

Caring Relationships: Commercial Surrogacy and the Ethical Relevance of the Other

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Surrogacy and Ethics

Today commercial surrogacy is a “global baby business” (Donchin 2010, p. 323) valued at between US \$500 million and US \$2.0 billion in India alone (Knoche 2014). This boom in international surrogacy can be ascribed to the possibilities opened up by assisted reproductive technologies (ARTs) such as in vitro fertilisation (IVF) as well as affordable travel opportunities in the age of globalisation. Hence starting a family is no longer exclusively a question of intimacy and individual choice between two people, nor is it a question of having a vast amount of money. Surrogacy has become an attractive alternative for many couples (Robinson 2006) either when reasons of infertility or sexual orientation make a “natural” pregnancy impossible or when a woman is unwilling to carry a pregnancy. Although surrogacy is forbidden in many countries (e.g. Germany), some countries (e.g. the UK) permit altruistic surrogacy

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and in others (e.g. India) surrogacy is actually a well-established form of medical tourism. Evidence suggests that the medical tourism industry will grow in the coming years, as for example, the surrogacy prices in India are five times lower than in some US states. Accordingly, Arlie Russell Hochschild describes commercial surrogacy as “the ultimate encounter between the market and intimate life” (Hochschild 2012, p. 178), where difficult questions about hiring others to perform personal acts arise. The practice of surrogacy is a sphere of life in which economic considerations, medical technologies and international regulations are indissolubly entwined. Because of its complexity, the practice of surrogacy makes ethical evaluation difficult.

Before presenting some ethical considerations concerning the practice of surrogacy, a short remark on terminology is required. In general, two kinds of surrogacy can be distinguished: In a traditional arrangement, a surrogate mother contributes her ovum and is genetically related to the child. Gestational surrogacy, in contrast, means that the surrogate carries a child that is not genetically related to her, but to the commissioning parents or a third party that donates the ovum and/or the sperm. This distinction is of empirical importance insofar as most surrogacy arrangements today are gestational and most “dramatic surrogacy failures” (Shapiro 2014, p. 1355), such as the *Baby M* case,¹ can be traced back to traditional surrogacy. Cases in which the surrogate mother is also genetically related to the child present a problem for the courts in particular, in that not only the legitimacy of surrogacy contracts has been called into question, but the issue has also been raised of whose right to the child is greater: the genetic and biological mother, or the genetic father and his wife, the social mother.

However, gestational surrogacy without apparent conflicts, which is relatively routine today, is not suited to serve as a starting point for a moral evaluation of the practice of surrogacy, and it is even less suited to present a moral argument to legitimise surrogacy. It can merely serve to emphasise different manifestations of problems within the *practice* of surrogacy. And even though ethical questions, such as the role of embodiment and genetic ties, are of greater importance in traditional than in gestational arrangements, I will show that both arrangements can share the problem of disconnected relationships. In this chapter, I consider

relationships to be an essential component for taking on responsibility. But this also requires that a relationship is recognised as such—a requirement which, above all in commercial surrogacy arrangements, is rarely fulfilled.

In addition to the distinction between gestational and traditional surrogacy, some authors draw a distinction between commercial and altruistic surrogacy in order to underline that the motivation for becoming a surrogate mother is central to the moral status of surrogacy itself. Many ethicists interpreting surrogacy as an arrangement of exploitation² and commodification³ refer to the vulnerable socio-economic background of most surrogates³ and suspect them of having become a surrogate solely out of financial motivation. Because of this financial incentive, the surrogate's decision cannot be declared as autonomous (which is the basis for "right" actions) but as heteronomous, that is guided by external motivations. Indeed, the financial incentive for women in the "global south" to enter into a surrogacy arrangement is extremely high. A woman who works as a surrogate can assure the livelihood of her family for five years; furthermore, she is able to offer her own children a better future by sending them to school (Karandikar et al. 2014; Panitch 2013). Besides the status of financial compensation in surrogacy arrangements, other conditions are problematic as well. The educational level of the surrogates is low, which often prevents them from understanding the contract conditions, the medical risks⁴ and the procedures they will have to undergo. There is a danger that the surrogates will make their decision under non-ideal circumstances and agree to give birth to a child that is not theirs in absence of the conditions for informed consent. Furthermore, their lack of education also diminishes their opportunities for other jobs. As a consequence, surrogacy often appears to be the only option these women have (Pande 2010). On the basis of the socio-economic conditions of most surrogates in the global south, surrogacy can be interpreted in one sense as providing the wrong financial incentive to do something one would not otherwise do or, alternatively, as a realistic chance for the surrogates and their families to live a better (autonomous) life (Fabre 2006; Macklin 1990).

From a libertarian standpoint, none of these socio-economic conditions constitutes a reason to forbid surrogacy per se. A prohibition is

considered to be a restriction of the freedom of women rather than a protection against exploitation. Prohibiting surrogacy would diminish women's autonomy and freedom of choice unjustifiably. Richard Arneson describes the libertarian position as follows:

No matter how restricted one's life options, the idea that the narrow range of one's options unacceptably constrains one's choice is not a reason to limit further one's range of choice. (Arneson 1992, p. 158)

In line with this opinion, Cécile Fabre argues that even though women in India often opt for surrogacy under non-ideal conditions (which should be improved), they live a “minimally flourishing life” (Fabre 2006, p. 187), which ensures that they can decide freely and in accordance with life plans. Any notion of further concerns, for example the emotional distress of being pregnant and giving birth to a child for another couple, is something that has to be taken seriously, but is no reason to deny people the possibility of choosing surrogacy (Fabre 2006, p. 199). Indeed, Fabre even allows surrogates to keep the child because of emotional ties; however, from her standpoint this is a question of “valid, but voidable contracts” (Fabre 2006, pp. 186–218). The eventuality of emotional bonding does not constitute a reason to doubt the correctness of the surrogacy contracts themselves. Even though some studies show empirical evidence that bonding between mother and child during pregnancy does not necessarily occur (Robbins and Eaves 2013), the question remains whether the *possibility* of bonding and the consequential potential harm to the surrogate is a real challenge for the practice of surrogacy. These doubts are dismissed by Fabre: “we cannot and will not ever be able to live in a risk-free society, particularly one free of the emotional risks attendant on parenthood. Nor, in fact, should we aspire to do so” (Fabre 2006, p. 218).

Other authors who also do not condemn contract surrogacy in general, but are rather concerned with gender inequality in the practice of surrogacy, mention the need to take care of “the most economically and emotionally vulnerable party in any such arrangement” (Satz 2010, p. 132), that is the surrogate, and thus demand an improvement in the conditions of surrogates in the global south. This may include, for instance, making third-party brokerage of pregnancy contracts illegal,

giving women the right to terminate the pregnancy against the will of the commissioning parents or making educational and occupational programmes available to Indian women. As a result of such measures, fewer Indian women would “choose” to become gestational surrogates (Satz 2010; Schanbacher 2014). Leaving aside the feasibility of the implementation of these requirements as part of the practice of surrogacy, the question as to the moral and social consequences of even an ideal practice of surrogacy still remains.

Already in the 1980s, the feminist philosopher Susan Sherwin claimed that it was a task for medical ethics to analyse ARTs in the context of control over reproduction. For her it is obvious that the increased use of ARTs, such as IVF, and the possibility of surrogate pregnancy imply a decrease in women’s control over their reproduction—especially for the surrogates.⁵ We must look not just to broad social policy, but also to the details of relationships to delineate the social attitudes and patterns that are at risk of being undermined (Sherwin 1989). The analysis must not be restricted to the individual and its situation nor to dyadic and personal relationships, but rather it must consider the relationships of all parties involved. Recently the care-ethicist Stephanie Collins wrote that, based on the inherent value relationships have for people, “relationships ought to be (a) treated as moral paradigms, (b) valued, preserved, or promoted (as appropriate to the circumstances at hand), and (c) acknowledged as giving rise to weighty duties” (Collins 2015, p. 47). This leads to the crucial question of what the moral foundation of relationships is and why relationships are important to individuals.

Levinas and Ethics

A philosopher for whom the relationship with another person is central for morality and for ethics is Emmanuel Levinas. Based on a phenomenological methodology presented with Jewish-theological thinking and terms, he describes ethics as an intersubjective relation beyond the need of any consciousness, knowledge or reflective ability. Levinas’ ethics can be read in the tradition of phenomenology. He describes the phenomenon of life by posing the question of what something means for us as

human beings. In an ongoing process of perceiving and interacting with the world, the self finds what it means to be ethical. For Levinas, ethics is the first and most important discipline of philosophy. However, his understanding of ethics differs from traditional ethical theories. It is neither based on a Kantian idea of self-legislation, nor the calculation of happiness, such as in utilitarianism, nor the cultivation of virtues. Instead it is best understood as a proto-ethics. This means that it focuses on the question of what it takes to understand ethics and why people should be moral at all. The idea of weighing different ethical principles is not relevant to Levinas, insofar as he describes an ethics which initially only addresses the relationship of the self to the Other and what it means for the self to carry responsibility for the Other. Questions involving the needs of many people, for example concerning justice, are of subordinate interest to Levinas. Being-with-one-another is an ontological dimension of a person and not just a social fact without any impact on the individual. This is why the foundation of Levinas' approach centres on the face-to-face encounter of the self and the so-called Other. The fact that Levinas presents the Other as fundamentally dissimilar, that is not merely as another self (the Not-I) or someone who displays similar characteristics, opens up the possibility, according to Levinas, to avoid reducing the Other in the self to a certain facet or a particular notion of the Other.⁶

Levinas and the Ethics of Care: The Mother–Child Relationship

Even though Levinas never uses the word “care” to describe the relationship between the self and the Other, the ethics of care and Levinas have a lot in common. Both take the mother–child relationship as a paradigm of their anthropological analysis. Although the phenomenology of natality is described as having all the aspects of a maternal body, the concept of the mother is not exclusive to women but rather independent of any category of sex. The relationship between mother and child serves as a paradigm for the fundamental vulnerability and dependency of the self. Without the mother, a child would not have been born and could not be part of this world. Life thus begins with dependency and with an

asymmetry of power, and both these characteristics of life require the care of another person. Being in a relationship with someone is therefore the first condition for being in the world. An ethics which emerges from such an image of human contingency and dependency represents an alternative to the model that regards people as “self-interested strangers” (Held 2006, p. 77) who simply enter into a contract with each other. It highlights responsibilities which exceed contractual models of reciprocity.

Furthermore, the mother–child relationship sheds light on the special characteristic of ethical relations: In the eyes of the mother, her child is special. Because of the fact of natality—which plays a crucial role both in the ethics of care and for Levinas—the concept of humankind starts with an emphasis on the particularity of every person and every situation. Just as the child is special to the mother, all people are of importance to someone. They are unique and irreplaceable in their meaning to someone else.

Finally, both ethics underline the importance of the attitude of being responsive to the Other and the world. Being responsive is not something one can really choose to be. Levinas uses the image of “being held hostage” to describe the phenomenon of dependency. In pregnancy, this dependency becomes obvious. Having a baby limits the freedom of the mother—she is not supposed to drink or eat what she wants, her body changes enormously and feeling physically sick is often part of pregnancy. It is not unusual for women to wish for their “customary body” back (Staehler 2016, p. 31), that is the ability to perform everyday activities again as usual. A mother’s love for her child is not affected by these constraints, however. According to Levinas, the same is true for the relationship with the Other: Being in a relationship with the Other represents a challenge for the self. This relationship is not freely chosen in its conditions, but is based on unconditional responsiveness and responsibility towards the Other.

Being responsive and responding to the needs of someone else are thus central to both Levinas and the ethics of care. While Levinas primarily foregrounds the needs of the Other, an ethics of care also asks to what extent the self can fulfil the needs of the Other. According to the well-known definition by the care-ethicist Joan Tronto (Tronto 1993, 2013), care is best understood as attitude and as practice. While this differentiation can be made methodologically, in daily life the phases of care often

occur (or at least should occur) all at once. “Caring about” and “taking care of” are descriptions of the attitude of the care-giver while “care-giving” and “care-receiving” touch on the practice of care. “To care” is about assessing a need (attentiveness), realising that one has the capabilities to help the other (responsibility), coming in contact with the object of care (competence) and expecting a response from the care-receiver (responsiveness) (Tronto 2013, pp. 34–35). Although the Other obviously plays a crucial role in the process of caring, almost all discussions about caring start from the perspective of the care-giver and not the care-receiver, as Tronto states (Tronto 2013, p. 150). This is the point where Levinas can offer important insights to supplement the ethics of care, because he builds his concept of relationships on the role of the care-receiver, the so-called Other. While the ethics of care can create awareness of how care practices should ideally proceed and the social, economic and political conditions necessary to facilitate this, Levinas lays the foundation for understanding why the Other approaches us and why we have to take responsibility for them. Levinas locates answers to the “why” of care in the Other, and not in the self.

Levinas’ Concept of Responsibility

Levinas’ starting point for ethics is the Other. The Other contains a transcendent part, a part which exceeds all experiences in the real world. Alterity—the being totally different than the self and different than any other object of experience—is addressing the self. It is challenging the self to give an adequate answer, because the self desires to understand the Other, but also lacks the capacity to fulfil this aspiration.

The relation to the Other is ethical, which for Levinas means that the self has to overcome traditional categories of thinking and acting, and that infinite responsibility for the Other is the mode of their relationship. This responsibility cannot be delegated, even if someone else can respond in a given situation. However, this should not be understood as an actual responsibility but rather as something pre-ontological that gives rise to a motivation to act ethically and to care for the welfare of the Other. How to respond to the call of the Other and to exercise one’s own responsibility is up to the self and its judgement:

The will is free to assume this responsibility in whatever sense it likes; it is not free to refuse this responsibility itself; it is not free to ignore the meaningful world into which the face of the Other has introduced it. (Levinas 1991b, pp. 218–219)

When Eva Feder Kittay says that it must first be acknowledged that who is responsible for whom is often a matter of absolute judgement and less a matter of degree (Feder Kittay 1999, p. 56), she is actually making the same point as Levinas. To meet the needs of another person is an absolute necessity and cannot be rejected, because without the Other, the self would not be obliged to give reasons for its action or even identify its own capacity to act. The question of the right reaction to the need of the Other, that is the actualisation of responsibility, is secondary. In this way, Levinas' conception of responsibility differs from what we usually think of when we talk about responsibility: The ability to act is typically understood to be a necessary condition for recognising and exercising responsibility. For Levinas, in contrast, being responsible for the Other is the foundation of every action. Before you act, you are already responsible.

The passivity of the self that is expressed by “being-already-in-responsibility” is why Levinas' concept of responsibility cannot be attributed to an intentional act; it is nothing the self can decide on. However, responsibility is normative, because it is necessary in order to be ethical, to be part of humanity. Thus, from Levinas' point of view, one may even say that the Other constitutes the self in its morality, because without the Other there would be no reason for being moral. Although the absolute responsibility for the Other seems to force the self into heteronomous actions, as Levinas sees it, this mode of relation constitutes an antecedent to freedom and the condition for being ethical. From this perspective, freedom is best understood as a liberation from ontological necessities, a “deliverance from Being” (Ciaramelli 1991, p. 88). The way Levinas thinks about the self also becomes clearer in this context: It is not a Hobbesian self that identifies the Other as a risk for one's own life and freedom. Instead the self is ethical and becomes a subject of good will with the appearance of the Other, because “*toward another* culminates in *for another*” (Levinas 1991a, p. 18).

Levinas even goes a step further by claiming that the relationship to the Other is of a general non-reciprocal asymmetry. The self does not

expect any kind of compensation in return for its responsibility to meet the needs of the Other. Within the ethical relation, the Other and the self are so different that it is impossible to conclude that the Other also has a responsibility for the self. The attempt to draw an analogy between the self and the Other fails, because the Other is characterised by an absolute alterity,⁷ a transcendent part, as Levinas calls it. This transcendent part of the Other renders the expectation of reciprocity or symmetry within the concept of responsibility impossible:

The knot of subjectivity consists in going to the other without concerning oneself with his movement toward me. [...] I have always one response more to give, I have to answer for his very responsibility. (Levinas 1991a, p. 84)

Whereas there are no restrictions on the responsibility of the self for the Other—even the responsibility of the Other devolves upon the self—the self cannot expect the other to behave in the same manner. To be is first of all being for the Other without expecting a reward. For Levinas, seeking reciprocity refers to the sphere of economy, that is to mere contracts. Within a contract there is no need to recognise the alterity of the Other, because economic relations are based on utility and the expectation of reciprocity between equals. Mere economy epitomises the “totalisation of unique persons” (Levinas 1995, p. 54). In this sphere, there is just a numerical alterity or diversity of Others, not a kind of recognition of the alterity of the Other. In contrast, ethics is the opposite. Ethics requires relationships between unique individuals and the recognition of their alterity. As a consequence, the purpose of ethics is not a search for rules or principles, but rather a search for the right response to a concrete Other.

Levinas and the Concept of Relational Autonomy

Levinas’ conception of ethics is furthermore a warning not to place a specific concept of the self at the centre of ethics. According to Levinas, a self that has been reduced to self-consciousness and self-sufficiency is untenable. This critique can be read as a provocative shift of emphasis in times where the self and its autonomy are conceptualised as acting “freely

in accordance with a self-chosen plan” (Beauchamp and Childress 2009, p. 99), that is where self-reference is central. When Levinas refers to the self, he is referring to a subjectivity that exists in dialogue and not as ego. Of course, a “life of enjoyment” and independence from the Other are also part of the self. Enjoyment is not tied to an end; it is the hedonistic sensibility beyond any act of consciousness. In this sense, Levinas anticipates the critique of the absolute passivity of the self that may lead to a loss of self. However, the self of enjoyment is the self “who gives to the Other when called upon in the face-to-face relation” (Chanter 2005, p. 42). Only a self that is different from the Other can be for the Other. The aspect of enjoyment helps to emphasise this ontological and epistemological distinction between the Other and the self. In contrast, the self and the Other interact intensely on the ethical level. They do not just share the world with each other; instead, the Other is welcomed into a world of “hospitality.” It is necessary to include the Other in order to be ethical, to be responsive and to perceive the necessity of acting.

Vulnerability, exposure to outrage, to wounding, passivity more passive than all patience, passivity of the accusative form, trauma of accusation suffered by a hostage to the point of persecution, implicating the identity of the hostage who substitutes himself for the others: all this is the self, a defecting or defeat of the ego’s identity. And this, pushed to the limit, is sensibility, sensibility as the subjectivity of the subject. It is a substitution for another, one in the place of another, expiation. (Levinas 1991a, p. 15)

The passivity of the ethical self is connected to the ontological vulnerability of the self, namely its susceptibility to various harms or exploitations. For Levinas, vulnerability is the basis for sensibility, for being responsive to the Other. In recent years, the discussion about vulnerability and relationality of the self also became an integral element of the discussion about “relational autonomy.” Catriona Mackenzie and Natalie Stoljar characterise relational autonomy as follows:

The focus of relational approaches is to analyse the implications of the intersubjective and social dimensions of selfhood and identity for conceptions of individual autonomy and moral and political agency. (Mackenzie and Stoljar 2000, p. 4)

They consider the exercise of individual autonomy to be embedded in historical and social features and therefore criticise, for example libertarians, for paying little attention to the background social conditions in which preferences are formed (Mackenzie 2014). Social structures and interpersonal relations are not just to be considered as a condition of causal control, instead they partly generate autonomy by affecting one's capacity to live an "autonomous" life (Dodds 2007; Oshana 2006; Westlund 2009). In other words, autonomy is constituted by the social, personal, economic and cultural embeddedness of the self and is an ongoing process that takes place in relation to others. In this sense, relationships should not be understood as intrinsically good; they also exhibit a disruptive potential—for example, when they prevent a self-determined life from being led or undermine shared values. Thus, questions such as those regarding the emancipation from oppression, the recognition of the Other and how best to structure our social practices in order to allow for autonomy are of particular importance.

These insights can help to clarify what a relational approach to the practice of surrogacy means: Relationships are an indispensable part of constituting the self, and in the context of surrogacy, this leads to a reconsideration of the importance of all kinds of relationships inherent to the practice of surrogacy as part of an ethical evaluation. To look at the practice of surrogacy as an individuals' choice (as libertarian positions do) means to refuse the complexity of such arrangements. Neither is the surrogate solipsistic in her autonomy nor is the decision of the commissioning parents independent of the social world they live in.

Levinas and Surrogacy

When Elizabeth Anderson states with regard to surrogacy that "by engaging in the transfer for children by sale, all of the parties to the surrogate contract express a set of attitudes toward children which undermine the norms of parental love" (Anderson 1990, p. 77), she seems to agree with Levinas. Contracts cannot regulate the way in which people should feel responsible for the concrete Other. Contractual arrangements suggest that a parental relationship starts when the parents-to-be bring the child

back to their home country. In line with Levinas, it is possible to explain why the responsibility of the parents-to-be is not limited to the baby, but has to be extended to the surrogate. In order to form a more precise idea of the shared responsibilities and the parties involved in surrogacy arrangements, however, drawing a distinction from Levinas seems to be informative. In general, three kinds of relationship can be ascribed to surrogacy arrangements (setting aside surrogacy agencies or sperm and ovum donors).

First of all, there is the relationship between mother and child. This relationship is central for Levinas' concept of being ethical, because pregnancy exhibits the same features as being a moral agent: Not all responsibilities for the Other are freely chosen, but the experience of the good is ubiquitous. The surrogate is bodily intertwined with the baby, and she "cannot choose not to be morally responsible for the fetus while it remains in her womb. In this sense, biology is certainly destiny" (van Zyl and van Niekerk 2000, p. 407). The relationship to the baby is based on sensibility beyond any genetic ties. It is not a question of knowledge of the Other or of the level of cognitive reflection, but it is instead the corporeal experience of the Other which determines its own dimension of cognition and experience. Levinas characterises this corporeal experience as sensibility, which is present in every cognitive-reflexive experience of the self, thus:

Sensibility—the proximity, immediacy and restlessness which signify in it—is not constituted out of some apperception putting consciousness into relation with a body. Incarnation is not a transcendental operation of a subject that is situated in the midst of the world it represents to itself; the sensible experience of the body is already and from the start incarnate. The sensible—maternity, vulnerability, apprehension—binds the node of incarnation into a plot larger than the apperception of self. (Levinas 1991a, p. 76)

The corporeal experience is much more powerful than a conscious examination of the self and the world can be. In this sense, alienation from the Other, the baby, is secondary to the immediate experience of the Other and only imaginable as a reflective and conscious act. This conscious alienation is exactly what agencies demand from the surrogates:

not to feel a deep connectedness to the baby, but rather to consider their wombs as “carriers” and themselves just as “prenatal babysitters” (Hochschild 2011, p. 24). From a phenomenological perspective, however, the body cannot be viewed exclusively as an object of ownership and control, but is rather a gateway to the world for the purpose of sensibility, which has proven itself independent of cognitive reflection. The concept of the “lived body,” which is greatly emphasised in phenomenology for its experience of the self (Carel 2011; Folkmarson Käll and Zeiler 2014), is knowingly manipulated and denied by agencies in the practice of surrogacy. Here mothers are prevented from bonding with the child during pregnancy, as this could potentially lead to the refusal to handover the child to the contracted parents and consequently result in a breach of contract—such as in the case of Baby M.

A second kind of relationship takes place between the parents-to-be and the baby that can be described in Levinas words as fatherhood. The main characteristic of fatherhood is not corporeity, but rather the uniqueness a father attributes to his child:

The son is a unique son. Not by number; each son of the father is the unique son, the chosen son. The love of the father for the son accomplishes the sole relation. (Levinas 1991b, p. 279)

Whereas the image of the Other in the self plays a role in motherhood, the recognition of the Other in its Otherness figures in fatherhood. Therefore, it is not a matter of defining the role of genetic paternity and the responsibility associated with it, but instead a matter of Finding-Yourself-in-the-Other without being the Other. Responsibility and attachment are thus seen as a process of recognition. The commissioning parents have a similar relation to the child—regardless of whether they are genetically related to the child or not. They are looking for their unique child and want to assume responsibility for the child’s whole life. However, as some cases in the practice of surrogacy show, this responsibility is a fragile construct.⁸ Unconditional love can be compromised and depreciated by the existence of a contract that seems to regulate the needs and responsibilities inherent in surrogacy arrangements (Kuhlmann 1998). Surrogacy contracts imply the possibility of control over the purchased product, yet fail to recognise that in the case of a child, the

contract does not concern goods, but instead a person who is vulnerable and non-exchangeable in their uniqueness.

The relationship between the surrogate and the parents-to-be is the third relationship of special importance in surrogacy arrangements. Little attention is paid to this topic in scientific discourse, but for this analysis it is crucial to show that the surrogate and the commissioning parents are not just contract partners, but also interrelated in an ethical manner. Levinas' concept of "the third" offers an interesting insight for the analysis of this special relationship, as it shatters the private relationship between the self and the Other and introduces a different, although still ethical, quality. As Stéphane Mosès points out, the third is different from the Other in the sense of proximity, quantity and its selection: The third is further afar than the Other, it is numerous instead of unique, and it is the only one in an ethical relationship that is freely chosen (Mosès 1993). The surrogates meet the criteria: they are usually miles away from the commissioning parents, it does not matter to them exactly which surrogate carries their child to term, and it is they who choose to enter a surrogacy arrangement and involve a third party in their family planning.

However, for Levinas, the third does not need to be conceived as a visible empirical human being. Instead, it is best interpreted as reminder that other people who are not part of a personal relationship and differ from the self in terms of ethnicity, sex, status or religion must be considered as well. The third interferes with the relationship of the self and the Other and thereby challenges the privileged position of the Other. Thus, it opens up the frontiers of thinking. The relationship to the third is not personal anymore, but refers to the sphere of justice and equality.⁹ Therefore, the third is also allied with institutions and universal laws instead of the particularity and context-sensitivity that is part of personal relationships. Levinas comments on the difference between the Other and the third as being a difference in thinking:

[...] what seems to me very important, is that there are not only two of us in the world. But I think that everything begins as if we were only two. It is important to recognize that the idea of justice always supposes that there is a third. But, initially, in principle, I am concerned about justice because the other has a face. (Levinas et al. 2005, p. 170)

It is notable that Levinas recognises that we need institutions and relationships of reciprocity and equality. However, this cannot mean that the social and the political sphere—what he calls “justice”—render the face of the Other irrelevant. Quite the contrary: The presence of the Other must not be replaced by institutional structures. Responsibility is always present as if there were a concrete Other with specific needs. For the practice of surrogacy this means that even though the surrogate is not part of a personal relationship, she is nevertheless part of a personal responsibility, and her needs must be met. In the current situation it is easy for the commissioning parents to shake off their responsibilities by referring to contracts with the agencies or to the fulfilment of governmental instructions. This is a development that Levinas criticises in his work: Institutionalisation, that is the mere application of rules, principles and laws, allows people to forget that exercising responsibility for the Other is valuable in order to do justice. Alternatively, one may say that ethics needs forms of institutionalisation but this set of (universal) rules must serve ethics. And ethics is capable of forming a better society only if people accept their personal responsibilities.

Conclusion

The discourse about the global practice of surrogacy often focuses on the question of the exploitation of surrogates or the increasing commercialisation of our lives. The point of view presented in this paper does not dispute such arguments, nor does it offer new concepts for dealing with the practice of surrogacy. It rather demonstrates a shift in perspective in order to provide a broader overview about the risks of surrogacy arrangements, with a special emphasis on the responsibilities in relationships that are often subverted in commercial surrogacy. Despite its importance, the role of the commissioning parents in particular receives little attention in ethical discourse. This is surprising insofar as without the parents-to-be, the demand for surrogacy arrangements would not exist, and the ethical debate would appear more or less redundant. New forms of relationships are born in the context of ARTs—such as the one between surrogates and the commissioning parents—but the allocation of responsibilities remains unclear. This gap can be filled by Levinas’ arguments about relationships of responsibility. First of all, he shows that

relationships constitute the self as moral or ethical. Being dependent on others is not a form of oppression but rather the condition for understanding the capacity of accepting responsibility. Furthermore, relationships of responsibility are not restricted to dyadic and personalities, because, particularly today, the parties involved in relationships are numerous, and people are indissolubly bound to each other as a result of global interdependence. Although relationships exhibit different modes of actualising responsibilities, this does not diminish the responsibility per se. In addition to this phenomenological description of relationships, Levinas can be read as a critical voice on the idea that international regulation is the main issue in the context of surrogacy. From Levinas' standpoint, such an argument obfuscates the real search for justice, which must be located in the self and its responsibility. Being ethical is nothing definitive, but rather an individual's endless search for an adequate way of being-for-the-Other. All these deliberations coincide with a reading in terms of the ethics of care insofar as revealing the need to take on responsibility can be read as a first step in overcoming the "crises of care" (Parks 2010)—as Jennifer Parks characterises the practice of surrogacy.

Notes

1. Elizabeth and William Stern entered into a surrogacy contract with Marybeth Whitehead. In 1986 Whitehead gave birth to a girl, Baby M, but was unable or unwilling to surrender the child to the Sterns. As William Stern was the legal father of the child, having provided the sperm, and Marybeth Whitehead the biological and genetic mother of the child, a court battle over custody extended over several years.
2. For the different facets of exploitation in surrogacy arrangements, see Wertheimer (1992).
3. Commodification is the idea that the norms of the market are appropriate for regulating its production, exchange and enjoyment. Critics regard this as a fatal economisation of the social. cf.: Anderson (1990).
4. One of the main medical risks of surrogacy is the caesarean delivery that is often forced onto the surrogate in order to accommodate the paying couple. See: Knoche (2014).
5. Of course, it can also be argued that the infertile woman who seeks a child is a potential victim of power relations in our society as she is *expected* to

- use all available reproductive technologies to fulfil her dream of her own child.
6. Even Martin Heidegger, with whose philosophy Levinas was well acquainted, characterises the ontological structure of the human being (Dasein) as relationality, the “being-with” (Mitsein), in his book *Being and Time*. The Other contributes significantly to the development of the self. On Heidegger’s relationality, Freeman writes: “Human beings are constituted by their relational, ontological structure of Mitsein, which is neither added on to Dasein as an afterthought nor derivative of it” (Freeman 2011, p. 368). Levinas goes far beyond considering being-with (Mitsein) as a phenomenon in which the self is found. Levinas characterises the relationship to the Other as an ethical relationship which challenges the self in itself and in which the self is continuously searching for the appropriate response to the needs of the Other. While for Levinas, the relationship to the Other is essential for selfhood, Heidegger concentrated on the significance of the world and the Other for the Dasein of the self in its mineness (Jemeinigkeit).
 7. This concept is criticised by Derrida: “The Other cannot be absolved of a relation to an ego from which it is other; it cannot be absolutely Other.” Compare: Bernasconi (2000).
 8. For example, in the case of Baby Manji, the Japanese commissioning parents divorced during the pregnancy and rejected their child. Ultimately, the grandmother adopted Baby Manji—otherwise the Baby would have remained parentless and stateless.
 9. Most authors describe the third as Levinas’ concept of the political sphere. See: Bedorf (2003); Caygill (2002); Delhom (2000); Simmons (1999).

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