

Presidency of the Council of Ministers



MOTION

PAID SURROGACY

18 March 2016

The text, discussed in the plenary session of 18 March 2016, was voted and approved by those present: Profs. Salvatore Amato, Luisella Battaglia, Carlo Caltagirone, Stefano Canestrari, Francesco D'Agostino, Antonio Da Re, Lorenzo d'Avack, Mario De Curtis, Dr. Riccardo Di Segni, Profs. Paola Frati, Silvio Garattini, Marianna Gensabella, Assunta Morresi, Andrea Nicolussi, Massimo Sargiacomo, Lucetta Scaraffia, Monica Toraldo Di Francia.

Profs. Carlo Flamigni, Demetrio Neri and Grazia Zuffa voted against.

Dr. Maurizio Benato, Dr. Carla Bernasconi, Prof. Anna Teresa Palamara and Dr. Carlo Petrini members without the right to vote also acceded.

Profs. Carlo Casonato, Bruno Dallapiccola, Laura Palazzani, Rodolfo Proietti and Dott.ssa Rosaria Conte, member without the right to vote, who were absent from the session, subsequently gave their approval.

Prof. Cinzia Caporale, absent from the meeting, later expressed her disapproval.

Prof. Carlo Flamigni sent a dissenting codicil and Profs. Cinzia Caporale, Demetrio Neri and Grazia Zuffa sent a statement of dissent. Both notes are set out below.

The NBC has spoken out repeatedly against the commodification of the human body (Motion on the trade of organs for the transplant, 18 June 2004; Motion on the trade of oocytes, 13 July 2007; Opinion on Illegal trafficking of human organs from living donors, approved on 23 May 2013).

In these documents the NBC recalled and endorsed the provisions of Art. 21 of the Oviedo Convention on Human Rights and Biomedicine (1997): "The human body and its parts shall not, as such, give rise to financial gain", providing, as reaffirmed by Art.3 of the European Charter of Fundamental Rights (2000), that it constitutes one of the ethical principles of the European Union.

The NBC points out that surrogacy is a contract which damages the dignity of the woman and the child, who, like an object, is subjected to a deed of sale.

The NBC believes that this hypothesis of commercialization and exploitation of the female body in its reproductive capacity, under any form of payment, explicit or surreptitious, is clearly contrary to fundamental bioethical principles also arising from the documents mentioned above.

The Committee intends to address the issue of surrogacy rendered without any financial reward in a specific more detailed Opinion.

** ** *

Motion on the so-called womb for rent approved by the majority on March 18 – A note of dissent by Prof. Carlo Flamigni

Before this motion (in its first version, which condemned all forms of "substitute motherhood" was discussed and voted on at the plenary meeting on Friday 18 March, I had presented a lengthy document in which I asked to differentiate between the various forms of surrogacy (to distinguish between, to use the media definition, womb for rent and the gift of the womb) and I put forward the question of setting priorities, recommending that evaluation be given as regards the appropriacy of urgently considering an issue of scarce numerical significance as that of "surrogate motherhood", while ignoring issues such as prostitution, the trafficking of young girls and pedophilia. In fact I had been struck very disagreeably by a statement issued by the Minister of Health (February 4, 2016) according to which "surrogate motherhood" is one of the worst forms of prostitution, an insult that, neither the women who are its protagonists nor their children (inevitably the "sons of whores"), deserve. My document was not taken into consideration and, being rather long and not having found a place here, it will be on my website (www.carloflamigni.it) in April-May. Here I will only consider the issue of the so-called "womb for rent", and, as in the last plenary meeting of the Committee, the one in which this motion was passed, I was accused of being a man (indeed, a gynaecologist) and therefore understanding so very little of the mysteries of the feminine soul, I will try to make good use of my recent collaboration with a brilliant young researcher at the University of Bologna, Angela Balzano (how we came to shared conclusions can be understood by reading a book we wrote together *Sexuality and Reproduction*, published by Ananke in 2015) and an essay by M. Cooper and C. Waldby (*Biolavoro Globale, DeriveApprodi* 2015) that Angela translated and which also contains two of our documents.

Like the NBC, I too have repeatedly declared myself against the commodification of the human body, in all its forms. If, therefore, I do not point my finger against "substitute motherhood" (it would be better to call it "gestation for others" or "gift of the womb") it is because I see it as a potential tool for self-determination, not only for parents who commission it, but also for the women who voluntarily agree to this gift, or sale, of their generating capacity, which means that the main thing that has to be discussed concerns the right to manage one's own body and the lawfulness or the convenience of placing limits even in those cases where it is absolutely respectful of the rights of others and does not produce any kind of damage whatsoever. It is best to immediately point out that a hypothesis emerged out of the discussion that took place within the NBC according to which this "gift" does not actually exist, what there is, is only an exchange, a hypothesis I knew very little about, and that I have always considered something in between an *excusatio non petita* and hypocritical self-criticism of capitalism.

I do not invoke strict regulatory requirements, nor do I side with campaigns claiming international prohibitions, rather I limit myself to trying to understand why today there is so much talk about substitute motherhood, and why there is the tendency to present it as an emblem of every form of commercialization of the living. Perhaps reasoning would be based differently if, in addition to keeping in mind international regulations, attention was paid to some real data. Certainly the use of new techniques of "total surrogacy" has increased in recent years but the numbers of couples and persons accessing it remains very small, both in absolute

terms, and if compared to that of those who engage in the more traditional therapies of assisted fertilization with third-party gametes. For instance, let's take, what happens in the United States: according to the statistics of the Centers for Disease Control on examination of the figures for 2008, "surrogacy" was used in only 1% of medically assisted procreation cycles (slightly over 900 times), while the oocytes harvested from third party women were used in approximately 12% of the cycles, enabling the birth of 5,894 children¹. We do not know how many people in Europe have resorted to surrogacy because there are no formal documented numbers (in countries where "surrogacy" is forbidden, those who use it may be prosecuted, which certainly does not help with the collection of data), but in any case we are talking about very low numbers compared to those related to MAP. It is worth mentioning the Observatory study on procreative tourism, which shows that in 2011 the number of Italian couples who went abroad for "Surrogacy" were 32, against 4000 emigrating to obtain "heterologous" fertilization.

To begin I thought it appropriate to choose well known ground: more than ten years of prohibiting fertilization with the gametes of others has shown that the choice of regulations dripping with bans and prohibitions on reproduction has as its sole outcome to create substantial differences based on census, with the more affluent being widely favoured and the poor forced to seek their fortune in laboratories and centres that are as inexpensive as they are unreliable. According to a recent study published by Human Reproduction², Italy is the European country that contributes most to swelling the queues of procreative tourism: out of 46 centres for MAP, and 1,230 couples, 392 were Italian. In a year about ten thousand Italian couples cross borders to find the gametes necessary for MAP, and these figures relate to only one month of monitoring. In the seven countries examined (as well as Italy, the figures refer to Spain, Switzerland, Belgium, Slovenia, Czech Republic and Denmark), Italian couples accounted for 31.8% of the total, a number that shows no sign of decreasing even after our Constitutional Court declared illegal the ban on donation of gametes and embryos. As regards this, I include the testimony of Elizabeth Coccia, former president of CECOS, who explains that Italian state centres are signing agreements with foreign gamete banks: "Some clinics, at least 12, have already finalized contracts, and with the "foreign" gametes already having arrived a first confirmed pregnancy has been obtained. Even the Careggi hospital in Florence, one of the few state run centres where heterologous fertilization started off, has just finalized four contracts with European banks, two Spanish and two in northern Europe, after having issued a public call for interest notice to which several certified European centres replied [...]. The decision to make agreements with foreign countries remains at the moment, the only possible way to guarantee heterologous fertilization in our country."³ Logic suggests, therefore, that banning surrogacy in Italy does not decrease recourse to the technique, but only determines an increase in reproductive tourism, increasingly resulting in regulating access to it according to

¹Centers for Disease Control and Prevention, 2008 Assisted Reproductive Technology Success Rates. National Summary and Fertility Clinic Reports, Department of Health and Human Services, Atlanta US 2010.

²F. SHENFIELD et al., *Cross border reproductive care in six European countries*, "Human Reproduction", 2010, 25/6, pp. 1361-1368.

³ Available at link: http://www.ansa.it/saluteebenessere/notizie/rubriche/salute/2015/01/14/eterologa-mancano-gameti-in-italia-si-cercano-allesteri_8e50559b-54bd-4186-82aa-81fa4b83b089.html (Last accessed October 2015).

income. There are already destinations for citizens of the upper classes, such as California, and destinations for the middle classes (and it looks like the perfect place for these treatments is once again India).

Too often our moral ideals move us away from the desires of real people and prevent us from feeling compassion for their suffering. I have encountered many men and women whose only desire was to have a child that they recognized as their "own" from a biological point of view. We may personally have never felt this desire, but a lack of empathy is not a valid reason to prevent the realization of the desire of others, at least in the context of the law. If gestation for others is not a practice that causes damage to third parties then there is no reason to ban it. Since many people claim that there is in fact an injured party, that of the surrogate mother, I invite you to explore the blogs that exist, that are managed directly by the "substitute mothers" of North American, who declare "I love to be pregnant" and justify their choice stating: "surrogacy is one of the most beautiful gifts we have to give"⁴.

In addition, a study conducted in 2005, which compared twenty-seven empirical studies, reports that in North America "gestational surrogate mothers" are "twenty or thirty- year olds, white, Christian, and married with children of their own" and that "family incomes of the surrogate mothers are often very modest (but not extremely low), since they are predominantly women who belong to the working class"⁵ (in which case the hypothesis of non-existence of the "gift" really seems nonsense to me). I know that the situation is different in India, where women who become "substitute mothers" have lower incomes: from ethnographic studies by Kalindi Vora⁶ and Amrita Pande⁷, it is evident that the "surrogate mothers" are mainly agricultural day workers, housewives who do cutting and sewing work from home, maids, cleaners. It is however widely documented that these women make a conscious choice in undertaking gestation for others. If we consider that their previous work exposed them to many risks and hardships, and relegated them to the home and that in return they received scant and often uncertain wages, it comes as no surprise that their choice is consciously based on financial calculation⁸. Can we blame them? Cooper and Waldby explain that by working in the reproduction market women finally take on "an entrepreneurial economic role, even if in this way it exposes them to high risks for their body"⁹.

⁴ See, among others, the blog <http://www.scarymommy.com/5-things-say-gestational-surrogate/>.

⁵ J. C. CICCARELLI, L. J. BECKMAN, *Navigating Rough Waters. An Overview of Psychological Aspects of Surrogacy*, "Journal of Social Issues", 2005, 61(1), pp. 21-43, p. 31.

⁶ K. VORA, Indian Transnational Surrogacy and the Disaggregation of Mothering Work, "Anthropology News", 2009, 50(2), pp. 9-12; K. VORA, Indian Transnational Surrogacy and the Commodification of Vital Energy, "Subjectivity", 2009, 28(1), pp. 266- 278; K. VORA, Medicine, Markets and the Pregnant Body. Indian Commercial Surrogacy and Reproductive Labor in a Transnational Frame, "Scholar and Feminist Online – Critical Conceptions: Technology, Justice, and the Global Reproductive Market", 9(1/2), http://sfonline.barnard.edu/reprotech/vora_01.htm, 2011.

⁷ A. PANDE, *Not an "Angel" Not a "Whore". Surrogates as "Dirty" Workers in India*, "Indian Journal of Gender Studies", 2009, 16(2), pp. 141-173.

⁸ According to reports by Cooper and Waldby women who choose surrogacy as a form of work receive compensation up to seven times their average annual income (about \$ 7,000).

⁹ M. COOPER, C. WALDBY, *Biolavoro Globale. Corpi e nuove forme di manodopera*, DeriveApprodi, Roma 2015, p. 117.

Examining with a minimum of concreteness and seriousness the problems of carrying out gestation for others requires taking into account, on the one hand, the labour market and its relationship with international regulations and, on the other, the developments of scientific progress (without forgetting the way in which the common sense of morals modifies and how subjective desires change). This kind of approach takes time and method, but, although perhaps it is less accepted than the classic moral approach, it is the only way to shed light on a well-known but very unspoken truth: the labour market has always privileged the characteristics of women related to care and reproduction and this is why women have always been prisoners of stupid and humiliating myths. Rather than emanating bans, what is required is the affirmation of a different culture that values women for what they really are and which treats motherhood for what it really is, a feeling and not an instinct: and wanting to have a child only means that the feeling is present but not that that woman deserves more respect and should enjoy greater prestige, just as wanting to show compassion for a companion who cannot have children is a self-giving act that cannot be the object of derision and criticism. As for the modification of the common sense of morals, I will limit myself to recalling that the same Court of Human Rights has referred to it as the source of moral rule in a sort of appeal addressed to legislators, in its judgment prohibiting the donation of female gametes in force until a few years ago in Austria. It has been taken into account even by the Treccani Encyclopedia, the always careful guardian of our culture, that writes in this regard; "Ultimately, the new issues raised by IVF may require for many of us a change in the opinions inherited from traditional ethics. "It must be recognized that such a profound transformation as the one foreseen concerning the reproductive function of family may involve a new ethics, with parameters different from those handed down by tradition. If it is true that the Biomedical Revolution, as a continuation of the Industrial Revolution, involves <the most fundamental transformation of humanity for which there are written documents>, then it is reasonable to think that science is opening a new phase of history and that ancient paradigms must be questioned".

Statement in support of voting against the motion "Paid surrogacy" by Cinzia Caporale, Demetrio Neri and Grazia Zuffa.

Surrogacy as a practice has been used well before the spread of assisted reproductive technologies, despite the fact that they have encouraged its spread. The issue is controversial, as is evidenced by the different ethical sensitivity of female reflection, as well as the regulatory differences within Europe itself. It is also true that globalization increases the risks of exploitation and alienation, and of course we must ensure that women and their freedom are provided with adequate protection. Prohibition does not allow for such protection, it exposes women to the risks and abuse of the black market trade. Conversely the choices of women during pregnancy and after childbirth should be guaranteed. Even by placing limits on agreements and contracts.

All this deserved a thorough investigational survey by the NBC as to today's reality regarding this practice and reflection on its meaning, starting from the experiences of the actual women who decide to carry out a pregnancy for another woman or couple. The stance adopted by the NBC, instead of probing and attentively listening, was to prefer to issue irrevocable judgment, closing the discussion before even starting it. Establishing that "surrogacy is a contract that

damages the dignity of the woman and the child," means denying the existence of a human fabric surrounding the birth of those children, of investment, thoughts, desires, feelings, first and foremost on the part of the gestational mother. That is, the denial of women's subjectivity, considering them once again as "dumb" bodies, subject to requirements, to give birth or not to give birth, according to the will of others and not their own.