

## **Human Rights and Surrogacy – Association between Human Rights Approaches and Ethical Approaches**

**Kalomoira K. Sakellarakis**

*National and Kapodistrian University of Athens and University of Peloponnese*  
*kalsakellarakis@gmail.com*

### **Abstract**

The main problems that Modern Bioethics faces concern mainly the terms of rights, which feature prominently in the theoreticalist theories. If classical theories of deontocracy and utilitarianism are applied to surrogate motherhood, we will be led not only to different but also opposing decisions. Bioethics, nevertheless, ought to make the best possible decisions and take into consideration moral aspects and values by prioritizing the importance of rights. The correlation between human rights and ethical approaches is particularly convoluted. Both of them are established on the respect of human dignity, the individual's importance and the moral integrity of human existence. As regards the moral dilemmas that arise as to the moral permissiveness of surrogacy, it behoves us to apply a particular ethical theory that will be used as a method of justifying a certain decision. Therefore, in the case of surrogate motherhood, basic ethical theories refer to Intuitionism and Ethical Ethics. A morality which is reliant foremost on the notion of duty, imperative and obligation. It examines the ethical dilemmas and answers the question of what one has to do based on their individual imperatives and duties.

**Keywords:** Human Rights, Surrogacy, Deontocracy, Utilitarianism, Human Dignity

### **Περίληψη**

Τα κυριότερα προβλήματα που αντιμετωπίζει η σύγχρονη βιοηθική αφορούν κυρίως τους όρους δικαιωμάτων, τα οποία κατέχουν σημαντική θέση στις συμβολαιοκρατικές θεωρίες. Εάν εφαρμοστούν οι κλασικές θεωρίες της δεοντοκρατίας και του ωφελιμισμού στην παρένθετη μητρότητα, θα οδηγηθούμε σε διαφορετικές αλλά κυρίως αντίθετες αποφάσεις. Η Βιοηθική, ωστόσο, οφείλει να πάρει τις καλύτερες δυνατές

αποφάσεις και να λάβει υπ' όψιν της ηθικές έννοιες και αξίες δίνοντας πάντα προτεραιότητα στον ρόλο των δικαιωμάτων. Η σχέση ανάμεσα στις ηθικές προσεγγίσεις και αυτές των ανθρωπίνων δικαιωμάτων είναι ιδιαίτερα περίπλοκη. Τόσο η μια όσο και η άλλη θεμελιώνονται στον σεβασμό της ανθρωπίνης αξιοπρέπειας, στην αξία του ατόμου αλλά και την ακεραιότητα της ανθρωπίνης ύπαρξης. Όσον αφορά τα ηθικά διλήμματα που ανακύπτουν ως προς το ηθικά επιτρεπτό της παρένθετης μητρότητας θεωρείται επιβεβλημένη η εφαρμογή κάποιας συγκεκριμένης ηθικής θεωρίας, που θα χρησιμοποιηθεί ως μέθοδος δικαίωσης κάποιας συγκεκριμένης απόφασης. Στην περίπτωση, επομένως, της παρένθετης μητρότητας, οι βασικές ηθικές θεωρίες αφορούν την Θεωρία της ενόρασης (intuitionism) αλλά και την Δεοντολογική ηθική. Μια ηθική που βασίζεται κυρίως στην έννοια του δέοντος, του καθήκοντος αλλά και της υποχρέωσης. Εξετάζει τα ηθικά διλήμματα και δίνει απάντηση στο ερώτημα που αφορά τι πρέπει κάποιος να κάνει βασιζόμενος στις ατομικές του υποχρεώσεις αλλά και στα καθήκοντά του.

**Λέξεις Κλειδιά:** Ανθρώπινα Δικαιώματα, Παρένθετη μητρότητα, Δεοντοκρατία, Ωφελιμισμός, Ανθρώπινη Αξιοπρέπεια

#### **PAPER:**

The main problems that Modern Bioethics faces regard the terms of rights, which feature prominently in the theoreticalist theories. If traditional theories of deontocracy and utilitarianism are applied to surrogate motherhood, we will be led not just to different but even to opposite decisions.

The Role of Choice in Liberalism (Nozick, 1984), Dworkin's Alternative Justice Proposals in the Field of Liberalism (Dworkin, 1977), and John Rawls's Theory of Opportunity's Invisible Idea are some of the theories that have the potential to lead Bioethics onto a commonly accepted path. Bioethics, nevertheless, ought to make the best possible decisions and take into consideration moral aspects and values by prioritizing the importance of rights. The correlation between human rights and ethics approaches is considerably convoluted. All of them are established on the respect for human dignity, the individual's importance and the moral integrity of human existence. We, therefore, conclude that human rights have the potential to

be an important normative asset for the evaluation of the achievements of Bioethics, such as that of surrogacy. The role of Bioethics is not to avert the biotechnological research and medical progress, but, in contrast, to contribute to finding any safeguards which will ensure the respect for human dignity and the realization of an act characterized by substantial solidarity, such as that of surrogate pregnancy.

The ultimate goal of Bioethics is to apply bioethical principles and to inform about the possible repercussions that human acquiescence may have on the new technology and especially on surrogate pregnancy. It does not seek to set obstacles in achieving human reproduction. Instead, it aims to make human responsible for their decisions. As regards to the moral dilemmas that arise concerning to the moral permissiveness of surrogacy, it behoves us to apply a particular ethical theory that will be used as a method of justifying a certain decision. Philosophy is not to provide an elixir of medical ethics but, instead, to analyze specific situations that appear in any medical dilemmas for the purpose of helping with the problem of surrogacy. It is also to contribute to the prioritization of moral principles and to the encroachment on uncompromising human rights. The deposition of a decision on an individual's consciousness coincides with emotions or furthers into arbitrariness. According to the era and following their own criteria, each society determines what is right once the moral values change. Nevertheless, in order for Philosophy to be able to answer for any arising problems and moral dilemmas, it is necessary that the fact that life is the highest commodity in the world (Theory of the Sanctity of Human Life) and that human is the ultimate form of life evolved on the planet be taken into account. Freedom is the basis for any putative commonweal recognizing the fact that it also includes the choice of evil. Any deprivation of liberty, however, may be the worst evil. Philosophy must take into account that no one has the right to damage the health of another person either directly or indirectly, and that the utilization of biotechnology achievements has to be done for the benefit of the human. Consequently, the economic benefit comes second in relation to the life and an individual's freedom, without anyone being granted, however, the exclusive employment and marketing of any form of life. Scientific research cannot be hindered. Notwithstanding, the view that anything artificial is not always for the benefit of human ought to be taken into account. There are many cases in which extreme

applications of knowledge are forbidden, but, in no case, can we forbid the search for a factual truth that human is trying to understand. Philosophical and biological education is an essential prerequisite so that citizens are involved in various decisions based on knowledge rather than the fear of the new and the unknown.

Myrto Dragona-Monachou posed the philosophical question on the association between moral philosophy and applied ethics during her announcement at the Kyoto Convention in 1994. She argued that in order for applied ethics not to be considered an open-and-shut case, theoretical moral philosophy should be the basis. Ethical problems are due to society and their observance is an individual choice. The difficulties that add to the solution to bioethical problems are the rapid development of scientific research, the financial interests, and the proposed solutions to bioethics problems. There are many conflicting philosophical principles, such as Kant's principle of autonomy, and the principle of benevolence, harmlessness and painlessness; all of which have a utilitarian crucible. The paternalistic model is displaced by the individual's autonomy and derives from the theory of utility. In the case of surrogacy, the basic ethical theories are:

### *The theory of intuition (intuitionism)*

The ability of an individual to apprehend not only the correct but also the intuitively erroneous is not enough to resolve the current bioethical issues. Any individual's desire to resort to the method of surrogate motherhood because they know that it is a good act without requiring any further moral argumentation could lead to an extreme dogmatism that does not provide meaningful solutions.

### *Ethical ethics*

The specific morality is based on the notion of duty, the imperative and obligation. It examines the ethical dilemmas and answers the question of what one has to do based on their individual imperatives and duties. A particular feature of this case is to push aside any circumstances and consequences which may affect a situation. If everyone considered a supreme duty the humanitarian attitude towards his fellow human beings, then the neonate's gestation will be prioritized by being integrate and loved

by the family. This viewing is characterized by the clarity and certainty of springboards, it nominates the negation of gestation in the case that the subject does not consider to proclaiming themselves, and more specifically the uterus, available for herself and independently of the need of relatives, friends or fellow citizens a high duty.

A moral system based on the ethical ethics is Kantianism and the Kantian categorical imperative. According to the categorical command, each one acts only according to such a guideline, through which an individual may at the same time want this guideline to become a universal law (Kant, 1984). The imperative requires agreement, the adjustment of the guideline to the acts with the universality of the law. According to the Kantian command, a law would be adjusted whereby the surrogate mother would gestate the estranged fertilized ova to enable a childless family to have a child; a practice that the pregnant woman would wish her fellow citizens to adopt had she been on the other end of this situation. The individual's right to life is primary and fundamental. Bioethics defines ethical values in an acceptable for everyone way. According to the supreme principle of benefit, which encompasses the demand for the maximization of happiness for the wider population, ethics is the creation and selection of a body that will ensure the good of childbearing through surrogate maternity for the greatest possible number of people.

In the first chapter of his famous book "*On Freedom*", (Mill, 1859) Mill attempted to set a limit to the restriction of freedom, whereby the only reason for which the state is allowed to restrict human freedom against will is to prevent harm to other people. Nevertheless, it is not legitimized to restrict the individual's freedom for personal physical or moral good. The state does not also hold the right to do or not something either because it will be better or make them feel happier. According to the otherwise convincing and quite ambiguous principle of harm, each individual holds authority for themselves, their body and mind. In the case of surrogate maternity, Mill's principle is clear, while Feinberg emphasizes autonomy extending Mill's thought. Mill's theory recognizes freedom as a basic feature of the autonomous human being; a freedom that is not limited to the spiritual field but is defined as the free development of the personality even in its external behavior. Feinberg (Feinberg, 1970) explains that in order to define a pregnant woman's behavior as a deliberate and unforced certain

conditions must apply. Initially, the chosen person should be capable of doing so and choosing to be the result of coercion.

According to Beauchamp's and Childress's moral principles, four principles govern bio-moral ethics, i.e. the principle of autonomy, beneficence, "non-harm" and justice. The principle of autonomy exists as '*primum inter partes*', meaning first among equal principles. On the other hand, the principle of beneficence includes charity, kindness and altruism, and, at the same time leads to the fellow citizen's obligation to contribute to the achievement of various important and legitimate interests, provided that they run no risk of being exposed to any danger. Dworkin explains that due to the fact that the moral environment in which people coexist is created mostly by the other, the question of who and how will have the power to contribute to its creation is considered to be of fundamental importance. The given answer which is consistent with the ideals of political equality is as follows: No one should be prevented from influencing the common ethical environment through their individual choices, their taste, their opinions and their example, just because this tastes or these opinions happen to cause disgust to those who have the power to force them to be silent (Dworkin, 1985).

On the other hand, there is also the case of the communitarians (communitarians) according to which both the community values and the communitarians are above the value of the community members and surrogate motherhood is mainly treated positively since the pregnant's act is an offer to a third person. It is noteworthy that on various occasions, technological means and medicine in general do not appear to be person-centered where the individual is prioritized over society but many times fundamental rights such as justice, equality and freedom are entrenched (Cohen-Almagor, 2000). Nevertheless, it is not uncommon to have solidarity for the fellow human being, non-charitable offering and integration of personality through childbearing being noticed.

It is a fact that we live in a time when humanity has left behind traditional values such as maternity and family. There are few who are in a hurry to stand out. However, scientists say that science has to advance for the sake of individuals and that it is not easy for man to interpret the secrets of creation. It is worth noting that there are particularly big moral and legal problems and that the situations are becoming more and more complicat-

ed. Rules are overturned, new data is being tested, and many relationships are shaken. People face another reality. They are forced to consider marriage, family and children from another, new perspective. The method of surrogate motherhood is a difficult issue, in which no one can easily take up a position.

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*Kalomoira K. Sakellaraki* has a Bachelor’s Degree in Greek Philology and a Master’s Certificate in Philosophy of Ethics. She is a PhD Candidate of Applied Ethics Philosophy and has completed her Doctoral Thesis, which is entitled “Surrogacy and Human Rights”. The aim of her research is to clarify the aspects that surrogacy arises under the guise of various rights theories and to emphasize the essential contribution of science to the efforts of childless couples to procreate. She has published articles in scientific journals of philosophy and has participated in World and International Congresses. She is a member of the International Forum of Teachers.