In Defence of a Professional Model of Surrogacy

Martina Brero

Student number: 5451612

Supervisor: Lucie White

Second reader: Jos Philips

Utrecht Universiteit

Faculty of Humanities

MA Applied Ethics

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Abstract

Surrogacy is a form of assisted procreation in which the surrogate, after artificial insemination, decides to carry a pregnancy for a commissioning couple. Currently, there are two main models of surrogacy being used: the altruistic model and the commercial model. The former only provides reimbursement by the intended parents of the surrogate's healthcare expenses. The second, on the other hand, in addition to the reimbursement for healthcare costs, also includes financial compensation for the surrogate's service. However, these surrogacy models present too many ethical difficulties and risks for the main stakeholders, i.e. the surrogate and the intended parents. In this thesis, I propose and defend a new surrogacy model, the professional model. In particular, this thesis aims to show that this model devised by Ruth Walker and Liezl Van Zyl, despite some weaknesses that I will present, overcomes, sometimes partially and sometimes completely, some of the most ethically critical and the most powerful problems of the altruistic and the commercial ones. The professional model should therefore replace the current surrogacy models and become the dominant one.

Keywords: surrogacy, professional model, trust, gratitude.

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Introduction

In The Second Sex, Simone de Beauvoir stated that ‘with artificial insemination is fulfilled the evolution that will allow humanity to dominate the reproductive function. These changes are of immense importance for women in particular’[1]. Much has changed since de Beauvoir wrote these lines. How we reproduce today is not what it used to be, and science has long since questioned certain limits of human reproduction, limits that at de Beauvoir’s time seemed natural and taken for granted. In the last forty years, medical technology has significantly progressed in assisted fertilization. It has made it possible to give birth to babies who otherwise, with natural methods, could never have come into the world[2]. Among the various forms of assisted fertilization that technology makes available today is surrogacy. Surrogacy is defined as ‘the pregnancy of a woman who voluntarily and freely harbors in her uterus until term an embryo produced through IVF techniques and who, before gestation begins, undertakes to deliver the newborn baby to an intended parent or an intended parent couple’[3].

Nowadays, there are two models of surrogacy, the altruistic and the commercial ones. As these are the only two existing forms of surrogacy, they are also the dominant and most widespread ones in countries where it is legal (USA, India, Russia, Ukraine...) because they are the only two alternatives from which people who decide to resort to this assisted reproduction practice can choose. The main difference between the two models is that the altruistic model does not provide compensation to the surrogate for the service rendered but only reimbursement of the healthcare costs incurred by her. The commercial model, on the other hand, in addition to including reimbursement of health care expenses, also stipulates that the surrogate receives compensation for the service she offers[4]. Unfortunately, however, both create ethical problems, which sometimes are aggravated by a lack of consistent regulation.

[1]Simone De Beauvoir, *Il secondo sesso,* Saggiatore, Milano 2008, p. 142.

[2]Carlo Bulletti, Carlo Flamigni, *Fare figli. Storia della genitorialità dagli antichi miti all’utero artificiale,* Pendragon, Bologna 2017, p. 53.

[3]Cinzia Caporale et al., “La maternità surrogata: profili etici”, *The Future of Science and Ethics*, 2015, p. 5.

[4]Vera Tripodi,“La gestazione per altri come diritto di scelta individuale”, *Bioetica*, 2020, p. 463.

A clarification is in order at this point. The purpose of this thesis is not to review the arguments for or against surrogacy, i.e. to address whether surrogacy is a morally acceptable medical practice to resort to fulfilling the desire to have one's own child. I assume that surrogacy is a morally legitimate practice. Instead, the thesis attempts to demonstrate and defend the idea that the professional model of surrogacy devised by Ruth Walker and Liezl Van Zyl[5] should become the dominant and preferable one. By envisaging the professionalization of surrogacy, I argue that it can overcome, sometimes partially and sometimes completely, some of the more critical and ethically strong difficulties and risks of both the altruistic and commercial models, thus bringing many benefits and greater protections for surrogates and intended parents. In particular, I argue that this model, by basing itself on the principle "primum non nocere", establishing an independent regulatory body, a code of ethics, registered surrogates with a fixed fee, support and counselling services, and standard surrogacy agreements, succeeds in overcoming the problem of debasement of surrogate's activity and time typical of altruistic surrogacy and the problem of trust typical of commercial surrogacy. For these reasons, I argue that the professional surrogacy model is fairer, more ethical and more satisfactory.

This is not to say that it does not have weaknesses or shortcomings. Indeed, contrary to what the authors of this model claim, I show how replacing the value of altruism with generosity and gratitude only minimizes the exposure of the surrogate to emotional harm present in altruistic surrogacy but does not avoid it altogether. Moreover, this model does not seem to consider the problematic nature of the terms and conditions it imposes and through which the financial reward for the surrogate should take place, but also the need to introduce get-to-know meetings between the parties before IVF which, as I will show, would be fundamental in assessing their mutual compatibility. There also seems to be a lack of reflections and measures on the issue of the number of natural children a surrogate has, the need to establish a minimum time between pregnancies, the minimum age limit at which a woman can be entered on the professional surrogate register and finally the re-employment of retired professional surrogates. These weaknesses and shortcomings might mistakenly lead the reader to think that not even the professional model should become the dominant surrogacy model. In fact, I will prove that the strengths of this model are more significant than its weaknesses and that the latter can be easily overcome.

[5]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 17.

Within Section One, I will introduce the first currently dominant model of surrogacy: the altruistic model. Firstly, I will clarify its main characteristics, and then I will raise against it the most ethically critical and the most powerful objections. The altruistic model considering surrogacy as a gift debases the activity that is required of the surrogate and the time she offers. I will argue that carrying a baby for nine months for others should not be regarded as a gift; instead, surrogacy should resemble a care provision more closely because of the time required and the resources employed. I will also reason that believing that the surrogacy relationship established between the intended parents and surrogate is a gift relationship exposes the surrogate to emotional harm due to unfulfilled expectations. Indeed, the gift relationship is a type of relationship in which the parties establish a meaningful bond only through mutual giving and receiving. Consequently, it is legitimate for the surrogate to expect to receive something in return. However, she receives no reward because altruism, the core value of altruistic surrogacy, is incompatible with any form of reciprocity. For this reason, I will claim that the surrogate does not feel recognized for the gift she provides.

In Section Two, I will present the second currently dominant surrogacy model: the commercial model. After analyzing its distinctive elements, I will advance one of the most ethically critical and powerful objections against it: by its nature, the contract cannot foster the trust that should be present in every surrogacy relationship. The underlying principle of commercial contracts indeed is "caveat emptor", i.e. let the buyer beware, which means that the contracting parties, acting entirely in their interest, must be alert to the risks they face from each other and ensure that they are protected from them by provisions in the contract. However, I will show that the contract, because of the delicacy of the service it regulates and the unpredictability of the attitudes of the parties involved in it, cannot provide a basis for building this kind of trust in the surrogacy relationship.

The reason why I claim that the objections I will raise against the altruistic model and the commercial model of surrogacy are some of the most ethically critical and most powerful is that they promote the constant exposure of surrogates to emotional as well as psycho-physical harm. Moreover, these difficulties are the ones that most disrespect and disregard both the intended parents and surrogates.

Finally, in Section Three, I will present the professional surrogacy model's characteristics, structure and functioning. Then I will reflect on a point that was not taken into consideration by its authors, namely that through the professionalization of surrogacy, its normalization and tolerance within

society could be achieved. Next, I will demonstrate why professional surrogacy should completely replace altruistic and commercial surrogacy. In particular, I will illustrate how it manages to overcome, at times only partially, some of the most ethically critical and strongest objections of the altruistic and commercial models. I will argue that the professional model, by instituting a fixed fee, even though I disagree with its terms and conditions, for reasons I will show later, still manages to avoid the debasement of the surrogate's activity and time present in altruistic surrogacy. Furthermore, I will reason that by replacing the value of generosity and gratitude with altruism, it only minimizes its exposure to emotional damage due to unfulfilled expectations. Indeed, in their reflection, Walker and Van Zyl do not seem to find a solution to the fact that the surrogate cannot be assured of grateful behaviors by intended parents, given the genuine nature of gratitude. For this reason, I will propose that surrogates be assisted both before, during and at the end of the professional surrogacy process by psychologists and psychotherapists (in addition to the counselling and support services that the professional model already provides) so that they may be able to deal with the possibility of not receiving any emotional compensation from the intended parents. Next, I will explain why the professional model should replace the commercial one. The first reason is that it establishes a code of ethics, an independent supervisory authority, standard surrogacy agreements and a register for surrogates to foster a relationship of trust between the parties as much as possible. The second reason is that the professional model replaces the commercial principle "caveat emptor" with "primum non nocere", i.e. first, do no harm. In this way, both intended parents and surrogate mothers have the confidence to put each other's interests before their own. However, in addition to what this surrogacy model already envisages, I will propose introducing, prior to IVF, voluntary get-to-know meetings between the parties to better assess their mutual compatibility.

Furthermore, in this section, I will try to forestall the criticism that all the measures and precautions established by the professional model could also be applied to the altruistic and commercial models. Lastly, I will consider two possible objections that could be raised against the professional model: the fact that professional surrogacy could become a career for many women and put their health at risk, and the fact that it does not seem to worry about the re-employment of retired surrogates, i.e. those who have reached the maximum number of possible pregnancies. Against the former, I will argue that the professional model, by setting a limit on the number of pregnancies per surrogate, prevents surrogacy from becoming a career. However, I will show how it forgets to consider three other equally important issues to protect the health of surrogates: the number of natural children a surrogate has, the minimum time between pregnancies and the minimum age limit at which a

woman can be entered on the professional surrogate register. Against the second objection, however, I will state that the professional model could either form several partnerships with companies, institutions and private associations to recruit retired surrogates. Alternatively, it could relocate the retired surrogates within the professional surrogacy system itself, no longer as surrogates but, for instance, as advisors and consultants.

Section One

This first section considers, after briefly clarifying in sub-section 1.1 who the main stakeholders are, the first currently dominant model of surrogacy, i.e. the altruistic model. It then reflects on some of its most powerful and ethically critical difficulties and risks. More specifically, in sub-section 1.3, I criticize the system of gift typical of altruistic surrogacy: considering surrogacy as a gift relationship debases the activity that is required of the surrogate and the time she provides, gives rise to the surrogate's misunderstanding of the type of gift relationship she is in and consequently exposes her to emotional damage due to unfulfilled expectations. I conclude, therefore, that altruistic surrogacy is not an acceptable model of surrogacy.

1.1 Stakeholders

Before analyzing the altruistic model of surrogacy and beginning my argument, I feel it is appropriate to clarify, in order to avoid any misunderstanding or confusion, who are the main stakeholders involved in the surrogacy process, be it altruistic, commercial or professional. In this complex and delicate form of assisted reproduction participates the person who will be the future social parent of the baby, the intended parent, defined by the US courts as 'one whose intent is to become the legal parent of a child born of assisted reproduction or surrogacy. To be an intended parent does not require that one have a genetic relationship to the child'[6]. The genetic father, the one who donates the sperm and who, depending on the situation, may coincide with the intended father. The genetic mother, the one who actually provides the oocyte through which IVF will then take place[7].

Finally, the surrogate, mistakenly called the gestational mother by many. The gestational mother is the one who makes her body available for a limited period, i.e. the nine months necessary to carry the pregnancy to term. For this reason, as researcher Vera Tripodi points out, it is incorrect to call the surrogate "mother"[8]. 'Properly speaking, surrogacy is not a form of surrogate motherhood. Instead, it is a surrogacy of pregnancy.

[6]Richard Storrow, "Surrogacy: American style", *Surrogacy, law and human rights*, 2015, p. 209.
[7]Matteo Di Benedetto, "La maternità surrogata: le principali questioni bioetiche", *Diritto*, 2019, p. 1.
[8]Vera Tripodi,"La gestazione per altri come diritto di scelta individuale", *Bioetica*, 2020, p. 454.

– Indeed – the role of the surrogate does not entail any of the obligations that are incumbent by law on the one who performs the role of mother and on every parent in general, that is, specific social and emotional responsibilities towards a baby such as the obligation to maintain, instruct and educate him or her'[9].

Having clarified the main stakeholders of surrogacy, let us now consider the altruistic model and its issues.

1.2 The altruistic model as the first dominant model of surrogacy

The altruistic model is one of the surrogacy models currently in use. Walker and Van Zyl define altruistic surrogacy as 'uncompensated or unpaid surrogacy where the surrogate is reimbursed for direct, reasonable expenses only'[10]. In this type of surrogacy, there is only a reimbursement of the medical expenses incurred because the service offered by the surrogate is considered a gift she gives to the intended parents and is free. This model is, therefore, mainly based on an act of altruism, generally built on the foundations of some form of kinship or solid friendship. In the majority of cases the surrogate is the sister or a close friend of one of the members of the couple who commissioned the gestation.

According to the advocates of altruistic surrogacy, this form of surrogacy is considered the least problematic and, above all, the most morally appreciable. Since it is free, altruistic surrogacy is motivated solely by the desire to offer help[11]. Understood as an altruistic act, the purpose of surrogacy is to improve the well-being and life of someone else, essentially to make a gift. For those who defend this model, the surrogate's motivation is therefore relevant: hers should be a gesture in respect of which she should not expect any reward or reciprocity.

[9]*Ibidem*, p. 454.

[10]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 3.

[11]Vera Tripodi, "La gestazione per altri come diritto di scelta individuale", *Bioetica*, 2020, pp. 457-458.

Many argue that only when it is gratuitous can the surrogate's choice be considered free[12]. Therefore, the surrogate's choice must be entirely disinterested to be morally licit. For all these reasons, the altruistic one is the only form of surrogacy permitted in certain countries. The research I have conducted reveals that most countries allow surrogacy only if the surrogate receives no remuneration, i.e. if surrogacy is altruistic. This is the case in Australia (except for Northern Territory), Canada, Greece, the United Kingdom, the Netherlands, New Zealand, Portugal, Cyprus, Denmark, Hungary and Israel[13]. However, as I will show in the following sub-section, this surrogacy model raises significant ethical and conceptual issues that should discourage advocates.

1.3 The system of gift as objection to altruistic surrogacy

As I have just explained, proponents of altruistic surrogacy take altruism as the basic moral value of surrogacy. They agree that the motivation behind women's willingness to undergo an altruistic form of surrogacy is that of giving a gift. However, talking about gift-giving for this medical practice is misleading for at least two reasons. First, making one's own body available for nine months to make a baby for others does not look like a donation. Instead, because of the time required and the resources employed, surrogacy seems closer to a provision of care[14]. The term "care", indeed, indicates 'the active and attentive interest in someone or something, which engages both our soul and activity'[15]. Thus more than offering a gift, the surrogate assumes the moral responsibility of doing what she promised to the intended parents what. For this reason, not offering compensation to her means debasing the kind of work she is asked to do and the time she provides.

[12]*Ibidem*, p. 458.

[13]Ida Parisi, "Alcuni esempi di GPA nel mondo", *Associazione Coscioni*, 2019, pp. 1-3; Daniela Danna, *Fare un figlio per altri è giusto. Falso!*, Laterza, Roma 2017, pp. 105-107.

[14]Vera Tripodi, "La gestazione per altri come diritto di scelta individuale", *Bioetica*, 2020, p. 459.

[15]Giuseppe Antonelli, "Cura", in *Treccani*, available on https://www.treccani.it/vocabolario/cura/.

One might ask, however, why surrogacy should be compensated while caring for a sick friend, for instance, should not? Both are forms of care, so both deserve compensation. Against this, I argue that in the case of caring for a friend, the caregiver is only responsible for the sick friend. In the case of surrogacy, on the other hand, the surrogate is responsible for both the intended parents and the intended baby: both require care for different reasons. Moreover, although both are forms of care, there is a different physical and mental involvement on the part of the caregiver. In the case of caring for a friend, the caregiver makes his or her body available in a different way than the surrogate does in surrogacy. Pregnancy is physically and mentally much more demanding and disabling than simply caring for a sick friend. It should also not be overlooked that in the former case, the well-being of the sick friend is not linked to the physical and mental well-being of the caregiver. In the second case, the surrogate's physical and mental well-being is fundamental to the well-being of the intended baby.

Many studies have delved into this topic, investigating the possible effects of a woman's psycho-physical distress on the development of the fetus and its psycho-physical health after birth. In this regard, it is interesting to consider the findings of Florian Rakers et al. on the influence of maternal stress on the fetus. According to this study, maternal stress experienced during different gestation periods appears to be linked to an increased risk in the baby of developing neuropsychiatric, cardiovascular and metabolic diseases later in life[16]. Cortisol has been indicated as the primary mediator of the transfer of maternal stress to the fetus. Its lipophilic nature (its tendency to dissolve in fat) allows transplacental passage, so excessive maternal cortisol could adversely affect the development of the hypothalamus-pituitary-adrenal axis of the fetus, a key axis for mediating and managing stress[17]. It is clear then how much the surrogate's psycho-physical well-being is linked to that of the intended baby. For this reason, there is a significant difference between caring for a sick friend and surrogacy, which explains why only in the latter case is a need for compensation for the caregiver. Unfortunately, by not recognizing any compensation to the surrogate, the altruistic surrogacy model debases the service she provides. On the contrary, as I will illustrate in section three, the professional model, by establishing a surrogate fee, overcomes this problem and thus proves to be more ethical, fair and satisfactory.

[16]Florian Rakers et al., "Transfer of maternal psychosocial stress to the fetus", *Elsevier*, 2017, pp. 186-187.
[17]*Ibidem*, p. 187.

The second reason why it is misleading to speak of altruistic surrogacy in terms of donation is that it is not entirely unreasonable or immoral for the surrogate (also by virtue of the family or friendship ties between the parties) to expect something in return for the help offered[18]. If, in altruistic surrogacy, the relationship established between the intended parents and the surrogate is regarded as a gift relationship, as its advocates claim, then it is legitimate for the surrogate to expect to receive something in return. This is because a gift relationship establishes a meaningful bond between two parties (the surrogate and the intended parents) through the giving and receiving something meaningful (the gestation service and compensation). In the reciprocity that characterizes this relationship, recognition of the other is implicit[19]!

The first problem, therefore, consists in mistakenly considering altruistic surrogacy as a mere gift for which she should not expect any compensation. The problem here is that in most cases, recipients of gifts are expected to give something back. Therefore, the idea of surrogacy as giving a gift is in contradiction with the idea of surrogacy as an altruist act for which the surrogate does not deserve compensation[20]. Of the same idea is the sociologist Aafke Komter, according to whom gift exchanges are based on reciprocity and their function is to establish and stabilize social bonds within a wide range of human activity[21]. As a rule, a gift recipient is expected to reciprocate somehow. However, in the altruistic model, the surrogate cannot expect any form of reciprocity. Indeed, altruism is, by definition, incompatible with any form of reward or reciprocity[22]. Thus, since the surrogate does not receive compensation from the intended parents and therefore does not feel recognized for the gift she provides them, emotional reactions such as disappointment, unhappiness and frustration are often generated in her. Thinking of surrogacy as a donation can expose the surrogate to emotional harm and make her less free in her emotional relationship with the intended parents[23].

[18]Joshua Shaw, “What do gestational mothers deserve?”, *Ethical theory and Moral Practice*, 2016, pp. 1036-1043.

[19]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 54, 58, 59.

[20]*Ibidem*, pp. 3-4.

[21]Aafke Komter, “Gifts and social relations: The mechanisms of reciprocity”, *International Sociology*, 2007, p. 94.

[22]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 77.

[23]Vasanti Jadva et al., “Surrogacy: The experiences of surrogate mothers”, *Human Reproduction*, 2003, pp. 2203-2204; Rhonda Shaw, “Rethinking reproductive gifts as body projects”, *Sociology*, 2018, pp. 15-19.

The second problem is that in many cases, the intended parents and the surrogate can understand differently the nature of their gift relationship[24]. Surrogates tend to treat the relationship as a 'community sharing' one, i.e. a relationship based on 'feelings of connectedness' or 'identification with other people'[25]. On the contrary, the intended parents treat it as a 'market pricing' one, a transactional, instrumental relationship that is based on benefits outweighing costs, with the result that their perceptions, motivations and expectations can be very different[26].

Many studies support that surrogates respond to a need in other people with whom they identify. They often care for the feelings of others, and act to benefit their friends or family however they can[27]. After conducting a study on the community of surrogates and intended mothers in Israel, Elly Teman shows how surrogates use metaphors of love, such as marriage, to talk about the bond they establish with the intended mother. According to the anthropologist, the close relationship between the two women can be compared to a romantic infatuation, especially on the part of the surrogate towards the intended mother[28]. On the other hand, the latter tends to see the relationship differently as a market pricing relationship. Indeed, the intended parents often consider the surrogacy agreement and, consequently, the relationship with the surrogate to be terminated once the baby is born and the reimbursement of healthcare costs to the surrogate has taken place[29].

[24]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 55.

[25]Aafke Komter, "Gifts and social relations: The mechanisms of reciprocity", *International Sociology*, 2007, p. 99.

[26]*Ibidem*, p. 100.

[27]Daniela Danna, *Fare un figlio per altri è giusto. Falso!*, Laterza, Roma 2017, p. 122.

[28]Elly Teman, *Birthing a mother: The surrogate body and the pregnant* self, University of California Press, Berkeley 2010, pp. 120-123.

[29]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 55-57.

Already in the early 1990s, thanks to Hazel Baslington's studies, this difference between intended parents and surrogates in interpreting the surrogacy relationship had been noted. The majority of surrogates, despite considering surrogacy a positive experience, denounced that for intended parents, the relationship ended once their gestational carrier service ended[30]. For this reason, many of them experienced a temporary sense of emptiness. One surrogate put it this way: 'It is an absolutely extraordinary feeling. You are in a unique situation. You are the centre of the couple's world, you feel so special. It is the bond you create with them, rather than with the child, that is so addictive, but unfortunately it does not last'[31].

However, while in a typical relationship in which gifts are exchanged, disappointment at not having been reciprocated as expected can be overcome by either calibrating the future contribution one can make to that relationship or by ending it, such a possibility is not granted to the surrogate once her pregnancy status has been established. The reason for this is that the relationship established in surrogacy implies a set of significant responsibilities on the part of the surrogate for the intended baby and the intended parents[32]. Termination of pregnancy or refusal to comply with dietary restrictions and medical recommendations would be disproportionate responses to her disappointment.

Upon careful analysis, moreover, the altruistic model does not even always take sufficient account of the intended parents' moral responsibility towards the surrogate, for example, that she is entitled to care and support not only for the period of the pregnancy but also for the period immediately following the childbirth. The postnatal phase is indeed one of the most delicate because it is the one in which, in most cases, surrogates realize what Walker and Van Zyl call 'relational devaluation'[33].

[30]Hazel Baslington, "The Social Organization of Surrogacy: Relinquishing a Baby and the Role of Payment in the Psychological Detachment Process", *Journal of Health Psychology*, 2002, pp. 65-66.

[31]*Ibidem*, p. 65.

[32]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 4-5.

[33]*Ibidem*, p. 60.

At this stage, many of them respond with hurt feelings, sadness and loss because they realize that the relationship with their intended parents had never been what they thought it was or that they were much less valued than they thought they were[34]. In other words, surrogates understand that intended parents value the surrogacy relationship as a market-pricing one, not as a community-sharing relationship.

According to Edward Lemay et al., the psychological pain experienced following a relational devaluation stems from the fact that the victim, in this case, the surrogate, needs or desires a relationship with her perpetrators, the intended parents. The latter, however, once they obtain the baby, tend to break off the relationship with the surrogate[35]. In this regard, I think it is appropriate to quote a testimony made by a surrogate on "surromomonline", one of the largest surrogacy support sites. 'After the birth, I got not a hug or nothing. I'm so frustrated of all of this I could just scream. As soon as the babies were born they got what they wanted'[36]. Browsing carefully on the site, one can see many similar testimonies demonstrating how common and deep the psychological pain experienced by the surrogate following the breakdown of the surrogacy relationship is.

To conclude, in this section, after presenting the first currently dominant model of surrogacy, I showed its most powerful and ethical difficulties and risks. The system of gift debases the activity and time the surrogate provides; above all, it generates a misunderstanding in the surrogate about the type of gift relationship she is in, consequently exposing her to significant emotional damage. For all these reasons, the altruistic surrogacy model is not fair, ethical and satisfactory and, therefore, should not be used.

[34]*Ibidem*, p. 61.

[35]Edward Lemay et al., "Experiences and interpersonal consequences of hurt feelings and anger", *Journal of Personality and Social Psychology*, 2012, p. 983.

[36]Zsuzsa Berend, "The romance of surrogacy", *Sociological Forum*, 2012, p. 927.

Section Two

This section, divided into two sub-sections, focuses first on the second currently dominant surrogacy model, the commercial model. It then considers one of its most powerful and ethically critical difficulties. In particular, within sub-section 2.2, I argue that the contract, which is the basis of commercial surrogacy, cannot foster the trust that should be present in every surrogacy relationship. I conclude, therefore, that the commercial model is not an acceptable surrogacy model either.

2.1 The commercial model as the second dominant model of surrogacy

Unlike the altruistic model, the commercial model includes, in addition to the reimbursement of health care costs, a payment to the surrogate for the service rendered that takes into account the loss of income and the indirect costs she incurs, i.e. those she sustains from the beginning of fertilization until some time after the birth[37]. Those who defend this model believe it is 'unfair for a woman to carry a baby for someone else and get nothing in return'[38].

Furthermore, in the commercial model, a contractual relationship is established between the parties, which means that through a contract, the parties' roles are agreed upon, including the payments of the commissioning couple and the conditions the surrogate must fulfill. The conditions are negotiated between the parties and bound by particular prohibitions. At the end of the contract, the surrogate expects to be paid for the service provided and the principals to receive a baby. Only when the surrogate relinquishes the baby to the intended parents is the contract complete[39].

[37]Vera Tripodi, "La gestazione per altri come diritto di scelta individuale", *Bioetica*, 2020, p. 458.
[38]American Surrogacy, "What is commercial surrogacy?", *Surrogate*, 2022, available on https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-commercial-surrogacy/.
[39]Yehezkel Margalit, "In defense of surrogacy agreements: A modern contract law perspective", *William & Mary Journal of Women and the Law*, 2014, pp. 430- 437; Jenni Millbank, "Rethinking 'commercial' surrogacy in Australia", *Journal of Bioethical Inquiry*, 2015, pp. 483-486.

Proponents of this model believe that through the contract, surrogacy can be more easily regulated and thus controlled. Above all, all parties' rights in the process are guaranteed and respected[40]. In reality, I will claim, this is not the case. Indeed, this form of surrogacy, due to a multiplicity of moral issues, which I will discuss in the following sub-section, is considered by the supporters of surrogacy themselves to be the most morally problematic. It is no coincidence that only a few countries allow commercial surrogacy. Commercial surrogacy is legal only in India, Ukraine and Russia. In the United States, however, the regulation of surrogacy varies from state to state. Most states in the USA allow a system of commercial surrogacy, whereby the surrogate may receive more than mere reimbursement of pregnancy-related expenses, which always amounts to recognition for her act; in others, e.g. New York, commercial surrogacy is prohibited[41].

2.2 The contract as objection to commercial surrogacy

Having clarified what the commercial surrogacy model is, let us now consider the objection according to which the contract, by its very nature, cannot promote the trust that should be present in any surrogacy relationship[42]. In this sub-section, I first explain what trust is, how it operates and what it is based on. Hereafter, I show why the commercial model of surrogacy does not foster much trust. I conclude that even the commercial one is not a fair, ethical and satisfactory surrogacy model.

While the commercial surrogacy model is better than the altruistic one because it provides financial compensation for the surrogate, thus preventing the service she performs and the time she offers from being debased, it is still deeply flawed. Indeed, the commercial model is neither adequately nor sufficiently regulated. None of the countries where commercial surrogacy is permitted has good regulations. This is demonstrated by the many court cases concerning surrogacy, crowding US courts every year[43].

[40]American Surrogacy, "What is commercial surrogacy?", *Surrogate*, 2022.

[41]Ida Parisi, "Alcuni esempi di GPA nel mondo", *Associazione Luca Coscioni*, 2019, pp. 1-3; Daniela Danna, *Fare un figlio per altri è giusto. Falso!*, Laterza, Roma 2017, pp. 105-107.

[42]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 10.

[43]Daniela Danna, *Fare un figlio per altri è giusto. Falso!*, Laterza, Roma 2017, pp. 19-24.

However, the problem goes far beyond insufficiently regulated contracts: it seems that the contract model's application to surrogacy is wrong because it, by its nature, cannot generate the trust central to surrogacy relationships[44].

As Katharina Beier correctly states, 'surrogacy [...] builds on mutual trust'[45]. Also, according to Walker and Van Zyl, 'trust is central to successful surrogacy: [...] once a surrogacy relationship is established, both parties have to trust each other'[46]. Thus, for a surrogacy relationship to be successful, the intended parents must trust the surrogate to do what she has promised and equally for the surrogate mother to trust the intended parents to keep their promises. However, the contract, the foundation of the commercial model, cannot generate much trust. But what is trust?

When speaking of trust, a distinction must be made between calculative trust and relational trust. Calculative trust is the trust in which risks can be quantified and factored; consequently, it sets up the relationship in such a way that it is in the interests of the trustee to fulfill it. This is the form of trust that dominates business transactions. On the contrary, relational trust, which is everyday trust, involves different processes from those that underpin calculative: it is usually built up over the course of interactions between people and relies on a range of cues[47]. 'Relational trust is at work where there is uncertainty, that is, where risks cannot be quantified and safeguards cannot be put in place'[48].

[44]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 10.

[45]Katharina Beier, "Surrogate Motherhood: A Trust-Based Approach", *Journal of Medicine and Philosophy*, 2015, p. 636.

[46]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 111, 84.

[47]*Ibidem*, pp. 84-85.

[48]*Ibidem*, p. 85.

Since all human interactions take place in an external environment containing both risks and uncertainties, in all decisions to trust, including those of surrogacy, operate both calculative and relational factors. This means that both calculative and relational factors will be at work[49]. ‘Potentially, in any environment, people can be betrayed by someone turning out to be untrustworthy. As a result, they are always vulnerable to opportunistic behavior. […] – When the intended parents select their surrogate, they are trusting a stranger who could betray that trust. The first problem, then, is that, in surrogacy relationships, – intended parents make the decision to trust a stranger from a relational perspective even if it is commercial surrogacy where everything is done on a contractual footing. They feel a bond and they want to trust’[50]. This happens because, as David Dunning et al. claim, ‘people trust not because it is what they want to do, but because they feel it is an obligation of their current social role. It is the action they ought to take’[51].

The second problem is that decisions to trust are derived from automatic, fast and efficient mechanisms involving the use of cues based on the characteristics of the person or situation in order to arrive at ‘good enough decisions’[52]. Cues easy to detect and easy to process, such as appearance and belonging to the same group, may be irrelevant and wrong to whether someone is actually trustworthy. Moreover, people tend to focus mainly on their expectations of the outcome[53]. In surrogacy relationships, it often happens that the intended parents ‘make mistakes by focussing on easy to process, but irrelevant personal cues to evaluate the trustworthiness of the surrogate. Surrogates in turn often base their trust on what they hope for rather than what the cues actually indicate is likely. Such mistakes can lead to misunderstanding and disappointment’[54].

[49]*Ibidem*, pp. 89-90.

[50]*Ibidem*, pp. 90, 93.

[51]David Dunning et al., “Trust at zero acquaintance: More a matter of respect than expectation of reward”, *Journal of Personality and Social Psychology*, 2014, p. 10.

[52]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 93.

[53]Anthony Evans, Joachim Krueger, “Bounded prospection in dilemmas of trust and reciprocity”, *Review of General Psychology*, 2016, p. 17.

[54]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 111.

Several studies show that personal trust cues in interactions with strangers are mainly based on the trustee's outward appearance, including facial expressions, facial expressivity and body language. Unfortunately, however, these cues are irrelevant for verifying the actual trustworthiness of the trustee. Reputation (individuals are more willing to trust people with a positive reputation than those with a negative reputation) and social category[55] also play an essential role in trustee evaluation. In particular, what Michael Platow et al. call "group-based trust" occurs, a phenomenon whereby people tend to place more trust in strangers who are in-group members[56].

Having explained what trust is and its methods of action, I now turn to show why the commercial model cannot foster much trust in surrogacy relationships. The underlying principle of commercial contracts is "caveat emptor", i.e. let the buyer beware, which means that the contracting parties, since they act entirely in their interest, must be alert to the risks they face from each other and ensure that they are protected from them by provisions in the contract[57]. However, the contract cannot provide a basis for building this kind of trust in a surrogacy relationship. The surrogacy contract indeed regulates the provision of a service in which parties interact and whose behaviors are unpredictable (in the surrogacy process, it is challenging to predict the attitudes of both surrogates and intended parents). Pregnancy, then, is a very delicate process in which complications can arise that require sudden decisions and that cannot be foreseen in advance or fully specified in the contract. For this reason, the contract will always have weaknesses.

Moreover, the trust issue is essential if one considers the vulnerability of the surrogate and the intended parents. Although no one can force the surrogate to comply with the conditions laid down in the contract, the intended parents, needing her service and having no other alternative, trust her to take care of the gestation. Intended parents then are vulnerable not only because they are in a situation of need but also because they have to face all the risks of pregnancy without having control over the gestation of their baby[58].

[55]Isabel Thielmann, Benjamin Hilbig, "Trust: An integrative review from a person–situation perspective", *Review of General Psychology*, 2015, p. 256.

[56]Michael Platow et al., "Two experimental tests of trust in in-group strangers: The moderating role of common knowledge of group membership", *European Journal of Social Psychology*, 2012, pp. 34-35.

[57]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 10-12.

[58]*Ibidem*, p. 109.

As Walker and Van Zyl point out, couples ‘who are unable to form a family without the surrogate’s assistance, entrust her with their most cherished hopes and also their most fragile means to realizing those hopes. […] What the surrogate does or fails to do can make a significant difference to the outcome of the pregnancy even though many things that go wrong are beyond anyone’s control’[59]. I believe that what these authors are referring to, can be better explained with a metaphor. Let us think, for example, of those people suffering from particular illnesses for which there are no commercially available cures (i.e. cures approved by the scientific community because they have been tried and tested) and who, for this reason, decide to undergo experimental cures (i.e. cures that have not yet been approved because they have not yet been thoroughly tested), perhaps in cities, regions or even countries other than those in which they live. By deciding to embark on a course of treatment of this kind, these patients entrust all their hopes of recovery as well as many of their means, including their financial means, to this (moving to another city, for example, to receive experimental treatments could be economically costly). However, even in this case, despite the presence of out-of-control factors such as an unpredictable allergic reaction to the drug, the appropriateness of the treatment or the precision used by the medical staff in administering it could have significant differences in the patient’s recovery.

A further point that exacerbates the vulnerability of intended parents is that, in most cases, they resort to surrogacy for clinical reasons, tending to be due to the intended mother’s inability to initiate or carry a pregnancy to term for health reasons, often very serious. This is the case, for instance, with women who have had a hysterectomy or ovaries removed, who suffer from a congenital absence of the uterus, who have already tried several cycles of artificial insemination without success, who have a medical history of recurrent miscarriages or, more generally, who have health conditions that are incompatible with pregnancy or for which gestation is inadvisable[60].

[59]*Ibidem*, p. 109.

[60]Cinzia Caporale et. al, “La maternità surrogata: profili etici”, *The Future of Science and Ethics*, 2015, p. 6.

For many people, forming a family is significant, and the vulnerability resulting from the impossibility of realizing this desire is equally relevant. A study of several British clinics providing gestational surrogacy and two agencies supporting genetic surrogacy found that for the 29 infertile women who participated in the study, surrogacy was the most often reported preferred option (21%), compared to fostering (3%), adoption (3%) and IVF (4%). Among the 29 women, half experienced their inability to start a family and their infertility negatively, with 52% reporting feeling devastated and the remaining 48% feeling very bad. Most of them said they would do almost anything to have a family. All of them stated that their lives were incomplete and dominated by their search for ways to achieve family status[61].

Like the intended parents, the surrogate is also subject to a particular vulnerability, not only as a person but also as the surrogate herself. She may, for instance, be vulnerable to the intended parents's unreasonable behavior or share values that differ from theirs. Indeed, the contract that characterizes the commercial surrogacy relationship cannot protect the surrogate from any unreasonable behavior on their part towards her (the intended parents could, for instance, give her a lower fee than agreed or even not want to pay her). However, she must trust them. Above all, she must be aware that she is engaging in a very delicate process, which cannot be interrupted by a simple change of mind[62].

To conclude, in this section, after presenting the second dominant model of surrogacy, I have shown how this, relying on the contractual model, cannot promote the necessary trust between the intended parents and the surrogate. Since trust should be the basis of all surrogacy relationships, given the vulnerability of both intended parents and surrogates, it follows that even the commercial one is not a fair and satisfactory model of surrogacy. In the following section, I will analyze the professional surrogacy model and show that it can overcome, at times only partially, the main difficulties of both altruistic and commercial surrogacy. Only better regulation and greater cautions, currently guaranteed by professional surrogacy, will make the risks avoidable and manageable.

[61]Olga Akker, “The importance of a genetic link in mothers commissioning a surrogate baby in the UK”, *Human Reproduction*, 2000, p. 1852.

[62]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 16, 89, 102, 108.

Section Three

Since in the previous sections, I analyzed the altruistic and commercial models, but above all, I highlighted some of their most powerful and ethically critical issues, in this section, after explaining the professional model's structure and functioning, I try to demonstrate how it manages, sometimes completely sometimes partially, to overcome them and why it should become the dominant model of surrogacy. First, in sub-section 3.1, I outline the characteristics of the professional model and reflect on a point that was not taken into consideration by its authors, namely that through the professionalization of surrogacy, its normalization and tolerance within society could be achieved. Second, in sub-sections 3.2 and 3.2.1, I argue that the professional model should replace the altruistic one because, by establishing compensation for the surrogate and replacing altruism with the value of generosity and gratitude, it avoids the debasement of the activity and time that she provides and minimizes her exposure to emotional damage due to unfulfilled expectations. Indeed, I show that since the surrogate cannot be guaranteed behaviors of gratitude from intended parents, given its genuine nature, the precautions and measures that the professional model adopts only seem to reduce this risk but not solve it as its authors claim. Furthermore, I criticize the terms and conditions under which the financial compensation would take place, in particular, the choice of Walker and Van Zyl to divide it into two installments. In sub-section 3.3, then, I illustrate how this model, through the replacement of the commercial principle "caveat emptor" with that of "primum non nocere", the establishment of a code of ethics, an independent supervisory authority, a surrogate registry and standard surrogacy agreements, overcomes the trust problem present in commercial surrogacy. However, to better assess the mutual compatibility between intended parents and surrogates, I advocate the introduction of voluntary get-to-know meetings before IVF. Furthermore, in this section, I try to forestall the criticism that all the measures and precautions established by the professional model could also be applied to the altruistic and commercial models. Finally, in sub-sections 3.4 and 3.4.1, I consider two objections that could be raised against this model. The first concerns the possibility of professional surrogacy becoming a career, thus endangering the health of the surrogate. The second objection concerns the fact that this model does not seem to worry about the re-employment of retired surrogates, i.e. those who have reached the maximum number of possible pregnancies. I show that the professional model could overcome both of them. I conclude that it should become the dominant one because it is more fair, ethical and satisfactory.

3.1 The professional model as the best dominant model of surrogacy

Besides the altruistic and commercial models, there is a fairer, more ethical and more satisfactory one: the professional model. Indeed, by providing more professional standards and tools, it minimizes risks and protects the interests of intended parents and surrogates. Above all, it succeeds in finding solutions, at times only partially, to the difficulties of the two current surrogacy models. For this reason, it should become the dominant and preferable surrogacy model. The greatness of the professional model lies in recognizing the surrogates' motivation to care and, at the same time recognizing compensation for their labour. The idea behind this model is that surrogacy is analogous to some caring professions, such as nursing, and therefore should be regulated by precise professional rules to protect all parties involved[63].

Essentially, the purpose is to regulate the relationship and payments between the intended parents and surrogates, just as one does with nurses. Like all caring professions, surrogacy must also provide for payment. Indeed, according to Walker and Van Zyl, payment does not per se exclude the surrogate from acting for morally good reasons. Instead, since surrogates offer services and forms of care that are fundamentally ethical, it would be wrong not to give them compensation[64]. The professional surrogacy model thus ends up negating the assumption underlying the dichotomy between the altruistic and commercial models: if the surrogate is not paid, then she is motivated by genuine altruism; if the surrogate is paid, then she is motivated by money[65]. Let us think, for example, of the care provided by a nurse, a teacher or a doctor: those in such professions receive remuneration because they care for their patients or students; the fact that they earn money does not devalue the value of the care performed. It would also be unfair to say that a teacher (a nurse, a doctor) only does her job for money. It, therefore, seems that payment is not in itself a problematic aspect of surrogacy.

[63]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 13.

[64]*Ibidem*, p. IX.

[65]Vera Tripodi,"La gestazione per altri come diritto di scelta individuale", *Bioetica*, 2020, p. 463.

Furthermore, in the professional model of surrogacy, the professionals, i.e. the surrogates, without having to violate their rights, must be able to offer care promptly, to a consistent quality, and that is relevant to the recipient's specific needs of the recipient, i.e. of the commissioning couples, because care is what they provide to clients and not what they feel about them[66]. In this regard, I want to reflect on a point that does not seem to have been taken into consideration by Walker and Zyl: the fact that, unlike altruistic and commercial surrogacy, only gestational surrogacy with IVF should be legitimate in professional surrogacy.

When discussing surrogacy, a distinction must be made between gestational or full surrogacy and natural or partial surrogacy. In the first case, the gametes of a genetic couple are used to produce embryos for a surrogacy agreement: these embryos are transferred into the womb of a woman, the surrogate, who agrees to act as host and who is not in any genetic relationship with the baby who will be born from this agreement. In the second case, on the other hand, the surrogate who offers herself as host is inseminated with the semen of the man of the commissioning couple[67]. It is clear that, in this case, there is a genetic relationship between the host and the baby because there is a womb loan and an oocyte donation. By virtue of this, it becomes clear why I state that the professional model should only allow gestational surrogacy. Being a surrogate means providing a care service, not donating oocytes. The surrogate is only responsible for gestating the fetus, not for being its genetic mother. Only through this practice can the surrogate's rights and wishes be protected in the surrogacy process. Indeed, being the genetic mother of the baby she is carrying could create a lifelong responsibility on her. Moreover, it must be considered that the child could be negatively affected by discovering that the woman by whom he was raised and educated does not coincide with his genetic mother.

[66]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 13.

[67]Laura Corradi, *Nel ventre di un'altra. Una critica femminista delle tecnologie riproduttive,* Castelvecchi, Roma 2017, p. 26.

Before demonstrating in the following subsections how the professional model succeeds in overcoming, sometimes only partially, the main difficulties of altruistic and commercial surrogacy, but above all, why it should become the dominant surrogacy model, I want to focus briefly on a positive aspect that its authors have not noticed. I argue that through the professionalization of surrogacy (only provided for by the professional model), its normalization and tolerance within society could be achieved. Let me explain further, once this practice is professionalized, society's view could change over time to the point where it would be tolerated and normalized like any other caring profession. This does not mean that society as a whole would have a positive opinion about it: some people might continue to judge surrogacy negatively. Tolerance is indeed the disposition to understand and respect ideas and behavior that differ from one's own[68]. Let us think, for instance, of the process of professionalization and legalization of prostitution in Amsterdam at the beginning of this century, which led to its tolerance and through which prostitutes began to have rights and duties like any other independent professional[69]. 'When – indeed – prostitution is legally accepted as a normal job, society must also reflect this new-found acceptance'[70]. This is why I assert that if the professionalization of surrogacy, as the professional model envisages, were to take place, society would consider it on a par with any other caring profession and therefore tolerate it.

[68]Vittorio Coletti, Francesco Sabatini, "Tolleranza", *Dizionario della lingua italiana*, available on https://dizionari.corriere.it/dizionario_italiano/T/tolleranza.shtml.

[69]Chrisje Brants, "The Fine Art of Regulated Tolerance: Prostitution in Amsterdam", *Journal of Law and Society*, 1998, p. 629.

[70]Joshua Cruz, Swaan Van Iterson, "The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red Light District", *Humanity in Action Netherland*, available on https://humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/.

3.2 How professional surrogacy avoids the debasement of the surrogate

In sub-section 1.3, I argued that the altruistic model of surrogacy is not fair, ethical and satisfactory because it presents several problems: it debases the activity that is required of the surrogate and the time she provides, it gives rise to a misunderstanding of the type of gift relationship she is in and consequently exposes her to emotional harm due to unfulfilled expectations. In this sub-section, I will explain that only by paying the surrogate for the care service she offers is it possible to overcome the problem of the debasement of her activity and time. Subsequently, in sub-section 3.2.1, I will show that by adopting the value of generosity and gratitude rather than altruism, it is possible to partially avoid exposing the surrogate to emotional harm due to unfulfilled expectations. I will conclude that the altruistic model should be replaced with the professional one because by providing compensation for the surrogate and recognition of generosity and gratitude as its founding values, it is more fair, ethical and satisfactory. For these reasons, it should become the dominant model of surrogacy.

The first solution that the professional surrogacy model offers against the debasement of the activity and time that the surrogate provides, which occurs in altruistic surrogacy, is the establishment of a fee, as in any other caring profession. Specifically, the professional model of surrogacy foresees that the surrogate receives a set fee not subject to bargaining, divided into two installments: the first within three months of the beginning of the pregnancy, the second at the end of the pregnancy. According to Walker and Van Zyl, the reason is that if the surrogate has miscarriages in the first three months (in the first trimester, a pregnant woman’s rates of miscarriage are much higher than in the other months), she would only be paid half of the expected compensation[71].

[71]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 19.

Although I defend the need for a fixed financial reimbursement for the surrogate, I consider that Walker and Van Zyl's view has a flaw that can be solved. The weakness of their viewpoint concerns the terms and conditions under which the compensation would take place. Why would a surrogate be paid less for something that is not her responsibility and for something that is extremely detrimental to her? Paying the surrogate only half the compensation means penalizing her for having had a miscarriage, thus for being the victim of an uncontrollable and unpredictable event for which she is not responsible. That is why I propose that full compensation be given to the surrogate at the time of fertilization, i.e. at the beginning of the pregnancy. Surrogates who, for some reason, were unable to carry the pregnancy to term have nevertheless made their bodies available just as much as those who succeeded, so it is only fair that they are paid equally. Another reason why it is unfair and risky to pay the surrogate mother in two installments or even at the end of the pregnancy, as in the case of commercial surrogacy[72], is that in this way, the intended parents might abuse her. They could, for instance, refuse to pay the fixed amount or negotiate the price. What I have just argued does not debunk my main argument because the option of professionalizing surrogacy always remains the best not only because, as I have just shown, it avoids the debasement of the surrogate's activity and time, but also for additional reasons that I will explore later.

Against the professional surrogacy model, it might be objected that with the institution of payment, as in the case of commercial surrogacy, the surrogate would no longer be motivated by morally good reasons but only by the reward, she would receive. Against this, I counter that the fact that the surrogate is justly paid does not preclude her willingness to do good or her being generous. According to the authors of this model, indeed, 'unlike altruism, generosity is not in conflict with self-interest. Giving more than is owed does not have to be done at the expense of one's financial security or providing for one's own needs. […] To compensate someone for undertaking an arduous, generous course of action – like that of gestating someone's baby – does not stop it from being generous. It merely allows the person to meet their own legitimate needs. […]

[72]Daniela Danna, *Fare un figlio per altri è giusto. Falso!*, Laterza, Roma 2017, p. 7.

– Furthermore, much evidence supports that – there is no contradiction in the claim that paid professionals can be generous in the way they do their work'[73]. Michelle Brock et al., for example, examined the correlation between the generosity of clinicians and the quality of care they delivered, finding that clinicians defined as generous in the laboratory provide 8% better care in their normal work environment[74]. Not only that, Anne Arber and Ann Gallagher showed that generous nurses also provide care with greater empathy. Caring relationships that are generous are the means by which the persons in their totality are cared about[75].

3.2.1 How professional surrogacy minimizes the exposure of the surrogate to emotional harm

I have just shown how the professional surrogacy model can solve the problem of the debasement of the surrogate's activity and time. I now turn to whether it is able to solve the other weakness of altruistic surrogacy, that of the surrogate's exposure to emotional harm due to unfulfilled expectations. According to the authors of this model, by adopting the value of generosity and gratitude instead of altruism, the professional model manages to overcome this weakness completely. Indeed, if in the altruistic model, surrogacy is seen as an act of altruism on the part of the surrogate, in the professional model, it is seen as an act of generosity to which emotional compensation (in addition to the financial one) must correspond, i.e. a gesture of gratitude on the part of the intended parents. However, after clarifying the meaning and role of generosity and gratitude in this model, I will present a critique through which I will conclude that it can only partially prevent the surrogate from being exposed to emotional harm. I will claim this is not a debunking reason against the professional model.

[73]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 71, 72.

[74]Michelle Brock et al., "Generosity and prosocial behavior in healthcare provision: Evidence from the laboratory and field", *Journal of Human Resources*, 2016, pp. 133-134, 152-154.

[75]Anne Arber, Ann Gallagher, "Generosity and the moral imagination in the practice of teamwork", *Nursing Ethics*, 2009, pp. 777-778.

Based on what the Science of Generosity Initiative at Notre Dame University expressed, generosity is the quality of 'giving good things to others abundantly'[76]. Thus, it is a disposition of mind to feel, think and act in particular ways[77] that brings 'a benefit which is not due another because of duty, obligation, or desert'[78]. According to Joseph Kupfer, there are two types of generosity: corporeal and spirit. Corporeal generosity includes both material and economic donations, such as blood donation and 'the care provided by professionals whose work is physically demanding', as in the case of surrogates[79].

In contrast, generosity of spirit manifests itself through both generous-mindedness and generous-heartedness. The first is a kind of generosity that requires effort and involves valuing, having faith in and giving others to excel, and consists in the ability to recognize the positive aspects of individuals or situations where others might only see the negative aspects[80]. The second is an emotional giving that manifests itself when people forgive the transgressions, failings and lapses of others. It involves not bearing grudges and holding resentment, but providing, as Kupfer puts it, the releasing of people 'from a claim against them and a chance to begin anew'[81]. Like generosity, gratitude is also a disposition of mind, more precisely, it is a moral feeling, an emotional response to a gift, to generosity. Gratitude is thus not a commodity delivered in response to payment. Instead, it is typically evoked when receiving costly, unexpected and intentionally rendered benefits and is a form of graciously crediting the other for something that was not strictly due[82].

[76]Science of Generosity Initiative, "What is generosity?", *Center for the Study of Religion in Society,* University of Notre Dame, Indiana, available on http://generosityresearch.nd.edu/ more-about-the-initiative/what-is-generosity/.
[77]Anne Arber, Ann Gallagher, "Generosity and the moral imagination in the practice of teamwork", *Nursing Ethics*, 2009, p. 776.
[78]Joseph Kupfer, "Generosity of spirit", *The Journal of Value Inquiry*, 1998, p. 359.
[79]*Ibidem*, p. 358.
[80]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 72.
[81]Joseph Kupfer, "Generosity of spirit", *The Journal of Value Inquiry*, 1998, p. 360.
[82]Courtney Ackerman, "What is Gratitude and Why Is It So Important?", *Positive Psychology*, 2018, available on https://positivepsychology.com/gratitude-appreciation/; Robert Emmons, Cheryl Crumpler, "Gratitude as a human strength: Appraising the evidence", *Journal of Social and Clinical Psychology*, 2011, pp. 56-69; Daniel Forster et al., "Benefit valuation predicts gratitude", *Evolution and Human Behavior*, 2017, pp. 18-26; Robert Roberts, "Mental-Health and the Virtues of Community: Christian Reflections on Contextual Therapy", *Journal of Psychology and Theology*, 1991, pp. 319-333.

In the context of surrogacy, it is clear what the intended benefit is, but more importantly, who the benefactors are and who the recipients are. So, for professional surrogacy to effectively solve the problem of exposing the surrogate to emotional harm due to unfulfilled expectations characteristic of altruist surrogacy, it is necessary for the intended parents, i.e. the recipients of the surrogate's generosity, to express gratitude and acknowledge that they are indebted to her. Indeed, when a woman decides to become a surrogate, she manifests both her generosity of body because she is committed to carrying a baby for someone else and her generosity of spirit, given the community-sharing gift relationship she finds herself in. As we saw in sub-section 1.3, in such a relationship, the surrogate tends to care for the feelings of the intended parents and act to benefit them.

Thus since the benefactor typically gives care or services for which no direct form of reciprocation, such as surrogacy, I agree with Walker and Van Zyl that gratitude on the part of the recipient is the appropriate response. Providing the surrogate only with financial compensation does not guarantee that she feels fully recognized for the service performed, nor does it prevent her from being exposed to emotional harm. It is essential that in addition to financial compensation, the surrogate receives emotional compensation. For this reason, the professional model creates a context that encourages intended parents to show gratitude to the surrogate[83].

There are several ways to express gratitude to the surrogate for her generosity: one can thank her, one can show helpfulness or solidarity both during and after the surrogacy process, one can support her needs and arrange meetings or visits to try to maintain the relationship after the birth of the baby. As a matter of fact, in surrogacy relationships, gratitude is a necessarily required response not only because it encourages the recipient to repay the benefactor but also because it plays a crucial role in regulating the initiation and maintenance of the relationship itself[84].

[83]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 74, 76, 77.

[84]Daniel Forster et al., "Benefit valuation predicts gratitude", *Evolution and Human Behavior*, 2017, pp. 18-26.

According to Sara Algoe and Ruixue Zhaoyang indeed, the effects of gratitude go far beyond reciprocity: the gratitude experienced by a person has significant implications for the quality of the relationship, particularly for its own growth. Moreover, the expression of gratitude, as long as it is not artificial, has good effects on the personal and relational well-being of both members of the relationship[85].

Against the professional surrogacy model, it could be objected that it does not ensure that intended parents feel grateful and thus emotionally compensate their surrogate through gestures of gratitude. Unfortunately, this objection is correct. Walker and Van Zyl do not seem to consider this problem in their reflection. Certainly, given the genuine nature of gratitude, I am aware that it would not be possible to establish an instrument or control body that ensures that the surrogate receives gratitude from the intended parents. However, a partial solution to this problem is possible. Indeed, I argue that both before, during, and at the end of the professional surrogacy process, surrogates could be assisted by a psychologist and psychotherapist in order to be able to deal with the possibility of not receiving any emotional compensation from the intended parents, however, deserved it may be. In fact, the professional model already provides constant support and counselling services for surrogates should misunderstandings, psychological problems, uncertainties or doubts occur. However, these services do not seem to consider the possibility of a lack of gestures of gratitude from intended parents and the consequent need to prepare surrogates for such disappointment.

[85]Sara Algoe et al., "Beyond reciprocity: Gratitude and relationships in everyday life", *Emotion*, 2008, pp. 425-426; Sara Algoe, "Find, remind, and bind: The functions of gratitude in everyday relationships", *Social and Personality Psychology Compass*, 2012, p. 462; Sara Algoe, Ruixue Zhaoyang, "Positive psychology in context: Effects of expressing gratitude in ongoing relationships depend on perceptions of enactor responsiveness", *The Journal of Positive Psychology*, 2016, pp. 399-400.

Two objections could be raised against what has just been argued: the first concerns the possibility of introducing counselling and support services also in the altruistic model; the second is that despite the replacement in the professional model of the value of altruism by that of generosity and gratitude and the introduction of ongoing counselling and support services, the problem of surrogate's exposure to emotional harm due to unfulfilled expectations would still be present given the impossibility of guaranteeing gratitude. Against the first objection, I argue that the presence of trained counsellors to assist altruistic surrogates in dealing with the lack of grateful behavior on the part of intended parents would be paradoxical because they adhere to a model that, as I showed in section one, excludes any reciprocity by its very nature. Against the second, however, I argue that if in the altruistic model, the surrogate's exposure to emotional harm due to unfulfilled expectations is 100% in the professional model, it is 50% because in the former case, reciprocity is excluded a priori in the latter not. In other words, in the professional model, there is the possibility that the surrogate is emotionally compensated, while in the altruistic model, this possibility is entirely lacking.

To conclude, unlike the altruistic model, the professional model allows surrogates to be paid for their care service. Unfortunately, although it recognizes the generosity of surrogates to be matched by grateful behavior on the part of intended parents, it cannot guarantee the certainty of this. For this reason, the professional model only partially overcomes the problem of exposing surrogates to emotional harm due to unfulfilled expectations. This weakness does not weaken my main argument: the professional model is still more fair, ethical and satisfactory than the altruistic model in that financial compensation is guaranteed, and emotional compensation is possible.

3.3 How professional surrogacy avoids the trust issue

In this sub-section, I argue that even the commercial model should be wholly replaced with the professional surrogacy model because it overcomes the objection, according to which the contract fails to promote sufficient trust between the intended parents and the surrogate. In particular, I claim that the professional structure, by replacing the commercial principle "caveat emptor" with the principle "primum non nocere", by providing a code of ethics, an independent supervisory authority, a register for surrogates and establishing standard surrogacy agreements imposes definite bounds on what surrogates and intended parents may expect and what they should not expect. It offers protection against the consequences of trusting a stranger. It prevents the intended parents from making unreasonable requests and enables sanctions against the surrogate if she does not behave properly. Furthermore, in addition to what the professional model already provides, I propose giving the intended parents and surrogate the opportunity to have voluntary get-to-know meetings to better assess their compatibility. I conclude that here again, the professional model proves to be more fair, ethical and satisfactory; therefore, it should become the dominant surrogacy model.

In sub-section 2.2, I have shown that the commercial model is neither adequately nor sufficiently regulated and that it regulates the relationship between the surrogate and the intended parents through the contract, which by its very nature fails to foster the necessary trust between them. 'Trust can hardly be a contractual stipulation, and it is the contract that determines what can be required'[86]. In a process as delicate as surrogacy, however, trust is crucial. The trustworthiness of the surrogate and the intended parents is central because both are in a vulnerable position. For these reasons, I argue that the commercial model should be completely replaced with the professional one, which treats surrogacy as a profession and not as a mere contract between two parties, but mainly because it introduces better and more safeguards to try to minimize the risks for both surrogates and intended parents.

[86]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 15.

Considering surrogacy as a caring profession, the professional model first provides for establishing a code of ethics and an independent supervisory authority whose task is to offer training for both intended parents and surrogates, maintain ethical standards, adjudicate complaints and sanction offenders. Each surrogate then can only perform care services if she is registered in a register supervised by the regulatory body[87].

In order to be registered on such a register, the surrogate must be deemed trustworthy, i.e. she must meet specific criteria including age, medical and psychological health, absence of coercion, but above all, she 'has made a commitment to act in accordance with the relevant law, regulations and codes of ethics'[88]. According to this model, a would-be surrogate, therefore, not only has to meet the medical and psychological criteria but also has to adhere to the values and ethical standards of surrogacy. This means that surrogates are chosen on the basis not only of their psycho-physical characteristics but also of their willingness to apply the ethical guidelines of surrogacy.

Thus, in the professional model, the surrogate gives her consent to take the best interests of the baby and the intended parents into consideration (in the sense of the professional commitment this requires) and to behave ethically. Likewise, intended parents must be clear about their responsibilities towards the surrogate before fertilization. This ensures a reciprocal process in which the intended parents are sure of the surrogate's ethical standards and are likewise able to understand and accept their responsibilities to her before they can proceed. The surrogate's interests are also better protected against unethical or unreasonable demands by the principals. The professional model indeed replaces the commercial principle "caveat emptor" with "primum non nocere", i.e. first not harm. Thus, both intended parents and surrogates are trusted to put each other's interests ahead of their own[89]. In this model, the trustworthiness of both of them is central. As I have shown in section two, in a surrogacy relationship, both intended parents and surrogates are vulnerable, which is why both must actively seek, through understanding and respecting their responsibilities and ethical values, to gain each other's trust.

[87]*Ibidem*, pp. 15, 17, 18.
[88]*Ibidem*, p. 106.
[89]*Ibidem*, pp. 14, 18.

‘Professionals in general have rights as well as duties, with regulatory bodies that enable them to refuse to do things that would breach their code of ethics or that would put them at undue risk’[90]. It is always important that the intended parents and the surrogate feel that they are a good fit for each other, that they share the same values and that they agree on any practices that the surrogate should undergo during the pregnancy that would have a material impact on the welfare of the intended baby. We see then how the registry is doubly useful not only because it allows surrogates to be more in control and confident about their ethical standards but also because both parties are, thanks to it, in a better position to make a decision based on their personal preferences. Furthermore, to foster a more secure and solid trust relationship between the two parties, the professional model establishes standard surrogacy agreements approved by the regulatory authority. These agreements allow the legitimate preferences of the intended parents to be accommodated, equally verify that they comply with ethical and lawful clauses, and, above all, fall within those agreed to by the surrogate[91].

In this regard, I feel it necessary to digress briefly on the issue of abortion. In the professional model, the termination of pregnancy is neither prevented nor forced. Indeed just as a woman may have an abortion regardless of the contrary opinion of her husband or partner and they may not force the abortion, so ‘the intended parents have to be prepared to accept, regardless of their own beliefs, that a surrogate has the right to terminate a pregnancy whenever it is legally permissible to do so’[92]. However, there may be situations where the intended parents, because they strongly oppose abortion, suffer from having to respect the surrogate’s decision to terminate the pregnancy. For this reason, the professional model allows a small number of surrogates with a conscientious objection to abortion to register on the register. In this way, even commissioning couples who are against abortion would have the possibility of choosing a surrogate with the same values and convictions as them and who would therefore be willing to give birth to a baby whose best interest may not be born. Unfortunately, there are challenging situations, for example, those of severe fetal abnormalities, where the baby from birth is cared for until death because it is not in its best interest to be treated by doctors. Nevertheless, for many parents, it is essential to know that they have not caused the death of their baby and to hold it in their arms while it dies[93].

[90]*Ibidem*, p. 160.
[91]*Ibidem*, pp. 161, 18, 131, 132.
[92]*Ibidem*, p. 161.
[93]*Ibidem*, pp. 162-163.

Although the professional model provides many measures and precautions to foster and facilitate the formation of a relationship of trust, its authors have not sufficiently considered the compatibility issue between the intended parents and the surrogate. For this reason, I propose establishing several get-to-know meetings voluntarily between them in addition to the surrogate register. Let me explain better, just as in the adoption process, there are get-to-know meetings between the couple and the child to be adopted aimed at getting to know better the child's background, history and peculiarities (this usually takes place in the institution or foster home where the child lives)[94] the same should be introduced in professional surrogacy. However, while in the case of adoptions, these get-to-know meetings, which usually take place in the institutions or foster homes where the children live, are mandatory[95], in the case of professional surrogacy, they should take place within the clinics where the surrogacy process would take place and should be voluntary, so both the surrogate and the intended parents could freely decide whether or not to participate. I also advocate that these meetings should take place in the preliminary phase of the surrogacy process, at least four months before the IVF. In this way, the intended parents would have sufficient time to get to know the surrogate properly and vice versa.

Some might claim that the voluntary nature of these meetings could prove disadvantageous and penalizing for both surrogates and intended parents. Indeed, if, for some reason, one of the two parties decides not to participate in these preliminary get-to-know meetings, it could give a negative impression to the other, generate doubts about his or her reliability and possible negative consequences on their future relationship. This is true. However, I would argue that should intended parents or surrogates decide to deprive themselves of such an opportunity to learn, they should also be aware of the risks they would face.

[94]Commissione per le Adozioni Internazionali, "L'Abbinamento", *Governo Italiano Presidenza del Consiglio dei Ministri*, 1993, available on https://www.commissioneadozioni.it/per-una-famiglia-adottiva/per-adottare/la-strada-dell-adozione/quinta-tappa/.

[95]*Ibidem*.

Against the professional model, it could be replied that these measures it provides do not guarantee that each professional is trustworthy. Trustworthiness indeed is a 'characteristic of the trustee, upon which people form a judgement by reference to factors such as implied values and previous behaviors'[96]. However, the fact that a supervisory authority can remove the surrogate from its register so that she can no longer practice is an incentive to comply with the rules. At this point, one might ask why all the measures and precautions of the professional model could not be envisaged and adopted in the commercial model to foster a trusting relationship between the parties. The lack of a supervisory authority in commercial surrogacy shows that even if there were a register for surrogates, a code of ethics and appropriately regulated surrogacy agreements, it would still fail to create a relationship of trust between the intended parents and surrogate mother.

In the commercial model, a commissioning couple, for example, might sign a well-regulated contract that is very protective of itself. However, if there is no authority to monitor the surrogate's compliance with these rules and clauses, then the well-regulated contract can never promote the necessary trust. It could be argued that outside of this context, there are plenty of situations in which contracts between two parties are concluded without a supervising authority to monitor, such as the buying and selling of a house. However, I claim that there is a massive difference between a house purchase contract and a surrogacy one. In the first case, the contract regulates property transfer between two parties. In the latter case, on the other hand, the contract regulates the provision of a service whose purpose is the birth of a new human being. Carrying a baby and giving birth to it is a much more delicate and risky process than buying and selling a house. For this reason, it is necessary to have an authority in the surrogacy context that monitors compliance with the rules.

[96]Emma Levine et al., "Who is trustworthy? Predicting trustworthy intentions and behavior", *Journal of Personality and Social Psychology*, 2018, p. 5.

By virtue of what has just been said, one might think that the introduction of a supervisory authority would resolve the issue of trust in the commercial model. Actually, I assert, this is not the case: even if the commercial model were to establish a supervisory authority, it would still not be able to foster trust between the parties. This is because, in professional surrogacy, there must be a solid legal framework to support the regulating authority, like other self-regulating professions, able to encourage trustworthy behavior and include enforceable safeguards in the agreement that establishes the relationship[97]. In other words, the professional model requires state recognition of the legitimacy of surrogacy through consistent and adequate policies and laws. In contrast, the commercial model is applied in jurisdictions where there is only a tolerance of the practice of surrogacy, but not full recognition of it guaranteed and confirmed by the law enforcement of the state[98].

For this reason, I claim that even if the commercial model were to establish a supervisory authority as well as a registry for surrogates, a code of ethics and appropriately regulated agreements to try to foster trust between the parties, it would fail because if problems arose, there would be no legal framework to protect both parties through, for example, recourse. In this way, they could risk suffering severe damage. Suppose, for some reason, a professional surrogate is removed from the surrogacy register, and the court rejects her appeal: she would have to be found criminally guilty if she decided to continue offering surrogacy services. The presence of a legal framework to support professional surrogacy, therefore, not only helps to protect intended parents and surrogates but also to strengthen their relationship of trust.

[97]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, pp. 138, 110.
[98]*Ibidem*, p. 148.

In conclusion, in this sub-section, I argued that the commercial model should be replaced with the professional model. This latter model, indeed, based on the principle "primum non nocere", by providing for a code of ethics, an independent supervisory authority, a surrogate register, standard surrogacy agreements but, above all, a legal framework in its support, fosters a relationship of greater trust between the intended parents and the surrogate. It thus overcomes the objection against the commercial model that the contract, which is the basis of commercial surrogacy, cannot promote the trust needed in a surrogacy relationship. For this reason, the professional model is a more fair, ethical, satisfactory and therefore preferable surrogacy model. However, the fact that, to date, it is the preferable model among all does not mean that it does not have weaknesses. In the following sub-sections, I will analyze, in addition to the flaws I have already addressed, two objections that could be raised against it.

3.4 Surrogacy career as the first objection to professional surrogacy

Having shown how the professional surrogacy model succeeds in overcoming, sometimes completely sometimes partially, the problems of the altruistic and commercial models, I think it is only fair to make my argument stronger to consider two possible objections that could be raised against it. In this sub-section, I reason with the first one, which refers to the possibility of professional surrogacy becoming a career, thus endangering the surrogates' health. Against this argument, I argue that the professional model limits the number of pregnancies the surrogates can undertake. However, I show that additional constraints should be considered to protect the health of these women as much as possible, such as the number of natural children they already have, a minimum break time between surrogacy services and the minimum age limit for registration on the professional surrogate register. In sub-section 3.4.1, on the other hand, I analyze the second objection, which concerns the fact that the professional model does not seem to worry about the re-employment of retired surrogates, i.e. those who have reached the maximum number of possible pregnancies. Against this objection, I argue that this model could adopt two solutions: it could form several partnerships with both companies, institutions and private associations to recruit retired surrogates. Alternatively, it could relocate the retired surrogates within the professional surrogacy system itself, no longer as surrogates but, for instance, as advisors and consultants.

The first objection that could be raised against the professional model concerns the possibility of professional surrogacy becoming a career[99]. The possibility of accumulating professional skills and moving up the surrogacy ladder according to one's skills and depending on the number of pregnancies one has had can be a real risk of professional surrogacy. Indeed, turning the service that surrogates provide to commissioning couples into a career endangers the integrity and physical well-being of the surrogates themselves.

[99]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 13.

According to research conducted by the University of Cambridge and the University of North Carolina, a woman who has had multiple pregnancies faces more significant health risks. After examining 8,583 women between 45 and 64 years of age, it was found that women with five or more pregnancies were not only 40 % more likely to suffer a heart attack but also more likely to suffer a stroke (25%) and cardiovascular complications (17%) than women with one or two pregnancies or those who had no pregnancies[100].

The professional model of surrogacy, then, in order to prevent the professionalization of surrogacy from implying a legitimization of unlimited pregnancies, which put the woman's health at risk, imposes a limit on the number of pregnancies allowed to a professional surrogate[101]. Moreover, in addition to what Walker and Van Zyl already envisage, I contend that three other considerations should be made, and especially three other constraints should be established in this model to protect the health of surrogates. The first is to take into consideration the number of natural children a surrogate has (should the surrogate have adopted children, these would not be counted for obvious reasons), then the number of pregnancies she has already gone through and, based on that, determine how many professional surrogacy services she can offer without putting her health at risk. For example, a surrogate with one natural child could offer surrogacy more times than another with two or three natural children.

The second constraint that should be introduced into the professional model is establishing the minimum time between pregnancies. The waiting time between pregnancies seems to be a significant and determining factor not only for the surrogate's health but also for the health of the intended baby. A study conducted by a group of researchers from Columbia University and Harvard University showed that if one waits at least a year, or at most 18 months, between the first pregnancy and the second, the risks of problems during gestation are very low. In contrast, if only six months are allowed to pass, the chances of the mother experiencing serious problems are 1.2%. In this case, the risk of a premature birth stands at an 8.5 % chance, while by waiting a year, the chances drop to 0.5 %[102].

[100]Clare Williams, "The Association Between Parity and Subsequent Cardiovascular Disease in Women: The Atherosclerosis Risk in Communities Study", *Journal of Women's Health*, 2018, pp. 725-726.

[101]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 13.

[102]Laura Schummers et al., "Association of Short Interpregnancy Interval With Pregnancy Outcomes According to Maternal Age", *JAMA Internal Medicine*, 2018, pp. 2, 3, 6.

For this reason, the professional model should establish a mandatory break of at least 12 months between the end of one professional surrogacy service and the beginning of another. The task of supervision should always fall to the regulatory authority, which should ensure that this break period is respected not only between one surrogacy service and another but also between a classic pregnancy and a surrogacy service. For example, a woman who has just had a child should wait at least 12 months before offering a professional surrogacy service. Only in this way could the surrogate's health and that of the intended baby be fully protected. Obviously then, this waiting time should be compensated in some way. That is why I argue that in those 12 months of waiting following the surrogate pregnancy, the surrogate should receive further financial compensation in addition to what she has already received for the surrogacy itself.

Finally, the third and final constraint that should be introduced into the professional model so that the surrogate's health is better safeguarded concerns the minimum age limit at which a woman can be entered on the professional surrogate register. Indeed, although Walker and Van Zyl recognize that age is one of the necessary criteria to be met for surrogate registration[103], they fail to provide precise indications in this regard, including the minimum age. In the face of this issue, it could be argued that any female person, once she has reached the age of majority, should have the opportunity, if she so wishes and if she also meets the other specific criteria (listed above in sub-section 3.3), to become a professional surrogate and thus be entered on the surrogate register.

[103]Ruth Walker, Liezl Van Zyl, *Towards a Professional Model of Surrogate Motherhood*, Macmillan, London 2017, p. 20.

However, I disagree with this possibility for two reasons. The first is that the age of the majority is not the same in all states. In Italy, for example, the age of majority coincides with the age of 18, 16 in Palestine and 20 in Thailand[104]. The second reason is that adulthood does not always coincide with the safest age for pregnancy, i.e. the age at which the risks to a woman's health diminish considerably, given the differences between the legal systems of states. According to the WHO, indeed, mothers between the ages of 10 and 19 run a higher risk compared with those in their early 20s of developing pre-eclampsia (dangerously high blood pressure during pregnancy that can lead to complications such as convulsions and coma), systemic infections and infections of the uterine lining[105]. Thus, if it were decided that once girls came of age, they would immediately have the possibility of becoming surrogates, they would face many health risks, considering that in most countries of the world, the age of majority is reached at 18. By virtue of what has just been demonstrated then, I state that the minimum age to become a professional surrogate should be at least 20.

3.4.1 The re-employment of retired professional surrogates as the second objection to professional surrogacy

The second objection that could be raised against the professional surrogacy model is that it fails to consider and thus take care of all those surrogates who have reached the maximum number of possible pregnancies. In particular, this model does not seem to concern itself with the re-employment of these women. In the previous sub-section, I showed that once the maximum number of possible pregnancies had been reached, a woman could no longer continue as a surrogate because this would seriously jeopardize her health. Therefore any surrogate who reached that limit would be in a similar condition to retirement. I call these women retired professional surrogates.

[104]N.d., "Age of majority", in *Wikipedia*, available on https://en.wikipedia.org/wiki/Age_of_majority.
[105]World Health Organization, "Adolescent Pregnancy", 2022, available on https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy.

The reasons why I support that the professional model should help retired surrogates to seek new employment, should they wish to do so, are twofold. First, a surrogacy model such as the professional one that aims to protect and safeguard surrogates as fully as possible cannot but be concerned with the final stage of their journey, i.e. the stage when they stop offering surrogacy services. Second, the women targeted by professional surrogacy are those of child-bearing age (I showed earlier that the minimum age to become a surrogate must be at least 20), hence young women. Considering that an upper limit is set on the number of professional surrogacy services that surrogates could offer, they would retire very early. Indeed, let us suppose that a woman becomes a professional surrogate at the age of 20, and after five surrogacy services, each about two years apart, she retires at 32. Suppose she decides to take a new career path for various reasons (economic necessity, personal reasons). This woman, given her age but above all given the long period of inactivity due to her past as a professional surrogate, would run the risk of finding herself disadvantaged and penalized when embarking on a new career path compared to her non-surrogate peers.

At this point, one might ask how the professional model should overcome this problem. Two solutions could be adopted. One could be to instruct the regulatory authority to form several partnerships with both companies, institutions and private associations in order to encourage the recruitment of retired surrogates. These would obviously have to be incentivized to form these partnerships: tax relief might be a good incentive. Companies, associations or private institutions that decided to hire retired surrogates would have tax advantages. Of course, this solution would be rather complex considering the state's intervention in recognizing and granting these companies such tax breaks. That is why I argue that another, more straightforward solution could be adopted. The regulatory body could indeed relocate the retired surrogates within the professional surrogacy system itself, no longer as surrogates but, for example, as advisors and consultants. They could join the experts in the support and therapeutic counselling process that the professional model already provides. In this way, the professional model would prove to be wholly and highly protective of surrogates not only in the initial and intermediate phase but also in the final phase of their service.

To conclude, in this third section, I have proposed a new model of surrogacy, the professional model, explaining its objectives, structure and functioning. Above all, I have explained how it is able to overcome, sometimes completely sometimes partially, some of the most ethically critical and powerful objections of both altruistic and commercial surrogacy. This is precisely why the professional surrogacy model is more fair, ethical, and satisfactory; therefore, it should be the dominant one. However, the fact that it is today the preferable model among all does not mean that it does not have weaknesses. Indeed, I have shown that two objections could be raised against it: the possibility of professional surrogacy becoming a career for many women, thus putting their health at risk, and the fact that it does not seem to concern itself with the re-employment of retired surrogates. Nevertheless, I have proved that even in the face of these objections, the professional model has found and could find satisfactory solutions, thus confirming itself as a successful and preferable surrogacy model.

Conclusion

This thesis aimed to defend a new surrogacy model, the professional model. In particular, the purpose has been to show why the surrogacy model devised by Walker and Van Zyl should become the dominant one instead of the altruistic and commercial models. In the first two sections, I showed that the current dominant surrogacy models present too many powerful and ethically critical difficulties as well as many risks for the main stakeholders, i.e. surrogates and intended parents. Particularly with regard to the altruistic model, I reflected on the fact that considering the relationship between intended parents and surrogates as a gift relationship debases the activity and time she provides and exposes her to emotional damage due to unfulfilled expectations. For an exchange of gifts to be satisfactory, there must be reciprocity. However, I have argued that altruism, the underlying value of the altruistic surrogacy model, excludes any form of reciprocity. About the commercial model, on the other hand, I criticized the fact that it, by regulating through contract the relationship between the intended parents and the surrogate, is not able to foster the trust that should be present in any surrogacy relationship.

In the third section, I have defended a model that considers surrogacy as a caring profession regulated by definite and precise professional regulations aimed at guaranteeing both intended parents and surrogates the protection of their rights and interests as well as adequate professional support at all times. I also reflected on a further strength of this model that was not taken into consideration by its authors, namely that through the professionalization of surrogacy, its normalization and tolerance within society could be achieved. Moreover, I demonstrated how the professional model is capable of overcoming, sometimes totally, sometimes only partially, some of the most powerful and ethically critical problems of both the altruistic and commercial models. Indeed, I criticized the terms and conditions it lays down for the surrogate's financial compensation. I argued that this should take place at the beginning of the pregnancy and, above all, should be full and equal for all surrogates regardless of the outcome of the surrogacy. Then, I pointed out how this model, by identifying generosity and gratitude as its core values, only succeeds in minimizing and not solving the problem of the surrogate's exposure to emotional harm, contrary to what Walker and Van Zyl claim. Next, I analyzed how the provision of structures, better regulations and cautions allow the professional model to reduce the risks associated with trust in strangers. However, I noticed that the professional model does not sufficiently consider the compatibility issue between the parties. For this reason, I proposed introducing voluntary get-to-know meetings between the intended parents and the surrogate before starting the IVF procedure.

To further substantiate my argument that professional surrogacy should replace both altruistic and commercial surrogacy since it is more fair, ethical and satisfactory, I tried to forestall the criticism that all measures and precautions established by this could also be applied to the other two. Finally, I have considered and tried to find solutions to several objections that could be raised against professional surrogacy: the possibility of it becoming a career for many women, the fact that it does not seem to worry about the number of natural children a surrogate has, the minimum time between pregnancies, the minimum age limit at which a woman can be entered on the professional surrogate register and the re-employment of retired surrogates, i.e. those who have reached the maximum number of possible pregnancies.

The scope of this thesis did not allow for a discussion of the relationship between moral acceptability and professional surrogacy, so this discussion deserves further consideration. However, based on what I have shown and argued in this thesis, I believe that the risks and uncertainties involved in surrogacy for both intended parents and surrogates can only be limited by adopting a professional model. Therefore, I hope that all countries where altruistic and commercial surrogacy is legal will consider replacing it with the professional one as soon as possible. Above all, I hope that even where this practice is not yet permitted, professional surrogacy will be considered a viable alternative among other treatments against infertility.

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