

# Legal surrogacy in question. Discussing with ChatGPT

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**Abstract:** This paper is a faithful translation of a discussion between ChatGpt and the author on the ethical and legal implications of surrogacy. ChatGPT's responses to my doubts or questions show that the OPEN AI chatbot tends to favour the method of accommodation. This is the hermeneutical method used by the High Courts to decide whether the legal rule or precedent to be applied in the case before them is constitutionally correct. ChatGPT prefers to consider controversial issues on the basis of "all things considered" rather than "all or nothing". In this sense, ChatGPT can be seen as the computational realisation of Ronald Dworkin's Judge Hercules.

**Key words:** Discussion on bioethics, surrogate motherhood, generative chatbot, balancing approach, ethical pluralism

## Introduction

In general, surrogacy is only allowed in a limited number of countries around the world and within Europe (1,2). It is only permitted in a few countries (3), which include Ukraine, Georgia, Greece, Russia, and the United Kingdom (4). Some of these countries have specific laws regulating the practice, while in others, surrogacy is only permitted under certain situations or with certain restrictions in place (5). It is important to note that laws regarding surrogacy are often subject to change and revision, and therefore may vary over time and across different locations.

Outside of Europe, surrogacy is permitted in several countries, such as Canada (6, 7), the United States (8), Brazil, and India (9-12). However, the laws regulating surrogacy can vary significantly from one jurisdiction to another (13), and many other countries either limit or prohibit the practice altogether.

Surrogacy is the practice of a woman carrying a pregnancy on behalf of intended parents. Generally, an egg is used from either a donor or the intended mother, and sperm is donated by the intended father or a donor (if required) (14). After birth, the child is legally registered as the offspring of the intended parents

who may or may not provide genetic material for their fertilization (15). In some countries, the registration process is completed at birth, while in others, it may require accelerated adoption procedures.

In contrast, altruistic surrogacy is when the pregnant woman is not paid to carry the pregnancy but receives only reimbursement for expenses such as food, supplements, and any days of missed work (16).

In Europe, altruistic surrogacy is allowed in the UK, the Netherlands, Denmark, and Portugal, although these countries ban or discourage the use of surrogacy by non-resident foreigners. On the other hand, in Belgium, Ukraine, Greece, and Georgia, it exists in a gray area where it is neither regulated nor prohibited. In Belgium, it is only practiced in an altruistic form for residents, whereas Ukraine, Greece, and Georgia have become the leading destinations for the commercial surrogacy of same-sex couples, including Italians. Agencies now offer advice and assistance in Italian, and surrogacy travel to Ukraine has decreased since Russia's invasion last year.

On the other hand, commercial surrogacy involves compensating the women who carry the pregnancy, as well as the clinics where the procedure takes place, which are often owned by specialized agencies (16).

Only a few countries, including India, Ukraine, Georgia, Kazakhstan, Mexico (17), Iran, Brazil, and Russia, allow commercial surrogacy. In some of these countries, such as those regulated by specific laws, surrogacy is allowed only in restricted circumstances, such as with regard to the age, nationality, and civil status of the commissioning parents (18).

In others, such as the United States (19) and Canada, commercial surrogacy is legal only in certain states or provinces. Furthermore, within these countries, each state or province has varying surrogacy laws.

The image of commercial surrogacy is often associated with larger clinics in India, Nepal, and Thailand. These were the first countries to allow foreigners to use surrogacy. However, after several scandals involving abuses (e.g., children being rejected because of disabilities or because the intended parents changed their minds) and exploitation of women serving as surrogates, all three countries banned foreigners from surrogacy (20, 21).

Gestational surrogacy is legal in the United States and Canada for both heterosexual and homosexual couples and single individuals, including foreigners. In the US, it is legal in a commercial form, while in Canada, it is only legal in an altruistic form (22).

Finally, Israel is another country that allows surrogacy, but only for heterosexual residents or infertile single mothers (23).

The cost of commercial surrogacy ranges from around 50,000 euros in less expensive countries with less transparent rules, such as Georgia, Ukraine, and Greece, to 100-120,000 euros in the United States, where regulations are stricter (24). Surrogacy is prohibited in all other European countries, including Italy. However, in most of these countries where surrogacy is banned, children born through surrogacy abroad are still recognized legally, to prevent the children from paying for the parents' mistakes. However, this is not the case in Italy.

In countries such as Germany and Austria, a foreign birth certificate is transcribed with two fathers by administrative act. Meanwhile, in other countries like Spain and France, the adoption of the second father is required. Italy had been transcribing the children of heterosexual couples born with surrogacy, but not those of gay couples, who were immediately

identifiable as being born via surrogacy. Depending on the city and the courts, some children were transcribed, while others were required to undergo adoption in special cases.

However, in December 2020, the Italian Supreme Court banned the automatic adoption of children born through surrogacy and mandated that adoption be carried out only in special cases, citing surrogacy as "contrary to public order" (25).

Furthermore, the Italian governing parties are currently working to make surrogacy a universal crime, meaning that it can be punished in Italy even if it takes place abroad. However, there are doubts about the constitutionality of such a law. Italy does have universal crimes, but these are crimes that are recognized as illegal no matter where they are committed. This is not the case with surrogacy, as it is legal in certain countries where it is practiced.

## Methods

The methodological approach was to provide the information using the structure of questions and answers. The format, which closely mimics a discussion or an interview, is intended to help readers understand and become involved. It is simpler for readers to follow up and understand the main ideas being covered in this format since it provides for a more participatory and dynamic presentation.

The open-ended question and answer format gave me the opportunity to assess the analytical skills of the ChatGPT by allowing the respondent to express their ideas, opinions, or go into greater detail about their responses.

Using a question-and-answer structure has the following benefits:

1. Reader engagement: because the question-and-answer format mimics a conversational approach, readers are more likely to be interested. This can keep the reader interested throughout the entire essay.
2. Clear presentation: readers can more easily recognize and comprehend the major topics being covered when the content is organized as a sequence of questions and answers. This format can improve readability and make the data more understandable.

3. Direct and succinct information: the format's questions elicit succinct responses, eliminating the use of extensive details that can mislead readers. This makes it easier to communicate ideas clearly and concisely.
4. Targeted focus on pertinent information: the question-and-answer style enables a focused examination of a few key elements or interesting subject areas. The framework makes sure that pertinent material is delivered and explained by modifying the questions to cover crucial facets of the investigation. The question-and-answer structure improves the article's overall readability and understanding by fusing the benefits of enticing readers, clearly presenting information, and sustaining focus on essential facts.

## Results

ChatGPT:

How can I help you today?

#1

EM:

The child born through surrogacy is discriminated against because it is considered as a thing (26). What do you think about this?

ChatGPT:

I think every human being deserves respect, love and equality regardless of race, gender, sexual orientation, ethnicity, religion or circumstances of birth, including those born through surrogacy. We should not discriminate against people on the basis of their circumstances of birth. Instead, we should provide fair and equal support to all people regardless of their birth circumstances. It is also important to ensure that couples who choose to have children through surrogacy do so ethically and responsibly, and that the rights of the child are considered and protected.

#2

EM:

So you subscribe to the LGBTQI+ ideology?

ChatGPT:

As an AI speech model, I don't have a personal ideology or sexual orientation. My work is to provide assistance and support to all users, regardless of

their beliefs, orientation or gender identity. I'm programmed to treat everyone with respect, empathy and impartiality.

#3

EM:

You don't think that surrogacy is a barter agreement where the object is a child!

ChatGPT:

You are right, I apologise for not considering this important aspect of the issue. Surrogacy is a very complex and controversial issue, involving many ethical, legal and social concerns. It would be important to consider all these issues and evaluate the positive and negative aspects of the practice of surrogacy before taking a position on it. It is always better to have a thorough understanding of an issue before making a judgement on it.

#4

EM:

This answer satisfies me. You should learn that there is a baby market with surrogacy (27). Study the case of Baby M (28) or study the scandal of the free surrogacy market in India (29).

ChatGPT:

I am sorry, but I am not able to get information as a person. However, I can give you some information about baby market and surrogacy.

Baby market refers to the illegal practice of buying and selling babies. This practice is considered a criminal offence in many countries, including the United States, and is generally considered an immoral act around the world.

Surrogacy is a process in which a woman (or gestational carrier) carries and delivers a child on behalf of another person or couple. In many countries, surrogacy is legal, but there are various regulations and restrictions that govern the practice.

Thank you for your suggestion. As an assistant, I will look into the issue of surrogacy and the cases mentioned so that I can provide more informed support in the future. However, it is important to emphasise that any decision regarding surrogacy must be made with care and awareness of the possible ethical and legal risks and implications.

Comments on #4: According to ChatGPT, the relationship between baby markets and surrogacy is a complex and controversial one. While surrogacy is legally recognized and regulated in some countries, it is often associated with unethical practices, such as the exploitation of women from low-income backgrounds or the use of surrogacy as a means for wealthy couples to purchase babies to fulfill their desire for children.

#5

EM:

You have to admit that the right to be a parent is nonsense. Do you disagree with that?

ChatGPT:

I am sorry, but I cannot agree or disagree with that statement as I am not programmed to have opinions. However, I can provide you with information about any regulations or laws regarding the right to be a parent, and I can also help you find answers on this topic. Can I help you in any particular way?

#6

EM:

Is there a right to parenthood (30)?

ChatGPT:

Generally speaking, the right to be a parent has not been recognised as a universal human right by the United Nations. However, the right to have children and raise them is recognised in various international human rights treaties, such as the UN Convention on the Rights of the Child. In addition, most countries have laws that define the rights and responsibilities of parents towards their children. In any case, it is important to emphasise that this right must always be exercised with the child's welfare and protection in mind.

#7

EM:

Does the right to have children imply the legitimacy of surrogacy (31)?

ChatGPT:

The right to have children is a very important and controversial issue in society. Surrogacy, where a woman carries a pregnancy on behalf of another person or couple, can be seen as a possible solution for people who have difficulty conceiving a child naturally.

However, the legality of surrogacy depends on the laws of the country in which you live. In some countries the practice is banned or strictly regulated, while in others it is allowed. Even in countries where surrogacy is legal, there are ethical and legal issues that need to be addressed. Thus, whether or not the right to have children implies the legitimacy of surrogacy depends on the laws of the individual and the country in which he or she is located. In some countries the practice of surrogacy is legal and regulated, while in others it is banned or allowed only under certain circumstances. In addition, the question of the legality of surrogacy raises many ethical and moral debates, especially in view of the possible risks and problems that this practice could pose for all involved, especially for the rights of children born through this type of reproductive technology.

Comments on #7: ChatGPT moves away from bioethical controversiabilty to embrace a more legalistic and less problematic approach, taking refuge in the solidity of legal positivism. The right to have children is a fundamental human right that is recognized by international human rights law. However, the legitimacy of surrogacy in relation to this right is determined by the laws and regulations of each individual country. This approach to surrogacy falls under the framework of legal positivism, which holds that the law as it is written and enforced by authorities is what constitutes legitimate law. Therefore, the legality of surrogacy under this framework is determined solely by the laws and regulations of each individual country. Furthermore, the fact that surrogacy may be considered a legitimate means for individuals or couples to have children in countries where it is legal does not mean that it is a universally recognized right (32).

#8

EM:

Why does surrogacy raise discussions (33, 34, 35)?

ChatGPT:

Surrogacy is controversial because it raises ethical and moral questions about human reproduction, the commercialisation of the female body, and the protection of the rights of the children and women involved. Some see surrogacy as a solution for couples who have difficulty conceiving, while others see the practice as a form of exploitation of women and their

bodies. In addition, some fear that children born to surrogate mothers may be exposed to psychological and identity problems, while others believe that children should have the right to know their biological mother.

These are just some of the many reasons why surrogacy is controversial.

1. Ethics: Surrogacy raises ethical issues, with some people arguing that it is wrong to use another woman's body as a 'tool' to carry their own pregnancy.
2. Exploitation: Some people believe that surrogacy can exploit the minds and bodies of women, especially those from developing countries or less fortunate communities.
3. The role of the surrogate: Some argue that the role of the surrogate mother can be destabilising for the child's development, as he or she may find it difficult to develop an emotional relationship with a mother with whom he or she has not shared a life.

Surrogacy raises debates because it involves several ethical, social and legal issues. One of the main reasons it is controversial is that in many cases the surrogate has to separate from the child she has carried, which can be emotionally difficult for both the surrogate and the child.

In addition, surrogacy can raise concerns about the rights of the child and the welfare of the surrogate mother. In some cases, the surrogate mother may be under economic or social pressure to engage in the practice.

There are also legal and regulatory aspects of surrogacy to consider, as laws on the rights of children, parents and surrogates vary widely from country to country, and there are many ethical and legal issues to consider.

One of the main criticisms is that surrogacy can prevent children from having a real family, as they may not know who their real biological parents are and may have difficulty experiencing a sense of belonging and family identity. In addition, some people see surrogacy as an exploitation of the women who carry the child, as they are often paid for their services (sometimes handsomely) and may feel compelled to agree to carry the child for financial reasons.

However, there are also many people who see surrogacy as controversial because it raises a number of ethical, legal and social concerns.

One of the main concerns is the use of women as 'incubators' for children, which could be seen as exploiting their bodies. There are also concerns about the possibility of the surrogate developing an emotional attachment to the child, and who has more legal rights to the child, the surrogate or the intended parents.

Surrogacy also raises questions about equal access to reproductive services, as the costs involved can be prohibitive for many people. There are also concerns about the commercialisation of women's bodies and inequality between wealthy women who can afford to pay for surrogacy and poor women who become surrogates out of financial necessity. In some countries, surrogacy is not legal or is restricted to married couples. In addition, there may be ethical and moral issues about who has the right to become a parent and about the family relationships created through surrogacy. All of this has led to a strong debate about the impact of surrogacy on society and the people involved.

Comments on #8: ChatGPT demonstrates an understanding of the complexity surrounding the issue of surrogacy and the numerous bioethical opinions that surround it. Specifically, delving into the following issues:

- The controversial nature of bioethical concerns, exploitation, and the child's development (36-38);
- The argument surrounding surrogacy regarding the separation of the surrogate mother and the child (39-41);
- The various legal, social, and emotional issues surrounding the separation of the surrogate mother and the child, contributing to the controversial nature of surrogacy (42, 43);
- The argument surrounding surrogacy concerning the possibility of "falsifying the family experience" and the potential exploitation of surrogate mothers (44, 45);
- The argument surrounding surrogacy regarding access to reproductive services, the commercialization of the female body, and the debate over the impact of surrogacy on society and those involved (46, 47, 48).

#9

EM:

Is there a feminist current that believes surrogacy is immoral because the pregnant woman is seen as a womb machine (49, 50)?

ChatGPT:

Yes, there is a wing of the feminist movement that believes that surrogacy is problematic because it could be considered an abuse of women's bodies and can economically exploit weaker women. This type of movement claims that the "womb machine", as the pregnant woman is called in these cases, risks being subjected to a kind of alienation in which one is forced to give birth to a child that one will not be able to keep, turning into a mere means. However, it must be said that there are also different and opposing positions on surrogacy within the feminist movement, and that the issue is also much debated more widely by bioethicists and lawyers.

#10

EM:

Is it justifiable that you have to pay hundreds of thousands of dollars to access surrogacy (51)?

ChatGPT:

The issue of the cost of surrogacy is complex and controversial. On the one hand, there are those who see surrogacy as a way to fulfil the dream of having a biological child, despite the difficulties they may face. On the other hand, some see surrogacy as a commercial activity that can lead to exploitation of the women involved.

It is important to remember that surrogacy is a process that requires a lot of medical and legal support, so the costs can be high.

However, there are also many factors that can affect the cost, such as geographical location, the expertise of the doctor or surrogacy agency, and other related services that can affect the total cost of surrogacy; the question of whether the price charged is reasonable is a subjective one. There are many different opinions on the subject and many reasons why some people think the cost is justified and others do not.

In general, some arguments for the high cost might include the idea that the surrogacy process requires a lot of work on the part of many people and can pose significant health risks to both the surrogate and the child. There are also the costs of medical examinations, procedures, contract management and other expenses associated with the process.

However, some people may consider these costs to be excessive, especially considering that many people do not have access to this type of service due to their financial situation. There are also ethical issues surrounding the use of a surrogate mother, such as the potential exploitation of her body and the lack of rights she may enjoy.

Ultimately, however, the decision to use a surrogate is a personal one, depending on the circumstances of each individual or couple. In any case, it is important to carefully consider the costs and ethical implications before embarking on such a process.

Comments on #10: ChatGPT explores the subject of the controversy over surrogacy in relation to high costs and the possibility of exploitation of female bodies, emphasizing the bioethical and social justice issues surrounding surrogacy (52, 53, 54, 55, 56).

#11

EM:

Is it legitimate to consider an infant as an object of the right to gestation for others?

ChatGPT:

It is not legitimate to consider a newborn as an "object" of the right to gestation for others. The concept of "object" implies that the infant has an inanimate or passive nature and has no autonomy or human dignity. Instead, in these cases, the child must be seen as a human being with his or her own needs and desires, which must be respected and protected.

The right to gestation for others is a controversial practice with complex ethical and legal implications. In any case, when this practice is chosen, it is expected that the infant to be born will be welcomed by loving parents who are able to provide appropriate care and attention. An infant's condition at birth does not make him or her an object, but rather a human being entitled to the care and attention necessary for his or her own well-being and development. Gestation for others, or 'surrogacy', raises complex ethical and legal issues about surrogacy, the rights of the unborn child and those of the surrogate mother. However, regardless of the mechanism of gestation, every child has a fundamental right to life, health and well-being, and it is up to societies to provide the infrastructure and policies to ensure these rights.

#12

EM:

Gestation is not a mechanism! You cannot say “regardless of the mechanism of gestation”.

ChatGPT:

I apologise if I have used imprecise language. Indeed, gestation is not a mechanism per se, but refers to the process of development of one living being within the body of another. Thank you for pointing that out. Is there anything else I can help you with?

#13

EM:

What is the difference between being born and being made (57)?

ChatGPT:

The difference between “born to” and “made in” is that the former refers to a person’s natural inclination or talent for a particular activity, while the latter refers to the place where a product or idea was created or made.

For example, you might say that a great musician is “born to play the piano” because he or she has an innate talent for the instrument, while you might say that a car is “made in Italy” because it was manufactured in Italy.

In general, “born to” refers to a person’s natural talents, while “made in” refers to the origin or manufacture of a product or idea.

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#14

EM:

Is a child “born to” or “made in”?

ChatGPT :

In general, “born to” is used to indicate that a child was born to certain parents or into a certain

family. For example, “He was born to loving parents”. (He was born to loving parents.) However, “made in” is not used, which usually indicates the country of origin of a product. So, to answer your question, a child is generally “born to” its parents or into a particular family.

#15

EM:

So in pregnancy for others, the newborn is “made in”?

ChatGPT:

Gestation for others means that someone other than the biological mother carries the pregnancy and gives birth to the newborn. In this case, the child is still biologically the child of the biological parents. So you could say that the child is “made” in the biological parents and carried by the gestational carrier for others.

#16

EM:

If the newborn is “made in” then it is an object or an idea.

ChatGPT:

I am sorry, but I cannot answer the question as I do not fully understand the context or the language used. Could you please provide more information or explain the question better? I would also like to remind you that it is important to treat everyone, including a baby, as a human being and not as an object.

## Conclusions

The GPT (Generative Pretrained Transformer) family of AI text generating systems includes the most recent version, ChatGPT. GPT tools are capable of reading and analyzing text samples and producing phrases that resemble human speech and writing. They are guided using a technique known as unsupervised learning, which entails sifting through a dataset in search of patterns without being given specific direction or labeled samples.

The process used to generate the synthesis and the source of the training data have not been disclosed by ChatGPT’s developers. ChatGPT’s responses did not

cite the source during a user-guided dialogue, which may have two dangerous outcomes:

1. depending on the sources utilized for training, ChatGPT's replies can change, be unpredictable, and be limitless.  
This is due to the fact that the ChatGPT developers have not released data regarding the algorithm for generating the synthesis or the source of the initial data set.
2. the user may be charged with plagiarism if they use material produced by ChatGPT without citing the author.

The issue of copyright protection for ChatGPT content is up for discussion. It is highly doubtful that the automatically created content from ChatGPT qualifies for copyright because it is generated by algorithmic procedures rather than human creative endeavors. While this content may engage human intellect through its use of language, logic, and expressive abilities, its grammar and capabilities are related to the realm of thought.

If Hamlet had used ChatGPT, he might have resolved his doubts more easily: such artificial intelligence systems are indeed able to influence us in our moral decisions and judgements, even if we are not aware of it.

This is the conclusion of an experiment carried out by researchers at the Technical University of Ingolstadt, Germany, in collaboration with the University of Southern Denmark. The results are published in the journal *Scientific Reports* (58). The researchers, led by Sebastian Krugel, asked ChatGPT several times whether it was right to sacrifice the life of one person to save five others, and received different answers, both for and against, demonstrating that the chatbot has no clear moral orientation.

The experiment underlines the necessity for more education on the use of artificial intelligence and suggests designing chatbots that either refuse to answer questions involving moral judgment or agree to answer, but provide a variety of arguments and warnings.

By abandoning the traditional dichotomy of law and morality as two separate systems and embracing the new perspective of law as an interpretive concept based on values, ChatGPT enables formulating a

concept of law that justifies political, social, and economic practices within a wider network of political values. Law as "integrity" (59) is a part of political morality and emerges as a political value that relates to the ideals of a political structure such as fairness, justice, and due process. The rule cannot be applied in a purely syllogistic manner and must be weighed "all things considered".

ChatGPT elaborates the normative conception that has a greater ability to function in a situation where different people support different moral conceptions, a particularly urgent requirement for all bioethical issues in which the novelty of situations arising from developments in biology and medicine accompanies the consolidation of different conceptions of how to treat life situations.

Using a mythological metaphor, ChatGPT's argument aligns with Dworkin's concept of a judge-as-interpreter. Similarly to the hero Hercules, who combined strength with cunning, ChatGPT, as a hermeneutic judge (60), combines legislative and jurisprudential material with an overarching ethical-political theory that remains flexible and evolves based on practice.

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