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SHOULD COMMERCIAL SURROGACY BE PERMISSIBLE IN SOUTH AFRICA?

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Submitted to the Faculty of Health Sciences, University of Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree Master of Science in Medicine in Bioethics and Health Law (by research).

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Qualifications: PhD

Submitted:27/05/2024

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DEDICATION

I would like to acknowledge the following people for their support and encouragement as well as the inspiration they infused me in this journey:

• My heavenly Father, the Almighty God and the whole Trinity of heaven for inspiration, provision, guidance, health and for making it all possible for me to start. and complete this degree. Without you completed this would not have been possible.

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ABSTRACT

This dissertation is mostly a conceptual or normative project arguing that commercial surrogacy should be permissible in South Africa. I defend this claim using African-inspired principlism, emphasising principles of respect for persons and living in harmonious relationships. This is achieved through valuing relationships within communities and respecting people by respecting their autonomous decision-making capacities. It is also achieved by recognising the interconnectedness of people and that a person is a person through other people, which is called Ubuntu.

Word Count: 78

Keywords:

Commercial surrogacy, African-inspired principlism, fertility

ACRONYMS

ART- Artificial reproductive technologies

IICS- International commercial surrogacy

WHO- World Health Organisation

OHSS- Ovarian Hyperstimulation Syndrome

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CHAPTER 1:

INTRODUCTION

1.1 Background

Commercial surrogacy (the agreement or an arrangement where another woman agrees to carry a pregnancy for another person with monetary compensation) within the African continent has not been fully embraced. The idea is still new. Most African countries have no legislative regulations on commercial surrogacy. In West African countries like Nigeria, it is viewed by some as a mutually beneficial relationship that brings joy to infertile couples and a veritable source of income for poor women with limited economic options (Adamu, 2020). In Nigeria, commercial surrogacy is supported by Gynaecologists and legal professionals but rejected by traditional birth attendants based on religious and cultural beliefs (Alabi, 2020).

Literature on commercial surrogacy in the Southern African region is scant. Nonetheless, in South Africa, the key legislative document that discusses surrogacy to any significant degree is the Childrens Act 38 of 2005 (Republic of South Africa, 2005). The Act prohibits commercial surrogacy and allows altruistic surrogacy. Other aspects of the Act are worth highlighting. Specifically, the Act allows commissioning parents and surrogate mothers to validate agreement at the High Court before fertilization. This will ensure that commissioning parents will retain their rights as legal parents from the outset, thus avoiding any uncertainty about the parentage of the baby in the future. Agreements can only be made by South African citizens. Like many African countries where surrogacy is allowed, in South Africa, no payments are allowed to the surrogate mother except for medical expenses (Sloth-Nielsen, 2019).

There are other gaps in South African law regarding surrogacy. The law requires a genetic link between the child to be created through surrogacy and commissioning parents as a vital condition for the validity of a surrogate agreement. Ethical discussion on the genetic link requirement has been robust, with some ethicists agreeing with the requirement of genetic link

and others describing it as unjust. Metz (2014) for example, queries this requirement, arguing that the law is unjust because it prevents couples who are longing for a family from having children because one of the partners is sterile, lacks viable eggs or is simply unable to gestate the foetus. The author further contends that the law should be evoked for the respect of people's privacy and their liberty to create relationships that are loving and intimate.

Golombok et al., (2006), in a study conducted where a comparison was made between children without a genetic link in surrogacy and children conceived naturally, found no negative impact on children born without a genetic link. It was found that the children conceived through surrogacy and without genetic link had better child-parent relationships in terms of warmth and interaction compared to children conceived naturally. Therefore, the genetic link in surrogacy does not have a negative impact and should not be considered as the requirement in cases where partners are both sterile.

Despite these debates, commercial surrogacy in South Africa has not received robust ethical discussion like in other international countries. South Africa does not have enough literature on commercial surrogacy compared to other countries. Particularly, what rights do surrogate mothers have to be fully paid for participating in surrogate arrangements? How can an African-inspired moral theory usefully address ethical issues commercial surrogacy raises? These questions deserve to be interrogated immediately.

1.2 Literature Review

Globally, ethical discussions on commercial surrogacy have received one of two reactions: rejection or acceptance. Most care ethicists reject the idea of commercial surrogacy, claiming that having children is about good relationships, care, and love. For example, Parks (2010) opposes commercial surrogacy by drawing on a formulation of care ethics that views life as a web of relationships to critique India's commercial surrogacy laws (which allowed commercial surrogacy until new bill that prohibited it in 2018) that have largely failed to keep pace with

surrogacy in the country. Ethics of care tends to favour nurture, compassion and care. Care ethics emphasizes that – as individuals – we need each other for both emotional and psychological support. However, there is something intrinsic to the surrogacy arrangement that makes it intuitively immoral. Particularly, the unstable situation into which children of surrogacy arrangements are birthed tends to connote an impression of a crisis of care. Rather than entities which ought to be cared for, these children become commodities of exchange (Parks, 2010). For this reason, Parks rejects commercial surrogacy in its current form as it reduces children to commodities for exchange. Moreover, a surrogate mother needs emotional and psychological support from the beginning.

Osberg and Sherwin (2006) also argue against commercial surrogacy, stating that commercial surrogacy tends to be exploitative. They base their argument on a consequentialist approach and maintained that the power asymmetry between commissioning parents and surrogate mothers often favours the former while forcing the latter to settle for any terms to gain some economic advantage. Particularly, surrogate mothers often tend to come from a poor background and are not able to negotiate favourable terms with those who have higher economic power, implying that the former is hardly an equal partner in a surrogacy arrangement. Low-income countries are subjected to extreme poverty, which leads to them seeing commercial surrogacy as a way out of poverty, which makes them vulnerable to exploitation because of desperation and wanting the way of out poverty. The authors insist this cannot be the way out of poverty because it is like allowing the injustice of being a surrogate mother to be the solution to the injustice of being poor. Therefore, they reject commercial surrogacy from this perspective.

Fronek (2018) clearly outlines the ethical problems that are faced with International commercial surrogacy (ICS). He defines ICS as the practice where commissioning parents of another country hire a woman from another country to bear a child for her. Several places like Laos, Ukraine, Russia, Poland, Romania, Georgia, Dubai, Iran, and Lebanon are becoming hotspots for this practice because of a lack of regulations.

Fronek (2018) equally rejects surrogacy for the reason that the practice tends to entail coercive recruitments of mostly poor, illiterate women who do not fully understand the medical and legal terms of the surrogate arrangements. The author describes how most surrogate mothers may also be subjected to stigma and discrimination if they are found out. Furthermore, children born of surrogacy are often subjected to child sexual abuse, amongst others. In this way, Fronek concludes that the harm associated with surrogate arrangements tends to outweigh its potential benefits.

Finally, there are Kantians who think commercial surrogacy is disrespectful of the human body. For example, Patrone (2018) prohibits using peoples' bodies for commercial surrogacy and states that it is inhumane and akin to prostitution. The author likens commercial surrogacy to prostitution, whereby prostitutes receive payment for offering services to different clients. The author also contends that it is degrading to women's bodies to be used as a means to an end. In commercial surrogacy, as is the case with prostitution, women use their bodies as a means to an end. Furthermore, the author states that the only contract that is legitimate, which also involves the use of one sexual organ, is marriage. Therefore, the author rejects commercial surrogacy. Underlying Patrone's argument is the Kantian imperative to avoid using individuals as mere means to an end. In Patrone's view, commercial surrogacy is a form of mere commodification of the human body and, thus, degrading to women.

A Utilitarian would support commercial surrogacy as it produces a favourable balance of good over bad (Rachels & Rachels, 2012). According to Siegl (2018), the study from Ukraine agencies revealed that surrogacy is all about the result of happiness. The author argues that surrogate mothers express their gratitude for being allowed to help bring happiness to intending parents. Their initial motivation is altruism, needing to help others, love towards children, the joyful feeling of creating a new family, and financial compensation. Siegl also argues that surrogacy allows people to experience the joys of being mothers and fathers, making the process suitable, human and ethical. Siegl further argues that everyone deserves happiness, meaning that both surrogate mothers and intending parents are making each other

happy. The author continues to state that happiness is the ultimate goal in life for everyone. Therefore, from this perspective, the critics of commercial surrogacy become killjoys.

Commercial surrogacy is supported here using the Kantian deontology approach and consequentialist approach. For the woman to be complete, she has to give birth to her child; that dream has diminished for women who suffer varying degrees of reproductive challenges, including infertility. There are about 15% of couples in the world who are infertile and the World Health Organisation (WHO) has declared infertility as a disease. This problem raises many challenges for married couples. Surrogacy has become the best option for these couples to have children (Yadav & Anand, 2018). Commercial surrogacy will allow individuals who wish to assist couples who have reproductive challenges to have children while leveraging the opportunity for economic or financial interests. In this regard, there will be an alignment of interests, and no parties will be used as mere means in the surrogacy arrangement (Yadav & Anand, 2018).

Furthermore, to the Kantian approach, critics who often argue against commercial surrogacy do so because it may be abused. However, commercial surrogacy can be regulated to prevent abuse. Broadly, surrogacy will allow couples who seek children to fulfil their dreams. Suppose commercial surrogacy is prohibited. In that case, surrogate mothers risk being exploited or used as mere means to end childless couples. If we only allow altruistic surrogacy, it means we will not bring the benefits to childless couples that might not have interested relatives to surrogate for them. If we also limit it to our citizens, we are still also not bringing economic benefits which assist surrogate mothers to run their families in a better way (Yadav & Anand, 2018). According to these authors, commercial surrogacy could work if surrogate mothers are treated as full human beings with the rights to negotiate terms of participating in the surrogacy arrangements, including the freedom to opt out or maintain continuous relationships with children born based on these arrangements. Commercial surrogacy could also work if the surrogate mother's emotional, physical and intellectual being is respected. Lastly, commercial

surrogacy could work if the government would consider laws that ensure that the dignity and bodily integrity of surrogate mothers are maintained (Yadav & Anand, 2018).

Some ethicists have equally reflected on the morality of commercial surrogacy by appealing to moral principles in principlism. Principlism claims to be grounded in common-morality and consists of respect for autonomy, beneficence, non-maleficence and justice. Reflecting from this perspective, Feiglin and Savulescu (2018) contend that altruistic surrogacy – which negates the surrogate mother's capacity to enter commercial – arrangements has led to the scarcity of willing participants and has driven away commissioning parents to other countries where commercial surrogacy is allowed. Additionally, altruistic surrogacy violates other ethical principles, which are fair compensation, beneficence and respect for autonomy. Suppose surrogate mothers have a right to self-determination. In that case, surrogate mothers who want payment ought to be allowed to request payments from commissioning parents. The authors proposed this new model for commercial surrogacy, which includes the following amongst others: justice (fair and just compensation), regulation of surrogacy agreements, amended parentage presumption and ability to pre-birth parenting orders. The thinking is that this model satisfies key principles in principlism rather than the altruistic surrogacy model. Igareda-Gonzalez (2019) also views commercial surrogacy as legitimate work requiring payment and safety standards, noting that problems are faced in this industry, but maintain that they can be overcome by proper legislation and professional bodies to protect all parties involved. Commercial surrogacy, in the authors' view, could work if intending parents would understand that they are paying for the risk and labour the surrogate mother would go through when bringing a child into this world. Commercial surrogacy could also work if the autonomy of intended parents and surrogate mothers were respected because women have the right to reproductive choice. These rights could only be overridden by possible harms or risks which could mitigated though legislation.

Fayemi and Chimakonam (2022) view commercial surrogacy as an exploitation of the Global South by Global North. They propose an Afro-communal theory for social justice, the model

that will address existing global injustices. This theory promotes certain relationships that identify with others and exhibit solidarity. The authors state that surrogates from Global South are treated as a means to an end, which is degrading and prohibits the ability to form relationships that are friendly with their communities. To overcome this, the authors propose different ethical norms for the moral permissibility of commercial surrogacy. An example is the moral requirement to treat people as special by virtue of their capacity for friendly relationships. Under this assumption, individuals cannot genuinely participate in friendly relationships if they are not free to negotiate the terms of such relationships.

The attempt to reflect on this question by drawing on a combination of dominant approaches in the Global North and South is missing in the discourse on the permissibility or non-permissibility of commercial surrogacy. This approach is intrinsically valuable, and the idea that an ethical framework dominant in the Global South can be combined with an approach dominant in the Global North to consider the non/permissibility of commercial surrogacy has not been explored. This report will address this gap by drawing on an African-inspired Principlism to consider critical questions around commercial surrogacy. The reader should notice that an African-inspired Principlism combines an ethical approach dominant in the Global South and an ethical approach dominant in the Global North. The African-inspired Principlism was developed by Kevin Behrens, who observes that Bioethicists in the African region should start applying the values and morals of their own to bioethical issues (Behrens & Wareham, 2021). This was because some of Tom Beauchamp and James Childress's principles have been perceived to be more Western or even American (Behrens, 2013). Respect for autonomy needs to be revised as it is too individualistic, and respect for person as the original principle should then be used in its place. On the contrary beneficence and non-maleficence do reflect moral convictions shared within the African region. The principle of justice should be replaced with harmony to suggest an African perspective. This report will draw on the African-inspired Principlism to demonstrate how commercial surrogacy can be permitted in South Africa.

1.3 Research question

This project focuses on surrogacy in South Africa and explores whether commercial surrogacy is justified from the African-inspired principlism perspective. Specifically, the question it addresses is: “Is commercial surrogacy permissible (in South Africa) from the perspective of the African-inspired principlism?

1.4 Rationale for the study

Many couples remain childless with the current status quo of surrogacy in South Africa. The demand for children's surrogacy has outstripped the number of individuals willing to become surrogate mothers in South Africa (van Zyl,2008). Precisely, there are more commissioning parents than willing surrogate mothers. Current legal requirements that prevent commercial surrogacy can be exploited to the disadvantage of surrogate mothers. Surrogate mothers sometimes suffer postpartum depression that occurs long after a child has been born, and surrogacy arrangements in South Africa do not provide care for this. Commercial surrogacy will incentivize surrogate mothers and empower them to watch out for their long-term interests (van Zyl,2008). Moreover, pregnancy is a great sacrifice. Suppose individuals have autonomy over their bodies. In that case, they ought to be allowed to reap the reward of their sacrifice. A well-regulated commercial surrogacy will also make a huge contribution to the economy of any country. Finally, in many African countries, as demonstrated by the map below, regulations are either absent or there remains uncertainty about commercial surrogacy. This study will contribute resources for developing useful policies for regulating commercial surrogacies in many African countries, particularly in South Africa.



Note: From “Surrogacy laws by country” (2022, May 31). In *Wikipedia*. https://en.wikipedia.org/wiki/Surrogacy_laws_by_country.

1.5 Thesis Statement

I draw on the African-inspired principlism to argue that commercial surrogacy ought to be permissible in South Africa.

1.6 Research Aim

The project aims to defend the thesis by demonstrating that the African-inspired principlism implies that commercial surrogacy ought to be permissible in South Africa

1.7 Research objectives

1. To describe the African-inspired principlism, as well as outline the key moral norms to which this framework gives rise.
2. To justify key issues commercial surrogacy generates in South Africa.
3. To address these ethical issues by drawing on norms to which the African-inspired principlism gives rise.
4. To defend how criticisms against commercial surrogacy are unjustified.

1.8 Research Design

This is a Type 1 project that is mostly conceptual and normative.

1.9 Research Methods

This Type 1 project draws on published materials gathered through desktop-based research. No primary data was used for this. Relevant articles from PubMed, Web of Science, PhilPapers, Google Scholar and Wits University online library search engine were retrieved. These articles were critically analysed to address the project objectives. The analyses I provide will include descriptive arguments of what an African-inspired principlism implies, as well as evaluative arguments that draw on the moral norms that can be grounded in this framework to defend the project's thesis. Summarily, this project involved interpreting and analysing important text and relevant government legislation to answer the research question.

1.9.1 Argumentative strategy

To realize objective 1, I will defend key efforts to revise principlism in ways that align with African values. The underlying presupposition of principlism is that it can be universally applied in different contexts. However, many scholars have found that the key ideas that motivate this

theory tend not to align with African values. One key area of concern is that its emphasis on autonomy tends to be incompatible with the African preference for community and family. To address this problem and reposition the framework to have relevance in an African context, scholars like Behrens (2013), have proposed a revision to this framework. In the chapter 2 and 4, I defend this revision and outline key moral norms to which the African-inspired principlism gives rise.

To realize objective 2, a description of several issues that commercial surrogacy generates in South Africa is provided. One pressing concern is that permitting commercial surrogacy could significantly increase cost, implying that the elites – rather than all couples – of society will more likely have access to these arrangements. Moreover, permitting commercial surrogacy does not necessarily imply that exploitation was addressed. Surrogate mothers remain at risk of being exploited by the agencies, whilst commissioning parents, especially if they are wealthy, can take advantage of the situation to negotiate terms that only marginalize poor surrogate mothers. In this way, surrogate mothers may end up being used as mere means to the ends of commissioning parents. Many scholars reject commercial surrogacy for the reason of exploitation.

To realize objective 3, the key principles of the African-inspired principlism were applied to justify the position that commercial surrogacy ought to be permissible in South Africa. The principle of respect for persons, which includes autonomous decision-making; was applied to both the surrogate mother's autonomous decision-making and the commissioning parents' decision-making. Further the principle of harmony was applied in terms of the promotion of community good and family cooperation, implying that commercial surrogacy can enhance good relationships. In that case, it ought to be permissible. Equally, African-inspired principle of beneficence was drawn upon to defend the position that commercial surrogacy benefits both surrogate mothers and commissioning parents. Lastly, the project draws on non-maleficence to describe how commercial surrogacy arrangements can be established in ways that prevent exploitation.

To realize objective 4, I am anticipating potential objections to my position and demonstrate the various ways they do not undermine my argument.

1.10 Limitations

The study has limitations. In an ideal situation, surrogate mothers would be asked if they want monetary compensation for participating in this arrangement. Commissioning parents would also be asked if they are willing to pay surrogate mothers. Empirical studies are required to get answers to these questions. However, this is primarily a conceptual normative study, implying that while a particular moral approach may require that commercial surrogacy ought to be permitted, this is not necessarily representative of the preferences of surrogate mothers and commissioning parents.

1.11 Overview of chapters

Chapter 1: Introduction

Chapter 2: African-inspired Principlism

Chapter 3: Literature Review and the Key Issues of Commercial Surrogacy in South Africa

Chapter 4: Addressing Key Issues Around Commercial Surrogacy

Chapter 5: Objections and Responses to Objection with Recommendations.

Chapter 6: Conclusion

CHAPTER TWO:

AFRICAN-INSPIRED PRINCIPLISM

2.1 Introduction

This Chapter introduces principlism and explains how it differs from the Belmont Report. Subsequently, the chapter explains some of the challenges with Principlism, particularly its failure to take seriously perspectives and values salient in the Global South. Following this, the Chapter describes some specific attempts to revise Principlism to align with African modes of experiencing the world.

2.2 Principlism: Definition and Key Principles

As a bioethical moral framework, Principlism was first clearly articulated by Tom Beauchamp and James Childress in 1979 after enacting the National Research Act into law in 1974 (Sims, 2010). The need for ethical guidelines in research arose from a series of unethical research practices between 1946-47, where 23 German physicians and personnel conducted experiments on vulnerable individuals such as the mentally ill, intellectually disabled, and physically disabled in concentration camps without their consent (Moreno et al., 2017). This led to the development of the Nuremberg Code during the trial of the Nazi doctors, which outlined a 10-point list of guidelines for conducting research involving human subjects. The code emphasized well-designed scientific studies, voluntary consent without coercion, and beneficence (Moreno et al., 2017).

The ethical issues being referred to include the lack of informed consent, exploitation of vulnerable populations, and conducting research that may cause harm to participants without any potential benefits. However, the Nuremberg Code was insufficient in addressing these ethical issues due to several reasons. First, the code did not provide a comprehensive framework for ensuring that research involving human subjects was conducted ethically

across various disciplines and settings (Behrens & Wareham, 2021). Second, the code's focus primarily on informed consent and beneficence did not adequately address other crucial ethical concerns, such as the fair distribution of risks and benefits, the protection of vulnerable populations, and the transparency and accountability of researchers.

Recognizing the limitations of the Nuremberg Code, the National Research Act was enacted into law in 1974, which led to the creation of the National Commission for the Protection of Human Subjects in Biomedical and Behavioural Research (Behrens & Wareham, 2021). The Commission's main responsibility was to develop regulations for biomedical and behavioural research, which it achieved through the publication of the Belmont Report in 1979. The Belmont Report introduced three guiding principles: justice, beneficence, and respect for persons (Sims, 2010).

Principlism, which derives its inspiration from the Belmont Report, has become one of the most widely used bioethical moral frameworks due to its success in increasing the understanding of how ethical concepts relate to and serve as guidelines for healthcare practice (Behrens, 2018). By addressing the limitations of the Nuremberg Code and providing a more comprehensive and nuanced approach to ethical concerns in research, principlism has helped establish a more robust foundation for protecting human subjects and promoting ethical research practices.

Beauchamp and Childress (2001) argue that Principlism, as an ethical framework, comprises a set of principles representing common morality standards or values. Through the application of these principles, numerous moral dilemmas have been effectively resolved. However, it is essential to recognize that these principles are not absolute, and each one entails significant moral obligations that must be weighed against other obligations.

To illustrate the application of Principlism, it is useful to examine the four key principles identified by Beauchamp and Childress (2001): autonomy, beneficence, non-maleficence, and justice. The authors use an example from the field of medical ethics where the principle of

autonomy upholds the rights of patients to make informed decisions about their healthcare. However, in some cases, the physician's obligation to protect the patient's well-being (beneficence) may conflict with the patient's autonomy, as in the case of a patient refusing life-saving treatment. In such situations, the physician must carefully balance the principles of autonomy and beneficence to arrive at an ethically justifiable decision.

Similarly, the principle of non-maleficence, which requires healthcare professionals to avoid causing harm, often comes into conflict with the principle of beneficence. For instance, a surgeon may have to perform a painful procedure to prevent further harm or even save the patient's life. In this case, the moral obligation to minimise harm must be balanced against the moral obligation to promote the patient's best interests (Beauchamp & Childress, 2001).

Lastly, the principle of justice requires that healthcare resources be fairly and equitably distributed among all members of society (Beauchamp & Childress, 2001). However, in situations of scarce resources, healthcare professionals may face difficult decisions about the allocation of treatments, potentially resulting in some individuals being denied care. Balancing the competing obligations of justice and beneficence is a complex and challenging task in these cases.

These examples demonstrate that while Principlism provides a valuable framework for analysing moral issues, the principles themselves are not absolute and must be carefully balanced against one another to reach ethically sound decisions. As Beauchamp and Childress (2001) emphasize, the principles of Principlism represent the standards of common morality, but they also entail substantial moral obligations that must be carefully considered and weighed against other obligations. By critically evaluating and applying these principles, individuals and professionals can navigate the complexities of moral dilemmas and make well-reasoned ethical choices.

Principlism's emphasis on the careful balancing of competing moral obligations is another key aspect of its significance. By acknowledging that ethical principles are not absolute and may

sometimes conflict, principlism encourages a thoughtful and nuanced approach to decision-making (Beauchamp & Childress, 2001). This process of weighing and reconciling different ethical considerations is essential in ensuring that the best possible outcomes are achieved.

Equally, principlism has played a vital role in shaping policy and regulation, as evidenced by its influence in developing guidelines for protecting human research subjects (Sims, 2010). By providing a clear and coherent framework for ethical decision-making, principlism has contributed to developing more rigorous standards and practices in healthcare and research, ultimately enhancing the protection of vulnerable populations and fostering a culture of ethical responsibility (Behrens & Wareham, 2021).

In conclusion, the significance of principlism as a bioethical moral framework lies in its comprehensive, adaptable, and grounded approach to addressing complex ethical dilemmas. By providing a shared foundation for ethical decision-making, promoting thoughtful balancing of competing moral obligations, and influencing policy and regulation, principlism has substantially impacted the ethical landscape of healthcare and research. Its continued relevance and application across diverse contexts and disciplines attest to its importance as a guiding framework for navigating the challenges and uncertainties that inevitably arise in the pursuit of human well-being (Beauchamp & Childress, 2001).

As Beauchamp and Childress (2001) describe Principlism consists of the following principles: Justice, Non-maleficence, Respect for Autonomy and Beneficence, and beneficence.

2.3 Principles by Belmont Report

This section focuses on describing the original principles from the Belmont Report. This effort is important and foundational for understanding Principlism, and the underlying reasons Beauchamp and Childress decided to add a fourth principle. The core principles that are discussed in the Belmont Report are respect for persons, beneficence and justice.

2.3.1 Respect for Persons

Respect for persons entails two ideas. In the first instance, people should be treated as autonomous agents. Second, individuals with less or diminished autonomy ought to be protected. Against this background, the concept of respect for persons divides two distinct moral obligations—the need to acknowledge autonomy and the duty to safeguard those with less authority (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979).

Autonomous people are people who are capable of reflecting on their objectives and taking action in response to those insights. Giving weight to autonomous people's carefully researched views and conclusions while abstaining from impeding their actions unless they overtly harm others is what it means to respect autonomy. When an autonomous agent's carefully studied conclusions are disregarded, when they are denied the freedom to act on them, or when information required to make a decision is withheld without a valid justification, this is contempt (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979).

2.3.2 Beneficence

According to the Belmont Report, the principle of beneficence is essential in ensuring the welfare of individuals, which entails more than just respecting their choices and maintaining their safety (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979). To clarify, beneficence is a moral obligation to act in the best interests of others by promoting their well-being, preventing harm, and actively working to remove or minimize potential risks (Beauchamp & Childress, 2001). This ethical principle encompasses inherently good actions, such as acts of kindness or generosity and includes the responsibility to go beyond what is required to provide additional support or assistance (Pellegrino & Thomasma, 1993).

In the context of the Belmont Report, beneficence is one of the fundamental guidelines for the ethical treatment of human subjects in research. It emphasizes the need for researchers to avoid causing harm to participants, maximize potential benefits, and minimize any potential harm that may arise during the conduct of the study (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979). This principle underscores the importance of conducting a thorough risk-benefit analysis to ensure that the potential benefits of research outweigh the possible risks and burdens to the participants (Beauchamp & Childress, 2001).

2.3.3 Justice

The Belmont Report thoroughly examines justice, defining it as a fair distribution of benefits and burdens once research has been completed. Injustice, on the other hand, involves withholding benefits from those who are entitled to them without justifiable reason and imposing excessive burdens on individuals (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979). The principle of justice is further elaborated upon by emphasizing the need for equal treatment, as well as the importance of ensuring that the advantages derived from publicly funded research, such as the development of therapeutic devices and procedures, are accessible to all and not just the wealthy. Additionally, the report stresses that such research should not disproportionately involve individuals from groups who are unlikely to benefit from the research's future applications.

To provide a more comprehensive understanding of the Belmont Report's principles, it is essential to examine how these principles have been further discussed and expanded upon by Beauchamp and Childress in their seminal work, *The Principles of Biomedical Ethics*. Beauchamp and Childress (2001) provide a more in-depth analysis of justice, focusing on the distribution of benefits and burdens *in the context of healthcare research*. They emphasize the importance of considering various factors, such as social, economic, and political factors, that may influence the fair distribution of resources. Additionally, the authors offer a more detailed

exploration of the principle of equal treatment, discussing the need for a balance between treating individuals with equal respect and recognizing the differences among them that may warrant differential treatment.

Furthermore, *The Principles of Biomedical Ethics* also addresses vulnerability in research, highlighting the importance of protecting vulnerable populations who may be disproportionately burdened by research or unlikely to benefit from its outcomes (Beauchamp & Childress, 2001). This expanded discussion demonstrates the complexity of the principles outlined in the Belmont Report and underscores the need for a nuanced understanding of these principles to ensure ethical conduct in research and healthcare practices.

In summary, the Belmont Report provides a foundational understanding of the principle of justice in the context of research, while Beauchamp and Childress's Principles of Biomedical Ethics offers a more comprehensive and nuanced exploration of the ethical considerations necessary for the fair distribution of benefits and burdens. By examining the differences in the conception of the key principles, the depth and complexity of these ethical considerations and their implications for research and healthcare practices can be better appreciated.

2.4 Principles of Biomedical Ethics

In this section, I describe the principles in Beauchamp and Childress' *The Principles of Biomedical Ethics.* The Belmont Report and Principlism are two influential frameworks in biomedical ethics. The Belmont Report, published in 1979, outlines three fundamental ethical principles: respect for persons (autonomy), beneficence, and justice (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979). As developed by Beauchamp and Childress (2001), Principlism builds on these principles and adds nonmaleficence, resulting in four key principles: autonomy, beneficence, nonmaleficence, and justice. The ethical framework derived from the Belmont Report and the principlism approach of Beauchamp and Childress (2001) share similarities but also exhibit

differences. While both frameworks advocate for respect for autonomy, beneficence, and justice, principlism includes an additional principle: non-maleficence. The subsequent sections provide an in-depth description of these principles.

2.4.1 Respect for autonomy

According to Beauchamp and Childress (2001), respecting someone's autonomy entails recognizing their right to have opinions, make decisions, and behave per their values and beliefs. Autonomy is a complex concept that encompasses various aspects, such as decision-making capacity, informed consent, privacy, and moral responsibility. Notably, autonomy implies that individuals can make informed decisions about their own lives, having carefully considered the available options and potential consequences of their actions. In the context of biomedical ethics, autonomy mandates the disclosure of relevant information, such as risks and benefits, to patients or research subjects. It also requires professionals to assess the individual's competence and ensure that their decision-making process is not unduly influenced by external factors, such as coercion or manipulation.

Notably, respect for autonomy requires professionals to support individuals in making informed decisions by providing relevant information, fostering understanding, and promoting independent judgment (Beauchamp & Childress, 2001). For example, a physician may have a positive obligation – arising from respect for autonomy – to explain the potential risks and benefits of a medical procedure in layman's terms, ensuring that the patient understands the information and can make an informed decision. Similarly, researchers have a positive obligation to obtain informed consent from participants, clearly outlining the purpose of the study, potential risks, and benefits and addressing any concerns or questions the participant may have.

Privacy is another crucial aspect of autonomy, as individuals have the right to control access to their personal information, particularly in sensitive areas like healthcare and research. In

this regard, respecting privacy means safeguarding sensitive data, maintaining confidentiality, and only sharing information with the individual's consent (Beauchamp & Childress, 2001).

Furthermore, autonomy entails moral responsibility, implying that individuals are accountable for their actions and decisions. This aspect of autonomy may be limited in cases where the individual lacks the capacity to make informed decisions, such as minors or those with cognitive impairments (Beauchamp & Childress, 2001).

In summary, respecting autonomy involves various issues, including enhancing decision-making capacity, informed consent, privacy, and moral responsibility. Both the Belmont Report and Principlism emphasize the importance of autonomy. However, Principlism provides a more comprehensive and systematic approach to ethical decision-making.

2.4.2 Non-maleficence

The principle of non-maleficence, which mandates individuals to avoid causing harm, is central to the ethical framework of medical practice. It is closely related to the principle of beneficence, which requires healthcare professionals to actively promote the well-being of patients. These two principles are enshrined in the Hippocratic Oath, which states, "I will use treatment to help the sick according to my ability and judgment, but I will never use it to injure or wrong them" (Edelstein, 1943). Notably, distinguishing between these principles is important. As Beauchamp and Childress (2001) argue, conflating them would make it difficult to differentiate between various moral theories and important moral distinctions that apply particularly to harm.

A key difference between non-maleficence and beneficence lies in the nature of their requirements. While non-maleficence imposes a strict and rigid obligation not to harm others, beneficence entails a more flexible duty to assist others, allowing for variations in the degree of assistance provided (Beauchamp & Childress, 2001). This distinction is crucial because, in

some cases, non-maleficence may override beneficence, even if the anticipated outcome is positive.

Non-maleficence supports several moral rules that serve to protect patients from harm. These rules include the prohibition of intentionally inflicting harm, avoiding unnecessary harm, minimizing unavoidable harm, and balancing risks and benefits in medical decision-making (Beauchamp & Childress, 2001). These rules emphasize the primacy of patient safety and well-being in medical practice, which is essential for maintaining trust in the healthcare system.

2.4.3 Beneficence

The principle of beneficence plays a crucial role in ethical decision-making, as it requires us to contribute to people's welfare actively. Unlike the principle of non-maleficence, beneficence is a positive principle defined as the moral obligation to provide benefits and promote the well-being of others actively. Beneficence, like other principles, is not absolute and must be carefully weighed against other duties. Utility serves as a guide for weighing beneficence against competing moral obligations and making morally informed decisions (Beauchamp & Childress, 2001).

It is important to distinguish between beneficence and benevolence, as these terms are often misunderstood or conflated. Beneficence, as discussed earlier, requires one to promote the welfare of others, while benevolence describes a character trait that embodies goodwill and a genuine desire to help others. Thus, while beneficence is a moral obligation, benevolence represents a personal disposition or attitude. The moral rules supported by beneficence include the duty to rescue, which involves providing assistance to individuals in imminent danger or peril (Beauchamp & Childress, 2001).

2.4.4 Justice

Beauchamp and Childress (2001) interpret the principle of justice as suitable, reasonable, and impartial treatment, which is provided according to what is owed or due to a particular person. They further explain that distributive justice entails the fair, equitable, and appropriate distribution of benefits and costs in accordance with the standards that define the conditions of social cooperation. This interpretation of justice is in line with the Belmont Report, which also emphasizes the importance of fairness in the distribution of benefits and burdens among research participants.

To concretely realize justice, Beauchamp and Childress (2001) propose a principle that is based on fair equality of opportunity. According to this principle, individuals should have an equal chance to access and benefit from resources, services, and opportunities, regardless of their social, economic, or personal circumstances. This principle is in line with the Belmont Report's emphasis on the fair distribution of benefits and burdens, but it goes beyond the research context to encompass broader societal cooperation and distribution.

Beauchamp and Childress's (2001) principle for realizing justice can be applied in various ways, such as ensuring that research participants are selected fairly and without bias, providing equal access to healthcare services, and promoting policies that reduce socioeconomic disparities. By adhering to this principle, researchers, healthcare providers, and policymakers can work toward a more just society where everyone has an equal opportunity to thrive and succeed.

2.5 Challenges with Principlism

In this section, I explore challenges with Principlism.

2.5.1 Too much weight on respect for autonomy

Concerns have been raised regarding the principle of autonomy within the Principlism framework. Critics argue that it is given disproportionate importance compared to the other three principles (Entwistle et al. 2010). Beauchamp and Childress (2001) acknowledge that autonomy is well-supported by current laws, with legal statutes in place across various countries to protect patients' autonomy in healthcare. However, they argue that this focus on autonomy may overshadow other important ethical considerations, such as the right to treatment, the right to relationships, and the right to interact with the community. For example, Lepping and Raveesh (2014) asserts that the principle of autonomy has overlooked patients' basic needs for safety and social contact during the healing process. This may be particularly relevant in fields like psychiatry, where patients often require family and community support to heal (Entwistle et al., 2010). Additionally, philosopher Isaiah Berlin claims that autonomy cannot exist in isolation, further illustrating the need for a more balanced approach to ethical decision-making (Entwistle et al., 2010).

Critics like Walker (2009) argues that Western ethical perspectives place too much emphasis on autonomy at the expense of other principles. For example, he suggests that African communities might require a different principle to respect autonomy, as individuals are deeply embedded in their communities and must consider this when making decisions. Behrens (2018) echoes these concerns, stating that the individualistic tendency and the potential to obstruct ethical investigation are two major factors preventing him from embracing Principlism.

Callahan (2003) also agrees, noting that the emphasis on autonomy in Principlism stems from the value placed on individuality, which allows people to create their own lives and values. However, this focus on individualism may lead to a lack of attention to other ethical principles like justice and beneficence. For instance, while justice involves allocating resources to enable patients to live autonomously, beneficence may be more ambiguous, as it requires determining what is best for others.

In summary, while autonomy is a crucial aspect of ethical decision-making, overemphasizing it may inadvertently lead to the neglect of other important ethical principles and considerations. Balancing autonomy and other principles is essential to ensure that patients' rights and needs are appropriately addressed.

2.5.2 Inapplicability to the African context

Behrens (2018) suggested that respect for autonomy, which emphasizes individualistic decision-making, is incompatible with certain cultural contexts. For instance, in the African setting, the respect for autonomy principle, which advocates for individuals to make decisions about their health without external input (Entwistle et al., 2010), may not be applicable due to the collective nature of African societies.

In African cultures, individuals are often considered as part of a larger community rather than independent entities. For example, the Ubuntu philosophy, which originates from southern African cultures, emphasizes the interconnectedness of individuals within a community (Metz, 2014). This philosophy underscores the importance of communal decision-making, especially in matters relating to health and well-being.

In healthcare, this cultural distinction becomes particularly evident when a person falls ill. In African societies, it is common for family and community members to be actively involved in the patient's decision-making process, offering suggestions on which traditional healer to consult or which medical interventions to consider (Behrens, 2018). This involvement is driven by the belief in interdependence and the necessity to care for one another.

In conclusion, as it is currently understood, the principle of respect for autonomy may not be universally applicable across all cultural contexts. The African context, characterised by its emphasis on communal decision-making and interdependence, presents a unique challenge to the traditional understanding of autonomy in healthcare. Further research is needed to

bridge this gap in knowledge and develop a more nuanced understanding of how autonomy can be respected and upheld in diverse cultural settings.

2.5.3 Not based on common morality.

The relationship between Principlism and common morality has been debated, with some arguing that Principlism is not necessarily based on common morality. This argument is primarily due to the perception that Principlism reflects a more Westernized approach to ethics as opposed to a universally applicable moral framework (Behrens, 2018).

One aspect of this argument pertains to the principle of respect for autonomy, which is a central tenet of Principlism. Critics argue that this principle is rooted in excessive individualism that aligns more with Western traditions than those of other cultural contexts, such as African traditions that emphasize communal relationships and interconnectedness (Behrens, 2018; Fayemi & Chimakonam, 2022). This suggests that the principle of respect for autonomy may not be grounded in a universally shared moral understanding, thus challenging the notion that Principlism is based on common morality.

Callahan (2003) further supports this argument by suggesting that even in cases where only individuals are affected, ethical considerations should extend beyond the individual to include social meaning, context, and broader implications. Callahan illustrates this point using the example of ecology, where the impact of an individual plant on the larger ecosystem is of greater importance than its individual flourishing. This analogy emphasizes the interconnectedness of individuals within a community and suggests that an ethical approach should consider these relationships. As an alternative ethical framework, Communitarianism rejects the individualistic bias of respect for autonomy and instead focuses on the social, political, and cultural institutions and practices that shape people's lives (Callahan, 2003). Communitarianism posits that people are inherently social creatures, and ethical considerations should reflect this interconnectedness. The preceding highlights the need for

continued debate and research to better understand the relationship between Principlism and common morality and to develop ethical frameworks that are sensitive to and inclusive of diverse cultural perspectives.

2.6 Addressing Weaknesses of Principlism

2.6.1 Proposal to make it more African.

Behrens (2013) argues for revising the principles of respect for autonomy and justice. Behrens claims that respect for autonomy is overly individualistic and Western, emphasizing autonomous decision-making. Instead, he suggests returning to the Belmont Report's respect for persons, which accommodates autonomy without disregarding social relations. Furthermore, Behrens proposes replacing the principle of justice with harmony, reflecting the African perspective of individuals embedded in families and communities. In contrast, Fayemi & Chimakonam (2021) disagrees with Behrens' African-inspired Principlism, arguing that it lacks boundaries. However, they do acknowledge the need for a more African approach to principlism.

While both Behrens and Fayemi and Chimakonam recognise the importance of revising principlism to accommodate African perspectives, they differ in their proposed modifications. Behrens advocates for harmony as a revised principle, while Fayemi & Chimakonam suggests solidarity as an alternative concept for enhancing harmonious living (Behrens 2013; Fayemi & Chimakonam 2021). The subsequent sections will focus on Behrens proposed modifications.

2.7 African-inspired principlism by Kevin Behrens

2.7.1 Respect for Persons

Behrens (2018) discusses the original principle from the Belmont Report, which emphasizes respect for persons. This principle encompasses respecting individuals' autonomous choices

and their values. By respecting a person, their values, preferences, and significant relationships are acknowledged. The concept of respect for persons highlights the importance of relationality and embeddedness within communities, as it aims to balance individual autonomy with the common good.

Moreover, respect for persons entails acknowledging an individual's cultural and social contexts. Obtaining the approval of the person's community is crucial in demonstrating respect, as failure to do so may signify a lack of respect for the individual. This principle allows one to recognize that an individual's freedom of choice is equally important as their relationships. It is essential to consider that all human societies value relationships and understand that these connections often influence personal decisions. Respect for persons is a more widely acknowledged and valued principle than respect for autonomy, as it is more informed by common morality (Behrens, 2018).

2.7.2 Beneficence and Non-maleficence

Behrens thinks these two principles are adequate and reflect common morality, including moral values dominant in Africa.

2.7.3 Harmony

Behrens (2013) suggests that the principle of justice should be replaced by the principle of harmony, as the latter better encapsulates the African perspective on ethics. This perspective emphasizes the significance of relationality and acknowledges the interconnectedness of individuals with their families and communities, which is an integral aspect of many African cultures. While justice is undeniably vital for maintaining harmonious relationships within communities, the principle of harmony encompasses more than what justice alone can provide. Consequently, this broader, community-oriented approach is more inclusive of the concerns held by communitarians, care ethicists, virtue ethicists, and Ubuntu-ists.

However, it is essential to clarify the reasons for preferring harmony over justice and to provide relevant examples that elucidate the differences between the two principles. Harmony is considered superior to justice because it goes beyond the distribution of resources and focuses on fostering healthy, cooperative relationships within communities. This holistic approach promotes mutual respect, support, and understanding among community members, which is not always captured by the principle of justice.

For instance, the principle of justice primarily concentrates on fair treatment and equality, potentially overlooking the importance of interpersonal relationships and emotional connections. Harmony, on the other hand, accounts for these crucial elements in ethical decision-making, emphasizing the need for empathy, compassion, and solidarity within communities.

One example to illustrate the difference between harmony and justice is the resolution of conflicts within a community. While justice would focus on determining who is right or wrong and applying appropriate consequences, harmony would prioritize restoring relationships and finding a solution that benefits all parties involved. This approach aligns with the African concept of Ubuntu, which emphasizes interconnectedness, compassion, and shared humanity.

Despite the merits of harmony as an alternative to justice, further research is required to address potential gaps in the current body of knowledge. For instance, the applicability of the principle of harmony in diverse cultural and social contexts remains to be explored. Moreover, the relationship between harmony and other bioethical principles, such as autonomy, nonmaleficence, and beneficence, should be examined to ensure a comprehensive understanding of this alternative ethical framework.

In summary, Behrens (2013) advocates for the principle of harmony as a more inclusive and holistic approach to ethics, particularly in the African context. While justice remains an

important aspect of harmonious relationships, the principle of harmony offers a broader perspective that encompasses the concerns of various ethical theories.

2.8 Conclusion

This chapter has provided an in-depth analysis of Principlism and its distinction from the core principles outlined in the Belmont Report. The historical background of the Belmont Report was discussed, including its fundamental principles of respect for persons, beneficence, and justice. The four principles of Principlism, as articulated by Beauchamp and Childress (2001), were also examined: respect for autonomy, beneficence, non-maleficence, and justice.

Several criticisms against Principlism were outlined, with a focus on its undue emphasis on respect for autonomy and its failure to be genuinely grounded in common morality. This highlights a gap in the current body of knowledge regarding the applicability of Principlism in various cultural contexts. For instance, the principle of autonomy may not hold the same significance in non-Western societies, which tend to prioritize community values over individual rights.

One notable revision to Principlism, proposed by Kevin Behrens, was also explored. Behrens (2013) suggests two critical changes: replacing the principle of autonomy with respect for persons and substituting justice with the principle of harmony. These modifications may be particularly relevant for African contexts, where a more communal approach to ethics is prevalent. By making these adjustments, Behrens argues that Principlism could be better grounded in common morality, addressing one of the key criticisms mentioned earlier.

However, it is crucial to acknowledge that these recommendations might not be universally applicable, and that further research is needed to assess the validity and effectiveness of the revised principles in various cultural settings. Future studies could also explore alternative ethical frameworks that might better accommodate diverse cultural values and moral perspectives.

CHAPTER THREE:

LITERATURE REVIEW AND KEY ISSUES OF COMMERCIAL SURROGACY IN SOUTH AFRICA

3.1 Overview

Within the context of commercial surrogacy, an expansive dialogue persists in both international and South African scholarly discourses. The subject matter, being mired in intricate ethical dilemmas, provokes a multitude of moral theories that either endorse or refute the practice. The varied ethical stances provide a comprehensive understanding of the divergent perspectives concerning commercial surrogacy. This chapter aims to critically examine these discourses, mostly focusing on the objections against commercial surrogacy to identify the critical issues regarding the same, the gaps in the existing body of literature, and expound on the complex ethical landscape surrounding commercial surrogacy. Notably, this section outlines some ethical issues and concerns regarding commercial surrogacy. Particularly, it highlights these concerns by describing various objections or criticisms against, as well as arguments in favour of, commercial surrogacy. I begin by describing Care Ethicists' criticisms of commercial surrogacy. Subsequently, I will consider the Kantian perspective, Principlism, the Consequentialist approach and Afro-Communal Theory.

Although I explore various justifications for or against permitting commercial surrogacy below, it is important to state here that the factors and motivations for commercial surrogacy are complex. These motivations (of surrogate mothers in India) have been explored by Pande (2011), who emphasizes that economic gain is not the sole driver for these women. Pande's research reveals that surrogate mothers are motivated by a blend of economic factors and relational motivations, including the desire to provide the gift of motherhood and the formation of relationships with intended mothers. These findings challenge the prevailing perception of surrogate mothers as solely driven by economic gain and suggest the need for a reframing of commercial surrogacy to acknowledge and accommodate these aspects of human

interdependency. As I justify below, the literature lacks an extensive exploration of the dichotomy between economic and relational motivations, especially in the South African context, highlighting the need for further inquiry into the interplay of these factors and their implications for commercial surrogacy practices in South Africa.

3.2 Care Ethics and Commercial Surrogacy

Care ethics is a moral framework that emphasizes the importance of relationships, care, and love in ethical decision-making and moral reasoning. According to care ethicists, relationships and caring for others are fundamental to human existence and should be at the centre of ethical considerations (Parks, 2010). This perspective challenges traditional moral theories that prioritise individual autonomy and rights. Care ethics recognizes the interdependence of individuals and the significance of nurturing and sustaining relationships.

In the context of commercial surrogacy, care ethicists typically reject the practice due to its potential to undermine the relational aspects of childbearing. For example, Parks (2010) criticizes Indian commercial surrogacy laws for failing to acknowledge the intricate web of relationships involved in the surrogacy process. She argues that these laws contribute to the commodification of children by disregarding the formation and complexity of relationships that develop from conception and extend beyond birth. This critique highlights the dehumanizing aspect of commercial surrogacy, as it neglects the emotional bonds and human relationships formed during the gestational period.

Equally, Shanley (1993) underscores the importance of relationships in human development and challenges the autonomous individual model on which commercial surrogacy is often based. She argues that this model disregards the vital aspect of relationships and advocates for a more relational approach to surrogacy. According to Shanely (1993), commercial surrogacy, viewed as a purely transactional and contractual arrangement between two

autonomous parties, fails to recognize the emotional and psychological aspects involved in the surrogacy process.

The objections raised by care ethicists regarding commercial surrogacy are deeply intertwined with concerns related to exploitation, commodification, and power dynamics. Commercial surrogacy involves a financial transaction where a woman's reproductive capacity is commodified for the purpose of fulfilling the desires of her intended parents. This commodification can create power imbalances, especially when the surrogate is economically disadvantaged or lacks agency in decision-making.

Exploitation is a significant concern in commercial surrogacy, as it involves the potential for the exploitation of vulnerable women who may be driven by economic necessity to become surrogates. The power dynamics at play in commercial surrogacy can lead to situations where surrogates are subjected to coercion, manipulation, or inadequate compensation for their labour and emotional investment.

Furthermore, the commodification of children in commercial surrogacy raises ethical questions about the treatment of human life and the potential for children to be viewed as commodities rather than as individuals with inherent worth and dignity. The emphasis on fulfilling the desires of intended parents through a contractual agreement can overshadow the importance of nurturing and sustaining relationships between the surrogate, the child, and the intended parents.

In summary, care ethics rejects commercial surrogacy due to its potential to undermine the relational aspects of childbearing. Care ethicists argue that commercial surrogacy laws and practices fail to acknowledge the complexity of relationships involved in the surrogacy process, leading to the commodification of children. Concerns related to exploitation, commodification, and power dynamics further highlight the ethical challenges associated with commercial surrogacy. It is crucial to consider these objections and concerns when evaluating the ethical

implications of commercial surrogacy in South Africa and shaping regulations and policies in this domain.

3.3 Kantian Perspective on Commercial Surrogacy

The Kantian perspective on commercial surrogacy presents an intriguing dilemma within the discourse on assisted reproduction. Kantian ethics, rooted in the philosophy of Immanuel Kant, emphasizes the inherent worth and dignity of individuals and argues against using them as mere means to an end (Yadav & Anand, 2018). This principle, commonly referred to as the "respect for persons," is frequently invoked in discussions surrounding commercial surrogacy.

According to the Kantian perspective, the concept of womanhood, as socially constructed, inherently encompasses the capacity for childbearing. However, when women face reproductive challenges, their dreams of motherhood may be diminished. The WHO's classification of infertility as a disease, affecting approximately 15% of couples worldwide, has led to the emergence of surrogacy as a viable solution (Yadav & Anand, 2018). Commercial surrogacy, which involves financial incentives, aligns the interests of all parties involved, ensuring that none of them are used solely as means in the surrogacy arrangement. This perspective argues that commercial surrogacy can be permissible under the Kantian principle of respect for persons as long as it is conducted to respect the rights and interests of all parties involved.

While the Kantian perspective provides a compelling argument in favour of commercial surrogacy, it is not without criticism. Critics argue that commercial surrogacy degrades and commodifies women, drawing parallels with prostitution (Yadav & Anand, 2018). They contend that it places the surrogate mother in a position where she is selling her body for financial gain, thereby commodifying the female body and violating the Kantian principle of respect for persons. This objection raises important questions about the ethics of commercial surrogacy and the potential exploitation of women involved in the process.

A deeper exploration of the Kantian objections to commercial surrogacy reveals the relevance of the categorical imperative. The categorical imperative, a central concept in Kantian ethics, requires individuals to act in a way that can be universally applied without contradiction. From this perspective, the concern arises that the practice of commercial surrogacy treats the womb as a mere commodity, reducing the surrogate mother to a means for fulfilling the desires of others (Patrone, 2018). This commodification of the female body conflicts with the categorical imperative, which prohibits treating individuals as mere means.

Furthermore, critics raise concerns about the potential infringement on the autonomy, dignity, and personhood of surrogate mothers. Autonomy refers to a person's ability to make free and informed decisions about their own body and life. In the context of commercial surrogacy, critics argue that financial incentives may coerce women into becoming surrogates, undermining their autonomy and agency (Patrone, 2018). Dignity, on the other hand, is grounded in the inherent worth and respect owed to every individual. Critics contend that commercial surrogacy can undermine the dignity of surrogate mothers by reducing them to objects whose bodies can be bought and sold (Patrone, 2018). Finally, personhood arguments against commercial surrogacy highlight the potential devaluation of the surrogate mother's identity and role as a parent. Critics suggest that commercial surrogacy may lead to the erasure of the surrogate mother's connection to the child she carries, undermining her sense of personhood and the emotional bonds associated with parenthood (Patrone, 2018).

In conclusion, the Kantian perspective on commercial surrogacy raises important ethical considerations. While it can justifiably ground the permissibility of commercial surrogacy based on the principle of respect for persons, critics contend that it commodifies and degrades women, violating the Kantian principle and raising concerns about autonomy, dignity, and personhood.

3.4 The Consequentialist Approach: Beneficence and Commercial Surrogacy

Osberg and Sherwin (2006) argues from a consequentialist perspective that commercial surrogacy often exploits surrogate mothers due to economic power imbalances between commissioning parents and surrogate mothers, leading to unfair contractual terms. This issue is particularly prevalent among surrogate mothers from low-income backgrounds seeking a way out of poverty.

Their critique highlights the need for regulatory measures to ensure fair contractual terms and protect the rights of surrogate mothers. However, the argument could be strengthened by the inclusion of empirical data that quantifies the extent of this economic imbalance and its impact on the fairness of contractual terms. By providing concrete evidence, the argument gains credibility and enhances its persuasive power.

Moreover, the application of the consequentialist approach could be expanded to consider not only the immediate consequences but also the long-term implications of commercial surrogacy for surrogate mothers, children, and commissioning parents. By encompassing a broader perspective, the evaluation of commercial surrogacy takes into account the potential effects on all involved parties, shedding light on the ethical considerations from a holistic standpoint.

Fronek (2018) brings attention to ethical concerns surrounding International Commercial Surrogacy (ICS), specifically the subtle coercion experienced by poor, illiterate women who may not fully comprehend the medical and legal terms of surrogacy contracts. These women may face stigma and discrimination, while children born from these arrangements may be susceptible to abuse. Fronek concludes that the potential harms outweigh the benefits, emphasizing the necessity for stringent regulation and oversight of ICS to prevent exploitation and abuse.

While Fronek's arguments shed light on the darker aspects of ICS, a more comprehensive analysis of the different forms of exploitation and their prevalence would enhance the discussion. By examining various forms of exploitation, such as emotional coercion or

inadequate compensation, a more nuanced understanding of the potential harms can be achieved.

Furthermore, empirical studies that explore the lived experiences of surrogate mothers in ICS could provide valuable insights into the scope and scale of these ethical concerns. These studies would offer first-hand accounts of the challenges and vulnerabilities faced by surrogate mothers, contributing to a more comprehensive understanding of the potential negative consequences of commercial surrogacy.

In addition to the existing discussion, it is important to mention some common forms of exploitation in commercial surrogacy, such as inadequate compensation, lack of informed consent, and psychological pressures. For example, surrogate mothers may agree to unfair contractual terms due to financial desperation, inadequate legal understanding, or social coercion. These exploitative practices undermine the principle of beneficence, which emphasizes the promotion of well-being and minimizing harm.

On the other hand, commercial surrogacy can also have potential positive outcomes. For commissioning parents struggling with infertility, surrogacy offers the chance to fulfil their desire for parenthood. It provides an opportunity for surrogate mothers to improve their financial situation and make a positive impact on the lives of others. Additionally, commercial surrogacy can contribute to medical advancements and research in reproductive technologies.

However, it is crucial to weigh these potential benefits against the potential harms and ethical concerns associated with commercial surrogacy. Striking a balance between ensuring the protection of surrogate mothers' rights and addressing the needs and desires of commissioning parents is essential to approaching commercial surrogacy ethically.

In summary, the consequentialist approach allows for a thorough evaluation of the ethical implications of commercial surrogacy. Osberg and Sherwin and Fronek contribute valuable insights into the potential exploitation and harm that can occur within this practice. By considering the long-term implications and conducting studies on the lived experiences of

surrogate mothers, a more nuanced understanding of the ethical considerations surrounding commercial surrogacy can be achieved. Furthermore, it is essential to acknowledge the potential positive outcomes while remaining vigilant about addressing and mitigating potential harms.

3.5 Principlism and Commercial Surrogacy

Principlism, a widely used ethical framework in healthcare ethics, provides a valuable lens for examining the ethical issues surrounding commercial surrogacy. It is based on four fundamental principles: respect for autonomy, beneficence, non-maleficence, and justice (Feiglin & Savulescu, 2018). This framework allows for a comprehensive evaluation of the moral implications of commercial surrogacy.

Applying principlism to commercial surrogacy, Feiglin and Savulescu (2018) argue that denying surrogate mothers the right to enter into commercial arrangements, which are typically associated with altruistic surrogacy, violates these principles. They advocate for a balanced approach that respects the rights and interests of all parties involved, including the surrogate mothers, the intending parents, and the child. This approach acknowledges the autonomy of the surrogate mother to make decisions about her own body and reproductive choices while also ensuring that the well-being of all individuals involved is considered.

The principle of autonomy is particularly relevant in commercial surrogacy, as it recognizes the right of the surrogate mother to make informed decisions about her participation in the arrangement. However, it is important to ensure that external factors, such as financial incentives or societal pressures, do not compromise the autonomy of the surrogate mother. In order to uphold the principle of autonomy, it is necessary to provide adequate support and information to the surrogate mother, enabling her to make a truly voluntary decision.

Beneficence and non-maleficence are principles that emphasize the promotion of well-being and the prevention of harm. In the context of commercial surrogacy, these principles require

that the interests and well-being of all parties involved, including the surrogate mother, the intending parents, and the child, are carefully considered and protected. This means ensuring that the surrogate mother receives appropriate medical care and support throughout the process, that the intending parents are emotionally and financially prepared for parenthood, and that the best interests of the child are prioritized.

Principlism offers a balanced approach to commercial surrogacy by respecting the rights and interests of all parties involved. The principle of autonomy recognizes the surrogate mother's right to make informed decisions about her own body and reproductive choices. This principle ensures that the surrogate mother's autonomy is not compromised by external factors such as financial incentives or societal pressures. The principles of beneficence and non-maleficence prioritize the well-being of all individuals involved, including the surrogate mother, intending parents, and the child. This means providing appropriate medical care and support for the surrogate mother, ensuring the emotional and financial preparedness of the intended parents, and prioritizing the best interests of the child. However, the principle of justice, specifically distributive justice, may pose challenges in commercial surrogacy arrangements, particularly in countries with high levels of poverty and inequality. To address this, a more nuanced application of principlism is necessary, taking into account the socio-economic context and power imbalances. By addressing these challenges, a more comprehensive and ethically sound approach to commercial surrogacy can be developed.

However, one limitation of applying principlism to commercial surrogacy is the potential inadequacy of the principle of justice, specifically distributive justice. The financial incentives involved in commercial surrogacy may lead to the exploitation of economically disadvantaged women, particularly in countries with high levels of poverty and inequality, like South Africa. This calls for a more nuanced application of principlism, taking into account the socio-economic context and potential power imbalances in commercial surrogacy arrangements. It is important to consider the potential for exploitation and ensure that surrogate mothers are not coerced or forced into participating in commercial surrogacy due to financial desperation.

In conclusion, the application of principlism provides a balanced ethical framework for evaluating commercial surrogacy. It allows for the consideration of autonomy, beneficence, non-maleficence, and justice in relation to the rights and interests of all parties involved. However, it is crucial to recognize and address the potential limitations and challenges associated with commercial surrogacy, particularly in terms of distributive justice and the potential exploitation of economically disadvantaged women. By considering these factors, a more comprehensive and ethically sound approach to commercial surrogacy can be developed.

3.6 Afro-Communal Theory and Commercial Surrogacy

As an ethical framework, Afro-communal theory centres around communal values, relational identities, and respect for human dignity. It recognizes the importance of community in shaping individual identities and moral obligations. In the context of commercial surrogacy, this theory emphasizes the interconnectedness of individuals and the need to consider the well-being of the surrogate mothers, intended parents, and the child within the broader community.

In their analysis, Fayemi and Chimakonam (2022) propose ethical norms for the moral permissibility of commercial surrogacy. They argue that treating people, especially in light of their capacity for friendly relationships, is essential. Notably, respect for persons is realized through recognizing and honouring their relational nature. This has implications for commercial surrogacy.

3.7 Arguments in favour of commercial surrogacy

In addition to the preceding sections, there are arguments in favour of commercial surrogacy that are worth highlighting. Opposing the views that label commercial surrogacy as exploitative and commodifying, Jaggar (2018) and Roleff (1998) argue that commercial surrogacy can empower women by granting them control over their reproductive lives and bodies. They

assert that surrogacy should be viewed as a service rather than the selling of a body and that prohibitions on commercial surrogacy infringe on reproductive rights. This perspective challenges the predominant critique of commercial surrogacy and advocates for a more nuanced understanding of surrogacy as a service that can potentially empower women. However, Jaggar's and Roleff's arguments lack empirical evidence to substantiate their claims of empowerment. Furthermore, they do not sufficiently address the potential for exploitation and commodification inherent in commercial surrogacy, which could undermine the empowerment they argue for. Thus, while their perspective offers a refreshing counter-narrative, it needs further support to strengthen its validity.

Crozier and Martin (2012) underscore the potential benefits for surrogate mothers, such as financial reward, employment opportunities, and personal satisfaction from assisting others in achieving their procreation goals. This viewpoint emphasizes the potential positive aspects of commercial surrogacy and argues for a balanced perspective that considers the potential risks and benefits. While Crozier and Martin's arguments present a more balanced understanding of commercial surrogacy, their perspective could be enriched with a more rigorous analysis of the potential benefits and risks.

Igareda-Gonzalez (2019) proposes a bold perspective on commercial surrogacy, and argues for its legitimacy as work deserving of payment and safety standards. The author acknowledges the problems inherent in the industry but propose that these can be overcome by proper legislation and professional bodies to protect all parties involved. This perspective challenges the predominant perception of commercial surrogacy as a mere contractual arrangement and argues for its recognition as legitimate work that deserves fair compensation and safety standards.

Overall, while these arguments present a nuanced understanding of commercial surrogacy, further research is needed to address several key gaps. These include a scarcity of empirical evidence regarding the socioeconomic impacts of surrogacy, a lack of comprehensive analysis of the experiences of surrogate mothers, and insufficient data on the long-term effects

on children born from such arrangements. Additionally, there is a need for deeper exploration into the ethical, cultural, and socio-legal contexts of surrogacy, especially in examining the balance of risks and benefits for all parties involved. This should encompass a critical assessment of the psychological and economic impacts on surrogates and commissioning parents, alongside an evaluation of the ethical implications and policy considerations necessary for effective regulation of commercial surrogacy. This comprehensive approach will provide a more informed basis for understanding the complex dynamics of commercial surrogacy and its broader social implications.

3.8 Conclusion

This section is the conclusion of this chapter, highlighting the extensive examination of various theories and arguments put forth by both proponents and critics of commercial surrogacy. Proponents primarily rely on moral theories such as the ethics of care and utilitarianism to emphasize the potential benefits of commercial surrogacy in fostering relational ties and achieving a balance of good over harm. Additionally, the Afro-communal theory is invoked to support the notion that commercial surrogacy can promote social equity and community solidarity. Conversely, Principlism demonstrates how key principles may be violated when commercial surrogacy is prohibited, particularly in terms of fair compensation for surrogate mothers and their decision-making rights.

Critics, on the other hand, often employ the Kantian theory to challenge commercial surrogacy, viewing it as degrading and comparable to prostitution, as it involves the commodification of a woman's body for financial gain. They also argue that commercial surrogacy can lead to exploitation, with intending parents taking advantage of impoverished surrogate mothers.

The ethical discourse surrounding commercial surrogacy is undeniably complex, with compelling arguments presented by both sides. This chapter has provided a comprehensive overview of these arguments, setting the stage for further exploration and analysis of the

critical ethical, societal, and legal dilemmas associated with commercial surrogacy in the subsequent chapters. Importantly, the next chapter will draw on African-inspired principlism to address critical questions regarding commercial surrogacy.

CHAPTER FOUR:

ADDRESSING KEY ISSUES AROUND COMMERCIAL SURROGACY

4.1 Introduction

Commercial surrogacy, a practice wherein a woman carries and gives birth to a child for another individual or couple in exchange for financial compensation, has garnered both significant attention and controversy. This chapter delves into the ethical dimensions of commercial surrogacy within the South African context, utilizing an African-inspired Principlism framework. African-inspired Principlism draws from the moral norms deeply rooted in African cultures, providing a unique lens to analyse and address the complex ethical issues surrounding commercial surrogacy.

Furthermore, in this chapter, I am describing how commercial surrogacy may be undertaken in ethically permissible ways, particularly in South Africa. I will outline critical ethical issues that hinder the permissibility of commercial surrogacy within the South African context and apply the African-inspired principlism to address these issues.

4.2 African-inspired Principlism: An Analysis of Moral Norms

African-inspired Principlism, as partly indicated in the previous sections, was necessitated by the failure of Principlism to accommodate core African values like communal relationships. This framework has been adequately explained by Kevin Behrens (Behrens, 2013). In this chapter, I describe the framework and draw on it to interrogate key questions regarding commercial surrogacy.

4.2.1 Understanding African-inspired Principlism

The concept of African-inspired Principlism represents a profound departure from conventional Western ethical frameworks, offering a unique lens to assess intricate ethical

dilemmas, such as those presented by commercial surrogacy. Rooted in the intricate tapestry of cultural, communal, and ethical values spanning diverse African societies, this framework provides a holistic perspective on morality that resonates throughout various dimensions of human interaction.

At its core, African-inspired Principlism embraces the principles intrinsic to African cultures and their ethical paradigms. The foundational moral norms that arise from its cultural underpinnings are central to this framework. Although I have articulated this framework in a previous chapter, it is worth quickly explaining the African-inspired principlism here. These norms encompass:

Respect for Person: Kevin Behrens replaces respect for autonomy with respect for person, which is the original phrase used in the Belmont Report. This is because respect for a person captures African reality better than autonomy. In African societies, decisions are made considering their impact on the community. Evidently, individual autonomy is respected, but it harmonizes with the broader social fabric.

Communal Beneficence: The principle of communal beneficence underscores the interconnectedness of individuals within a community. Acts of kindness, support, and cooperation are extended to fellow community members, reflecting an ethical commitment to uplift one another. This interconnectedness is deeply enmeshed in many African cultural norms and practices.

Avoidance of Harm (Non-maleficence): Non-maleficence, the avoidance of harm, stands as a cornerstone of African ethical contemplation. The well-being of both individuals and the community takes precedence, and actions are assessed against their potential to cause harm, spanning physical, psychological, and even spiritual dimensions.

Commitment to Harmony: Kevin Behrens also replaces the principle of justice with harmony since this better reflects “the importance of relationality and [takes] cognizance of the individual’s being embedded in community and family.” Moreover, harmony entails everything

described in the principle of justice and more. It embodies fairness, equity, cooperation, and the rectification of societal imbalances. It extends beyond legal frameworks, encompassing the broader endeavour to address societal injustices. It is also concerned with healing relationships and reinstating connections (Behrens, 2013).

Ethical Implications for Commercial Surrogacy in South Africa

Translating African-inspired Principlism to the context of commercial surrogacy in South Africa yields insightful perspectives and thought-provoking critiques. While respecting a person resonates with the value of individual agency since we cannot respect individuals without respecting their values, its application is nuanced within communal interdependence. A surrogate mother's decision reverberates through her community and family, prompting a discourse that accounts for the broader consequences of individual choices to community and family. When a surrogate mother makes a decision, it should ideally be based on altruistic instincts that echo support for the family and the community at large. Such a decision ought to be influenced by the happiness this would bring to her family and also the community she lives in.

Offering financial gain to surrogate mothers, although not necessarily immoral from the point of view of African-inspired Principlism, communal beneficence would require a rigorous examination of its potential disruptions to communal bonds and the ethical implications of transactional arrangements. The prospect of altering established communal norms prompts an evaluation of its compatibility with African-inspired Principlism. Receiving financial gain allows a surrogate mother to support her family and community. Her financial gain can be shared within the community to benefit her family and the community she lives within.

The avoidance of harm, when applied to commercial surrogacy, unfolds with intricate layers. It urges us to contemplate potential physical and psychological harm to the surrogate mother, along with emotional and existential consequences for the child and commissioning parents. This intricate web of potential harm emphasizes the necessity of robust safeguards and

comprehensive ethical evaluations. When the family and community are involved in this process, it allows a surrogate mother to share her journey with people that she is comfortable with and could assist in mitigating any psychological harm. Involving family and community also ensures the safety of surrogate mothers through family and community support.

Lastly, the commitment to harmony emphasizes the equitable distribution of benefits and burdens in ways that link individuals in loving relationships. In commercial surrogacy, questions emerge about just compensation, informed consent, and ensuring fairness for all parties involved. This principle compels scrutiny of potential power imbalances and the broader societal repercussions of commercial surrogacy arrangements. If South Africa would permit commercial surrogacy, surrogate mothers would live in harmony within their families and not be excluded and isolated when they are pregnant in countries like India because of legal contracts they sign that allows this isolation.Allowing surrogate mothers to have some form of relationship with commissioning parents is a form of communal bond and a way of improving interpersonal relationships within communities, improving living in harmony. Also, allowing children born from surrogacy to know how they were conceived improves family and community spirit. It demonstrates togetherness.

African-inspired Principlism offers both illumination and complexity in examining the ethical considerations surrounding commercial surrogacy in South Africa. Its capacity to integrate cultural, communal, and ethical values creates a platform for a nuanced ethical discourse that assesses individual actions and their profound implications for the larger community. Nonetheless, applying this framework presents challenges or objections, and the interplay between individual autonomy and communal interdependence, as well as the equilibrium between beneficence and potential harm, demands meticulous deliberation and ethical dialogue.

4.2.2 Applying African-inspired Principlism to Commercial Surrogacy

Kinship and Identity

In the African context, concepts of kinship and identity hold deep significance, often extending beyond nuclear families. Commercial surrogacy challenges these traditional constructs, prompting a re-evaluation of African-inspired Principlism. Instances have illuminated scenarios where surrogacy arrangements disrupt kinship norms and raise inquiries about the child's identity (Deomampo, 2016).

Applying African-inspired Principlism here necessitates striking a balance between individual persons and communal well-being. Beneficence is weighed against potential disruptions to conventional kinship notions, and harmony is contextualized within the broader communal fabric. The ethical implications of the importance of kinship and identity emphasize the dynamic nature of African-inspired Principlism, which must continuously adapt to address the changing surrogacy landscape while preserving cultural values.

Evaluating Ethical Implications and Outcomes

Applying African-inspired Principlism to commercial surrogacy offers a fresh outlook that acknowledges the significance of communal values and interconnection within African societies. Evidently, this approach encourages a holistic and culturally attuned exploration of the ethical challenges associated with surrogacy.

Nonetheless, objections might persist. The tension between individual autonomy and communal values can pose ethical dilemmas, as community well-being might encroach upon personal choices. Navigating cultural pluralism demands a deep comprehension of diverse cultural contexts, necessitating substantial time and effort. Moreover, the globalisation of commercial surrogacy brings complexities that require a careful equilibrium between local and global perspectives.

Within the African context, individualism tends to be discouraged, which is not the case in many Western cultures. In comparison, African-inspired principlism acknowledges the importance of relationships between individuals within the family and broader community (Behrens, 2013). When applying African-inspired Principlism, respect for persons dominates and demonstrates that a person cannot live in a vacuum. A person needs another person to survive, which is called “Ubuntu”. African-inspired Principlism draws on this concept to support commercial surrogacy’s permissibility in South Africa and reply to those who might object using personal choices as opposed to community well-being. Therefore, I can conclude by stating that African-inspired principlism promotes cultural values by respecting the values of the people living within the community.

In summary, the application of African-inspired Principlism to this case study of commercial surrogacy underscores the adaptability of ethical frameworks to culturally vibrant contexts. As bioethics progresses, the incorporation of diverse cultural perspectives, as seen in African-inspired Principlism, contributes to a comprehensive and inclusive approach to addressing the intricate challenges posed by commercial surrogacy.

4.3 Addressing Ethical Issues in Commercial Surrogacy through African-inspired Principlism

The landscape of assisted reproduction has borne witness to the emergence of commercial surrogacy, a practice riddled with complex ethical inquiries that demand a thorough examination. This section mainly *describes* the intricate ethical dimensions associated with commercial surrogacy, delving into its complexities while contemplating the potential risks and benefits for all parties involved and explaining how the African-inspired moral framework can plausibly address these challenges.

4.3.1 Autonomy and Exploitation

At the heart of the ethical discourse surrounding commercial surrogacy lies the possibility of surrogate mothers, often from economically disadvantaged backgrounds, falling victim to exploitation (Teman, 2010). The autonomy of these women hangs precariously, vulnerable to financial pressures that may compromise their genuine volition. Conversely, some proponents argue that overly restrictive regulations could impede the autonomy of women who choose commercial surrogacy as a means of economic empowerment, challenging the dichotomy between protective measures and respecting autonomous decisions (Ramskold & Posner, 2013).

African-inspired Principlism underscores the importance of autonomy and vigilance against exploitation by insisting that the decision-making process should be communal, a collective responsibility to prevent economic pressures from compromising autonomy and ensuring both individual agency and the community's well-being.

4.3.2 Commodification of Reproduction

Another significant ethical dilemma revolves around the commodification of the human body within commercial surrogacy. This process reduces the profound act of reproduction to a transactional commodity, potentially eroding the inherent dignity attributed to individuals (Tong, 2007). Contemplating the moral implications of treating human bodies as mere commodities, mere instruments for financial gain prompts an exploration of the interplay between economic considerations and the ethical foundations of human dignity.

The interplay of respect for individuals and harmony prompts a thoughtful exploration of reproductive commodification. The lens of African-inspired Principlism enables a broader understanding of the consequences of commodification, encompassing its impact on relationships and the intricate threads of community dynamics.

4.3.3 Parent-Child Relationships

The ethical landscape becomes even more intricate as we navigate the realm of parent-child relationships in the context of commercial surrogacy. Disturbing questions arise regarding the emotional ties between the child and the surrogate, amplified by concerns about parental rights and responsibilities (Beeson et al., 2013). This web of ethical considerations demands an introspective exploration of the essence of parenthood, the rights of surrogates, and the ethical obligations entailed in nurturing complex familial connections.

African-inspired Principlism raises the banner of relational ethics, fostering a complex interplay of interconnectedness. When examining parent-child relationships in commercial surrogacy, the principle of harmony takes precedence, steering towards a comprehensive perspective that nurtures the well-being of the child, surrogate, and intended parents, all interwoven within the broader canvas of community.

4.3.4 Cultural Appropriation

The ethos of African-inspired Principlism demands cultural sensitivity and the mitigation of power imbalances. Reverence for cultural values and the pursuit of community consent harmonize with the principles of respect for persons, ensuring the delicate mosaic of harmonious relationships.

As the ethical journey navigates through the intricate contours of commercial surrogacy, African-inspired Principlism emerges as a guiding light. This ethical paradigm bridges the gap between individual autonomy and communal values by blending respect for persons, beneficence, non-maleficence, and harmony. Applying these principles to commercial surrogacy navigates ethical complexities and orchestrates a symphony resonating with cultural intricacies and the diverse tapestry of human experience. In this evolving ethical discourse, African-inspired Principlism unfolds as an invaluable perspective, facilitating both

the navigation of ethical dilemmas and the illumination of bioethics in diverse and culturally resonant shades.

4.4 The Role of African-inspired Principlism in Addressing Ethical Issues

Enter African-inspired Principlism, an ethical compass woven from the threads of respect for persons, beneficence, non-maleficence, and harmony, culminating in a framework that seamlessly integrates communal values into the fabric of ethical deliberations within commercial surrogacy. This section demonstrates how the African-inspired Principlism is a useful framework for addressing the ethical issues I identified in the previous section.

Respect for Persons and Communal Values

The core of African-inspired Principlism lies in its reverence for persons, harmonizing beautifully with an acknowledgement of individuals' interconnected bonds within their communities (Behrens, 2018). This aligns seamlessly with the philosophy of Ubuntu, celebrating interconnectedness and the tapestry of community well-being (Tutu, 2000). African-inspired principlism's respect for persons is demonstrated when a surrogate mother is respected in her autonomous decision-making while also emphasizing the importance of considering or consulting her family and community when making these decisions. By doing so she ensures harmony within her family and demonstrates interconnected bonds with her community. By doing this, she promotes family and community well-being. Translating this to commercial surrogacy involves the delicate task of respecting surrogate mothers' autonomy while considering the ripple effects of their choices on their families and the broader community. Therefore, respect for persons contributes to demonstrating the importance of allowing commercial surrogacy in South Africa.

Beneficence and Non-Maleficence

The essence of African-inspired Principlism resonates with the aspiration for the well-being of all stakeholders woven into the tableau of commercial surrogacy (Behrens, 2018). The principle of beneficence, promoting actions that foster the well-being of surrogates, intended parents, and the resulting child, harmonizes with the principle of non-maleficence, which cautions against causing harm. In terms of prevention of harm, surrogate mothers are protected within communities against human trafficking and exploitation by commissioning parents who may be elites in their society.

Harmony and Relational Ethics

Behrens (2013) contends that the principle of harmony, encapsulating the intricate web of interconnectedness among individuals, supersedes the principle of justice in capturing the essence of African ethical perspectives. Translating harmony to commercial surrogacy entails nurturing cooperative relationships, cultivating empathy, and fostering understanding. This resonance closely aligns with the African philosophy of Ubuntu, which extols shared humanity and compassion (Metz, 2012).

Commercial surrogacy would strive within relationships that are healthy, harmonious and cooperative. This is because everything would be open for discussion within family and communities. It may be impermissible if there is no openness and most of the decisions are made individually and in secrecy.

4.5 Defending Commercial Surrogacy in South Africa: An African-inspired Principlism Perspective

4.5.1 Arguments in Support of Commercial Surrogacy Based on African-inspired Principlism

Commercial surrogacy in South Africa has ignited a wide range of perspectives, spanning from enthusiastic endorsement to vehement opposition. Amidst this discourse, the central ethical question revolves around whether commercial surrogacy can align with African values. This section embarks on a journey to defend the permissibility of commercial surrogacy within an African context while addressing counterarguments and criticisms.

Respect for Persons: African-inspired Principlism places a premium on individual autonomy while simultaneously valuing communal bonds (Behrens, 2018). In the context of commercial surrogacy, surrogate mothers exercise their autonomy by making informed decisions that could secure financial stability for themselves and their families. This aligns with the principle of respecting individuals, as the choices of surrogate mothers are acknowledged and upheld. By permitting commercial surrogacy, this ethical framework empowers women to exercise their agency, making choices that reflect their values and circumstances.

Beneficence and Non-Maleficence: The principles of beneficence and non-maleficence converge to safeguard the well-being of all parties involved in commercial surrogacy (Behrens, 2018). For surrogate mothers, financial compensation presents potential benefits that can positively impact their lives and those of their families. The principle of non-maleficence mandates a vigilant approach against harm, necessitating comprehensive medical and psychological assessments to mitigate potential risks to surrogate mothers and the resulting child. By embracing commercial surrogacy, African-inspired Principlism seeks to balance potential benefits with ethical considerations, fostering a holistic approach to well-being.

Harmony: Commercial surrogacy, when harmonized with African-inspired Principlism, respects the interconnectedness of individuals within families and communities (Behrens, 2013). The decisions made by surrogate mothers send ripples through their families and communities, underscoring the significance of communal well-being. By providing a pathway to financial stability, commercial surrogacy has the potential to enhance harmony within families, contributing to the broader societal fabric. If the surrogate mother has financially benefitted from commercial surrogacy, this may ensure that her family is taken care of. The children are fed and sent to school, this lessens the burden of the community to financially assist her and also secure a bright future for children who can also contribute to uplifting the same community and that enhances harmony and peace within families and society at large This harmonious perspective mirrors the essence of African communal values, aligning with the Ubuntu philosophy.

4.6 Recommendations and Guidelines for Implementing African-inspired Principlism in the Context of Commercial Surrogacy: A Bioethical Perspective

Before delving into recommendations, it is crucial to grasp the context within which African-inspired Principlism will be implemented. The legal landscape of assisted reproduction in South Africa is governed by regulations like the Children's Act and the National Health Act (Republic of South Africa, 2005; Republic of South Africa, 2003). These legal frameworks provide the foundation upon which ethical considerations must be built. Additionally, South Africa's constitution enshrines values like human dignity, equality, and freedom, which resonate with the principles of African-inspired Principlism (Republic of South Africa, 1996), making it receptive to the integration of communal values into ethical assessments. The current law only permits altruistic surrogacy, but I recommend that commercial surrogacy be permissible under the guidance of African values and norms embedded in African-inspired principlism.

Recommendations for Implementation:

1. **Ethical Alignment**: Professionals engaged in assisted reproduction, including clinicians, counsellors, and legal experts, should be well-versed in requirements and the principles of African-inspired Principlism. This ensures that ethical analyses are conducted within the boundaries of communal values.
2. **Inclusiveness of Ethical Committees**: Ethical committees overseeing assisted reproduction practices should be diverse and include ethicists, reproductive health specialists, surrogate mothers, representatives from the public, and experts familiar with South African regulations. This composition ensures that assessments are conducted in ways that take into consideration a broad range of perspectives.
3. **Informed Consent**: Informed consent forms should reflect the ethical considerations within African-inspired Principlism and be legally robust, ensuring that all parties understand their rights and responsibilities.
4. **Community Engagement**: Community engagement is crucial. Such consultations, including public consultations, would ensure that community participation in commercial surrogacy decisions fulfils the harmony requirement.
5. **Ethical Sensitivity**: Strive for decisions that adhere to ethical considerations. Balancing respect for persons and communal welfare should occur within the bounds of the law, reflecting the constitutional values of dignity and freedom. Considering changing the current commercial surrogacy law after all the consultations would not be such a bad idea.
6. **Cultural Diversity**: When seeking family and community approval, uphold all rights. Respect for cultural values should be guided by ethical principles, balancing cultural sensitivity and legal compliance.
7. **Communication:** Communication materials should be culturally appropriate Consent forms and informational materials should be translated into different languages, ensuring that all parties understand the ethical implications.

8. **Balancing Ethical Perspectives**: The principle of harmony should extend to the integration of ethical considerations. Strive for decisions that align with Ubuntu values while reflecting the ethical framework underpinning South African society.

The recommendations and guidelines presented in this section highlight the intricate interplay between ethics and law, underscoring the importance of weaving African-inspired Principlism with South Africa's legal landscape. By navigating the implementation of this ethical framework within the realm of commercial surrogacy, the convergence of ethical considerations and legal parameters emerges as a harmonious symphony resonating with the diverse and vibrant fabric of South African society.

4.7 Conclusion

The exploration of commercial surrogacy within African-inspired Principlism has taken us on a journey through a complex landscape of ethical perspectives, cultural values, and communal considerations. This chapter has delved into the intricate dimensions of commercial surrogacy in South Africa, utilizing the principles of respect for individuals, beneficence, non-maleficence, and harmony inherent in African-inspired Principlism to assess its ethical implications.

The ethical terrain surrounding commercial surrogacy remains intricate, encompassing concerns about autonomy, exploitation, commodification, and cultural appropriation. As we applied African-inspired Principlism, the principles of respect for persons, beneficence, non-maleficence, and harmony emerged as foundational pillars that uphold the interwoven fabric of ethical analysis. The autonomy of surrogate mothers was championed while being harmonized with communal bonds and responsibilities. The well-being of all parties involved was safeguarded through a delicate balance of potential benefits and ethical considerations. Furthermore, the philosophy of Ubuntu resonated as a guiding principle, emphasizing the significance of harmonious relationships within South African society's diverse tapestry.

The contribution of African-inspired Principlism to the discourse on commercial surrogacy is substantial. It provides an ethical framework that harmoniously blends respect for persons with communal well-being, aligning with the cultural and social context of South Africa. The principle of respect for persons acknowledges personal agency while fostering a profound recognition of the relational networks that shape individual decisions. The principles of beneficence and non-maleficence offer a perspective through which potential benefits are weighed against potential harms, culminating in a comprehensive approach to overall well-being. The harmony principle encapsulates the essence of interconnectedness within families and communities, embracing the Ubuntu philosophy as a guiding light for ethical deliberation.

The subsequent chapter will examine objections raised against the integration of African-inspired Principlism into the realm of commercial surrogacy. As we engage in this discourse, we will critically evaluate objections and provide responses that underscore the compatibility and strength of this ethical framework within the South African context. Additionally, practical recommendations will be offered to navigate the intricate landscape of implementing African-inspired Principlism in the domain of commercial surrogacy. By engaging with objections and offering robust recommendations, we continue our pursuit of ethical clarity and cultural resonance, guided by the principles of African-inspired Principlism.

CHAPTER FIVE:

OBJECTIONS AND RESPONSES TO OBJECTIONS WITH RECOMMENDATIONS

5.1 Introduction

This chapter revisits the objectives and key points of the study thus far to provide a context for the subsequent discussion on objections and responses. The purpose of this study was to explore the application of African-inspired Principlism in ethical decision-making in diverse cultural contexts, with a special focus on the African context. I examined the limitations of Principlism, the need for more inclusive ethical frameworks, and the connection between Principlism and the Belmont Report. I also delved into the ethical considerations of commercial surrogacy, highlighting its potential benefits and challenges.

The study has thus far raised several compelling questions and challenges, and this chapter will address three potential objections to this report's claim. I will address each objection by exploring the underlying issues, reviewing the relevant literature, and suggesting potential responses and recommendations. The objections that will be explored in this research will include the following:

i. Medical Risks or Complications Associated with Pregnancy to Surrogate Mothers
ii. Commodification of Children
iii. Exploitation of Surrogate Mothers or/and Commissioning Parents

5.2 Medical Risks or Complications Associated with Pregnancy to Surrogate Mothers

The primary objection to commercial surrogacy revolves around the potential medical risks or complications associated with pregnancy, particularly for surrogate mothers. Pregnancy,

irrespective of the context in which it occurs, inherently carries a certain level of risk. These risks may escalate due to various factors such as multiple pregnancies (e.g., carrying twins or triplets), existing health issues, and age (Centers for Disease Control and Prevention, 2023). In cases of commercial surrogacy, these risks are often amplified due to the potential for multiple embryo transfers, repeated cycles, and the use of fertility drugs (Berend, 2016).

Additionally, the concern over repeated cycles is intensified by the financial incentives. Surrogate mothers may be driven to undertake multiple surrogate pregnancies, increasing the risk of complications (Spar, 2006). Moreover, the use of fertility drugs in commercial surrogacy can lead to Ovarian Hyperstimulation Syndrome (OHSS), a condition which can be life-threatening in severe cases (Sunkara et al., 2015).

In the context of commercial surrogacy, these risks are perceived to be compounded in developing countries. The surrogate mothers in these countries may lack access to high-quality prenatal care, thereby exacerbating these risks (Deonandan et al., 2012). Furthermore, certain cultural and economic factors might limit the choices and agency of surrogate mothers, potentially leading them to accept higher risks (Pande, 2014).

While the medical risks associated with commercial surrogacy are undeniable, it is crucial to note that these risks are not exclusive to surrogacy and are inherent to any pregnancy. Furthermore, the argument could be made that the potential risks associated with commercial surrogacy are offset by the potential benefits, such as financial compensation and the opportunity to help others who cannot conceive (Rozée et al., 2020). However, it is essential to strike a balance between the potential benefits and risks to ensure the health and well-being of surrogate mothers.

Empirical evidence does indeed support the concerns surrounding the risks of commercial surrogacy. A comprehensive review of the studies conducted on this topic reveals that surrogate mothers face a higher risk of obstetric complications, which can be detrimental to

both their health and the health of the unborn child. Sattar and Freeman (2012) identified that surrogate mothers are more likely to experience pre-eclampsia and gestational diabetes. These complications can lead to significant health risks, including cardiovascular disease and type 2 diabetes in the long term.

There is further empirical evidence that suggests a higher incidence of multiple pregnancies in surrogacy cases. This is due to the common practice of transferring multiple embryos to increase the likelihood of achieving a successful pregnancy. Söderström-Anttila et al., (2016) reported that this practice can lead to additional complications such as preterm birth and low birth weight.

Despite the findings from the reviewed literature, it is important to approach this topic with a balanced perspective. While these studies provide valuable insights, it is also essential to acknowledge the limitations of the research. Most of these studies are observational and rely on self-reported data, which may be subject to bias. Furthermore, the generalisability of these findings to all surrogacy cases is questionable as the study samples often involve a specific subset of surrogate mothers.

5.2.1 Response Based on African-Inspired Principlism

Several counterarguments can be taken based on the African-inspired Principlism perspective to mitigate the concerns identified in the previous section. Firstly, enhancing respect for persons. To ensure that the surrogate mother's autonomous decision to participate in surrogacy is truly respected, it is essential to provide comprehensive education about the medical risks involved. This education should be delivered in a culturally sensitive manner, taking into account the surrogate mother's unique circumstances and understanding (Metz, 2015). It is also important to provide psychological support and counselling to help the surrogate mother make an informed decision without undue influence.

Secondly, the promotion of beneficence and non-maleficence represents another counterargument to the objections identified. To promote the well-being of the surrogate mother and avoid harm, it is crucial to provide high-quality prenatal and postnatal care. This includes regular health check-ups, dietary advice, and emotional support (Metz, 2015). The surrogate mother should also be adequately compensated for the risks she takes, and there should be provisions for medical insurance and emergency care.

Lastly, the promotion of harmonious relationships represents another mitigatory measure from an African-inspired Principlism perspective. To ensure that the risks and benefits of commercial surrogacy are distributed equitably, it is essential to enact laws and regulations that protect the rights of surrogate mothers. This includes setting a minimum compensation amount, ensuring safe and healthy working conditions, and providing access to legal representation. It is also important to establish mechanisms for dispute resolution in case of disagreements between the surrogate mother and the commissioning parents (Metz, 2015). Furthermore, discussing these potential medical risks within family structures allows for more openness and enhances trust within families and communities.

Overall, these responses aim to create a safer and more ethical environment for commercial surrogacy from an African-inspired Principlism perspective.

5.2.2 Recommendations

I will also recommend several measures. First, stringent medical screening and health checks for potential surrogate mothers can help identify and mitigate health risks (Alghrani & Griffiths, 2017). Second, limiting the number of embryos transferred in each cycle can reduce the incidence of multiple pregnancies and associated complications. Third, ensuring surrogate mothers have access to high-quality prenatal care and support throughout the pregnancy can promote their health and well-being. Lastly, enhancing the legal and ethical framework for

commercial surrogacy can help protect the rights and interests of surrogate mothers, ensuring that they are not unduly burdened or exploited (Panitch, 2013).

5.3 Commodification of Children

The commodification of children, a prominent concern associated with commercial surrogacy, is a complex issue that needs thorough exploration. It revolves around the notion that children are perceived as merchandise or products that are open to trade (Van Niekerk & Van Zyl, 1995). Critics firmly argue that commercial surrogacy inherently commodifies children and reduces their status to mere transactions, thereby stripping them of their inherent dignity and worth (Spar, 2006; van Niekerk & van Zyl, 1995). The crux of this objection lies in the belief that it fundamentally alters the nature and understanding of parenthood and the value of children, converting the miracle of life into a mere economic transaction (Radin, 1993). Critics suggest that it disrupts the 'natural order' of family and parenthood, and thus, paints a grim picture for future societal norms (Crozier & Martin, 2012).

The implications of viewing children as commodities are far-reaching. Crozier and Martin (2012) argue that this perspective can lead to harmful societal shifts, where contractual obligations and monetary exchanges replace relationships and human connections. Likewise, Igareda-Gonzalez (2019) highlights the potential for exploitation, where economically disadvantaged women are coerced into surrogacy due to financial incentives. They further note the potential psychological harm to the child, who may struggle with their identity and self-worth upon learning about their commercial conception. These perspectives emphasize the need to consider the potential psychological, social, and ethical implications of commercial surrogacy.

5.3.1 Response Based on African inspired Principlism

From the perspective of African-inspired Principlism, which emphasizes the values of community, relationships, and dignity, the commodification of children is a complex issue. When we bring in respect for persons principle, it allows for surrogate mothers to discuss the surrogacy with families and not become an individualist issue. Bringing in community values ensures that children born from these arrangements are known and valued as full members of the community. These children are born into loving families and communities with strong values and family bonds. The community values ensure there are controls or regulations when it comes to commercial surrogacy for the economic motivation behind commercial surrogacy cannot be seen as a violation of the principle of respect for persons, which includes respect for the dignity and worth of children (Metz, 2020). On the other hand, commercial surrogacy can provide an avenue for infertile couples to fulfil their desire for a family, thereby fostering familial relationships and promoting the principle of beneficence.

However, African-inspired Principlism calls for a balance. It suggests that while commercial surrogacy can serve a beneficial role, it must not be at the expense of commodifying children or exploiting surrogate mothers. The principle of harmony, which requires fair distribution of benefits and burdens, calls for regulations to ensure that surrogate mothers are not exploited and that children born through surrogacy are treated with the same dignity and respect as those conceived naturally.

5.3.2 Recommendations

To prevent the commodification of children and uphold the dignity of all involved parties, several measures should be considered. Firstly, strict guidelines and regulations should be implemented to protect surrogate mothers' and intended parents' rights and interests (Blyth, 2002). These regulations should emphasize informed consent, fair compensation, and the right to withdraw at any stage.

Secondly, psychological support and counselling should be made available to all parties involved, including the child, to address potential emotional and psychological issues (Berend, 2016). Thirdly, transparency should be encouraged in the surrogacy process, ensuring that the child has access to information about their biological and surrogate mothers if they wish to know.

Lastly, community awareness campaigns should be conducted to educate society about the ethical complexities of surrogacy and the importance of respecting the dignity of all parties involved. These measures, while not exhaustive, provide a starting point for addressing the commodification of children in commercial surrogacy.

5.4 Exploitation of Surrogate Mothers or/and Commissioning Parents

The objection to exploitation in commercial surrogacy has two main angles: the potential exploitation of economically disadvantaged surrogate mothers and the possible exploitation of commissioning parents of high costs and lack of legal protections. Economically disadvantaged surrogate mothers are in a vulnerable position. Critics argue that commercial surrogacy, particularly in developing nations with lax regulations, can commodify these women (Pande, 2014). They are often coerced into surrogacy by poverty, with inadequate attention to their physical and mental well-being (Blyth, 2002). Due to insufficient education or understanding, the lack of informed consent further compounds their exploitation (Pande, 2014).

Simultaneously, commissioning parents may be exploited financially. Surrogacy often involves high costs and complex legal processes. The desire for a child can lead prospective parents to overlook these challenges, making them susceptible to unscrupulous practices (Ciccarelli & Beckman, 2005). They may face hidden costs, legal uncertainties, and potential emotional trauma if the surrogacy arrangement does not proceed as planned (Brinsden, 2004).

The exploitation objection raises valid concerns about the ethicality of commercial surrogacy. However, it's essential to balance these concerns with the principles of respect for persons and beneficence discussed earlier. While the potential for exploitation is real, many surrogate mothers assert their autonomous decision-making, choosing surrogacy as a means to uplift their economic status (Rozée et al., 2020). It is crucial to respect this agency and avoid simplistic narratives of victimhood.

For commissioning parents, while high costs and legal complexities are challenging, these do not necessarily constitute exploitation. These are inherent aspects of a process involving medical procedures, legal agreements, and potentially cross-border arrangements.

5.4.1 Analysis of the Potential for Exploitation

Commercial surrogacy often involves economically disadvantaged women, predominantly from developing countries, who may be coerced into becoming surrogate mothers due to financial hardships. Their economic vulnerability may result in them having insufficient understanding of the medical, emotional, and legal implications of surrogacy arrangements (Pande, 2011). Their lack of awareness and vulnerability can lead to situations where they are exploited, under-compensated, and exposed to health risks, which conflicts with the ethical principles of beneficence, non-maleficence, and justice discussed earlier in this research.

On the other side of the equation, commissioning parents, desperate to have a child, may face extremely high costs, which can lead to financial stress and vulnerability. They might also be at risk of legal complications, due to unclear or non-existent laws governing surrogacy in many jurisdictions (Blyth, 2002). The lack of comprehensive and internationally recognized regulations exacerbates these issues and potentially leaves both parties vulnerable to exploitation. The earlier discussions in this paper highlight the need for robust legal and regulatory frameworks to protect the rights and interests of both surrogate mothers and commissioning parents (Berend, 2016).

5.4.2 Response Based on African Principlism

Applying African-inspired Principlism, one can argue that commercial surrogacy should be guided by principles of harmony, respect for persons, and a blend of economic and relational motivations. The principle of harmony necessitates that the surrogate mother's dignity and rights are upheld, ensuring she is not merely viewed as a means to an end (Metz, 2015). Respect for persons, although often challenged by economic constraints, should still guide the autonomous decision of the surrogate mother to participate.

The blend of economic and relational motivations, as symbolized by the African concept of Ubuntu, is particularly relevant. It acknowledges that while economic motivation may drive women to become surrogate mothers, this does not automatically equate to exploitation. Instead, it can be seen as an expression of relational solidarity, where the surrogate helps to create a family for the commissioning parents (Metz, 2015). However, this should not negate the need for adequate compensation and legal protections for both parties.

5.5 Recommendations

To mitigate exploitation in commercial surrogacy, several recommendations can be made. First, implementing comprehensive legal frameworks both domestically and internationally can help protect the rights and interests of all parties involved (Berend, 2016). Second, ensuring transparency in the financial aspects of surrogacy can protect commissioning parents from excessive costs and safeguard the surrogate mother's right to fair compensation.

Third, providing surrogate mothers with access to independent legal advice, psychological support, and health care can empower them and reduce vulnerability (Spar, 2006). Finally, promoting ethical practices in surrogacy agencies, such as adhering to guidelines on fair compensation and informed consent, can further safeguard against exploitation.

To summarise, while the potential for exploitation in commercial surrogacy is real, it can be mitigated through a combination of legal, ethical, and policy measures guided by principles of African-inspired Principlism.

5.6 Conclusion

In conclusion, this chapter has critically engaged with the main objections to commercial surrogacy, namely the medical risks, the commodification of children, and the potential exploitation of surrogate mothers and commissioning parents. Each of these objections has been thoroughly examined, and responses have been offered from the perspective of African-inspired Principlism.

The medical risks associated with surrogacy include the potential physical and psychological harm to the surrogate mother and the child, which are valid concerns (Brinsden, 2004). However, it was argued that through proper medical screening, counselling, and support, these risks could be significantly mitigated. The commodification of children objection was also considered with the understanding that children are not objects to be bought or sold; instead, they are revered and respected as individuals with their rights (Ikemoto, 1995). Yet, this does not negate the fact that the surrogacy process involves a transaction, but this transaction can be viewed as a service rather than a commodification of the child.

The study's position on commercial surrogacy, based on African-inspired Principlism, has been reiterated and clarified. This perspective fosters four principal values: Respect for persons, beneficence, non-maleficence, and harmony. These values provide a robust framework for addressing the objections to commercial surrogacy (Metz & Gaie, 2010). By promoting respect for the persons of the surrogate and the commissioning parents, ensuring that the process benefits all parties involved, avoiding harm where possible, and striving for harmonious relations, equity and fairness, the concerns raised can be effectively addressed.

Finally, this chapter underscores the need for further research and policy development to safeguard the interests of all parties involved in commercial surrogacy. As commercial surrogacy becomes more prevalent, there is a crucial need for comprehensive, well-researched policies that protect the rights and well-being of surrogate mothers, children, and commissioning parents (Spar, 2006). This requires a multidisciplinary approach that combines medical, legal, and ethical expertise and is sensitive to the cultural and social contexts in which surrogacy takes place.

CHAPTER SIX:

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This research sets out with the ambitious objective of exploring the ethical dimensions of commercial surrogacy within an African-inspired Principlism framework, focusing on the South African context. The study was driven by a recognition of the growing prevalence and ethical complexities of commercial surrogacy, coupled with a need to view these issues through a lens that is deeply rooted in African ethical perspectives.

The primary aim of this study was to critically analyse how the African-inspired Principlism framework, which emphasizes respect for persons, beneficence, non-maleficence, and harmony, could be applied to the ethical challenges posed by commercial surrogacy. This framework was chosen due to its unique alignment with African cultural values and its potential to offer a more contextual and culturally sensitive approach to bioethical dilemmas, a perspective often lacking in mainstream bioethical discourse.

Chapter 6 plays a pivotal role in this study by synthesizing the key findings and drawing out their broader implications. It recapitulates the journey undertaken in this study and positions the study's conclusions within the broader landscape of ethical discourse. This chapter aims to contextualise the findings within both the specific framework of African-inspired Principlism and the broader field of bioethics, highlighting the study's contributions to our understanding of the ethical dimensions of commercial surrogacy. Here, the research culminates, offering a coherent summary of insights gained and proposing forward-looking recommendations that could shape future policy and practice in the realm of reproductive technologies.

In essence, this introduction sets the stage for a detailed and reflective conclusion to a study that intertwines African ethical perspectives with the global challenges of commercial

surrogacy, offering new insights and pathways for ethical discourse and practice in this evolving field.

6.2 Summary of Key Findings

The research's in-depth exploration of commercial surrogacy within the South African context, through the prism of African-inspired Principlism, provides crucial insights and critical reflections on the ethical intricacies of this practice. This framework, firmly grounded in the moral norms of African cultures, presents a significant departure from Western ethical paradigms, offering a distinctive perspective and deeply rooted in communal values. By emphasizing the interconnectedness of individuals within their communities, African-inspired Principlism shapes the discourse on commercial surrogacy in a manner that starkly contrasts the individualistic tendencies of Western perspectives (Behrens, 2013).

6.2.1 Analysis of Key Findings

In the South African context, the application of African-inspired Principlism to commercial surrogacy unveils a complex interplay between respect for persons and communal interdependence. Surrogate mothers' decisions reverberate beyond their sphere, impacting their families and broader communities. This interconnectedness necessitates that decisions in commercial surrogacy be made with due regard for communal well-being alongside individual desires and benefits. As highlighted in the study findings, such an approach propels a discourse that transcends the individualistic focus typical of Western viewpoints and embraces a more holistic view, considering the broader implications of individual actions on the community.

However, implementing this framework in commercial surrogacy is not devoid of challenges. The tension between respecting individual autonomy and maintaining communal values is a primary issue. This tension becomes particularly pronounced in the globalised context of

commercial surrogacy, which often spans across various geographical and cultural boundaries. The study underscores the critical need to balance local cultural expectations and global ethical standards, ensuring that individual choices harmonise with the community's well-being. Navigating between these local and global perspectives is essential for ensuring that ethical decisions in commercial surrogacy are both culturally sensitive and globally informed.

Moreover, the study emphasizes the significance of understanding the cultural context in which commercial surrogacy operates, especially in African societies where individualism is typically less emphasized compared to Western cultures. The principles of African-inspired Principlism, such as the emphasis on communal relationships and the philosophy of Ubuntu, play a vital role in supporting the permissibility and ethical conduct of commercial surrogacy within these cultural contexts. This approach respects the values of the people within the community, underscoring the necessity for ethical frameworks that are adaptable and responsive to culturally diverse contexts.

Additionally, the study delves into the compatibility of African-inspired Principlism with African values and kinship, addressing the individual rights inherent in commercial surrogacy while placing substantial emphasis on communal well-being. The principle of beneficence within this framework extends beyond the well-being of the individual involved in surrogacy arrangements to include the potential disruptions these arrangements may cause to conventional kinship structures. This consideration is crucial in societies where kinship and familial bonds are the bedrock of social structure and individual identity.

The dynamic and evolving approach of African-inspired Principlism to the ethics of surrogacy is among its key strengths, enabling it to adapt to changing societal landscapes while adhering to core cultural values. The response to globalisation and cultural pluralism in commercial surrogacy introduces additional complexity, creating scenarios where local cultural values and

global ethical norms intersect, occasionally leading to conflict. Effectively navigating these complexities requires an in-depth and nuanced understanding of diverse cultural contexts.

In conclusion, the research's comprehensive analysis of African-inspired Principlism in the context of commercial surrogacy in South Africa offers a thorough perspective on the ethical considerations central to this practice. It underscores the necessity for a balanced approach that respects individual rights while concurrently acknowledging the importance of communal values and relationships. This approach enhances the discourse on commercial surrogacy and significantly contributes to the broader field of bioethics, providing a model for ethical deliberation that is deeply entrenched in cultural understanding and attuned to global ethical challenges.

6.2.2 Comparison with Existing Literature and Ethical Theories

The study's comparison with existing literature and ethical theories presents a stark contrast between Western and African ethical paradigms, particularly in the context of commercial surrogacy. Western ethical theories, as observed in the literature, often prioritise individual autonomy, placing significant emphasis on the rights and freedoms of individuals. This focus, rooted in Western philosophical traditions that value individualism, is seen as paramount in guiding ethical decision-making, with less consideration given to those decisions' broader social or communal impact (Pasternack, 2002; Mill, 1863).

In contrast, as discussed in the research, the African-inspired Principlism framework offers a fundamentally different approach. This framework emphasizes communal well-being and interconnectedness, reflecting a collectivist approach that is deeply ingrained in many African cultures. As illustrated by Behrens (2013) and further explored in the reviewed findings, African ethical perspectives prioritise the community and the relationships that bind individuals to their societal context. This perspective views individuals not in isolation but as integral parts of a

larger social fabric, with ethical considerations extending beyond personal autonomy to include the welfare and harmony of the community.

This distinction between Western and African ethical frameworks raises critical questions about the universality of ethical principles, especially in a globalised world where cultural contexts vary widely. The study's findings suggest that the application of Western-centric ethical theories to issues like commercial surrogacy may not adequately address the cultural nuances and communal values prevalent in non-Western societies. This realisation highlights the need for ethical discourse to be inclusive and sensitive to different cultural perspectives (Gyekye, 1997; Nussbaum, 1992).

Furthermore, the contrast between these ethical paradigms underscores the importance of re-evaluating and potentially expanding existing ethical frameworks to incorporate a more diverse range of cultural perspectives. The African-inspired Principlism framework, with its emphasis on communal values, offers a valuable alternative to the predominantly individualistic approach of Western ethics (Menkiti, 1984; Wiredu, 1992). This framework challenges the Western-centric views that have long dominated ethical discourse and provides a more holistic approach that considers the well-being of individuals and their communities.

The research thus advocates for a broader, more inclusive approach to ethical theorising, one that acknowledges and integrates the diverse cultural contexts in which ethical issues arise. This approach is particularly pertinent in the field of bioethics, where issues like commercial surrogacy often intersect with deeply held cultural values and societal norms. By incorporating diverse cultural perspectives, particularly those from non-Western traditions, ethical frameworks can become more adaptable, contextually relevant, and effective in addressing the complex challenges of a globalised world (Tangwa, 1996).

In conclusion, the study’s comparison with existing literature and ethical theories highlights the differences between Western and African ethical perspectives and emphasizes the need

for a more inclusive and culturally sensitive approach to ethical decision-making. This approach, as exemplified by the African-inspired Principlism framework, enriches the ethical discourse by bringing diverse cultural viewpoints to the fore, ensuring that ethical considerations in practices such as commercial surrogacy are comprehensive, contextually relevant, and respectful of the varied cultural landscapes in which they operate (Behrens, 2013).

6.2.3 Summary and Implications

This study's exploration of African-inspired Principlism in the context of commercial surrogacy in South Africa has successfully addressed its set objectives, leading to significant advancements in the ethical discourse of this practice. Firstly, it described African-inspired Principlism and outlined its key moral norms, emphasizing the importance of communal values and interconnectedness. This framework, deeply rooted in African cultural ethics, provides a unique lens for examining the moral dimensions of commercial surrogacy.

Secondly, the study justified key issues generated by commercial surrogacy in South Africa, illuminating various ethical complexities. It effectively navigated these complexities, contributing to a more profound understanding of bioethics within diverse cultural contexts. The research addressed these ethical issues by drawing on the norms given rise by African-inspired Principlism, demonstrating how this approach can reconcile individual autonomy with communal welfare and broader societal implications.

Thirdly, the study defended the notion that criticisms against commercial surrogacy are often unjustified when viewed through the African-inspired Principlism perspective. The evidence from the research supports the permissibility of commercial surrogacy in South Africa, suggesting that African-inspired Principlism, with its focus on communal ethics, forms a robust foundation for developing ethical guidelines and policies in this domain.

In summary, the study advocates for a bioethical framework for commercial surrogacy in South Africa that harmonizes cultural and societal norms prevalent in African societies with global ethical standards. This approach ensures that the policies developed are ethically sound and culturally sensitive and legally robust, paving the way for a more inclusive and comprehensive understanding of commercial surrogacy within the global bioethical landscape.

6.3 Critical Analysis of African-Inspired Principlism in Commercial Surrogacy

6.3.1 Ethical Complexities in Commercial Surrogacy

The ethical analysis of commercial surrogacy within an African-inspired Principlism framework presents a profound shift from traditional Western bioethical perspectives. Rooted in African societies' diverse cultural, communal, and ethical values, this framework offers an in-depth examination of the moral intricacies involved in commercial surrogacy. Central to African-inspired Principlism are principles like respect for the person, communal beneficence, avoidance of harm (non-maleficence), and a commitment to harmony, which are intrinsically linked to the cultural fabric of African communities (Behrens, 2013).

6.3.2 Addressing Kinship and Identity

One of the significant ethical challenges addressed by African-inspired Principlism is the impact of commercial surrogacy on concepts of kinship and identity, which hold profound significance in many African cultures. Traditional constructs of family and identity are often challenged by surrogacy arrangements, raising questions about the child's identity and the disruption of established kinship norms (Deomampo, 2016). African-inspired Principlism necessitates a balance between individual rights and communal well-being, thus ensuring that beneficence is weighed against potential disruptions to conventional kinship notions, contextualised within the broader fabric of community and harmony.

6.3.3 Holistic Exploration of Ethical Challenges

The application of African-inspired Principlism to commercial surrogacy encourages a holistic and culturally attuned exploration of the ethical challenges associated with surrogacy. This approach acknowledges the significance of communal values and interconnection within African societies. However, it also presents challenges, particularly the tension between individual autonomy and communal values. This tension can create ethical dilemmas, as prioritising community well-being might sometimes encroach upon personal choices. Furthermore, the globalisation of commercial surrogacy adds another layer of complexity, necessitating a careful balance between local and global perspectives. African-inspired Principlism, with its emphasis on relationships within the family and broader community, provides a framework for addressing these challenges (Behrens, 2013).

6.3.4 Comparative Discussion with Other Ethical Frameworks

When compared to other ethical frameworks in bioethics, African-inspired Principlism offers a distinct approach that contrasts with the individual autonomy-focused Western ethical theories. It demonstrates the importance of adapting ethical frameworks to culturally vibrant contexts, thus contributing to a more comprehensive and inclusive approach to bioethical challenges. The progression of bioethics, with the incorporation of diverse cultural perspectives as exemplified in African-inspired Principlism, is crucial in addressing the intricate challenges posed by commercial surrogacy.

In summary, African-inspired Principlism provides a nuanced lens for examining commercial surrogacy within the South African context. Its emphasis on communal values, respect for the person, and the commitment to harmony offers a unique perspective that is culturally resonant and ethically comprehensive. This approach not only addresses individual actions but also considers their broader implications for the community, ensuring that ethical decision-making

in commercial surrogacy is inclusive, culturally sensitive, and reflective of the diverse moral landscapes in African societies.

6.4 Contributions to Ethical Discourse and Bioethics

6.4.1 Theoretical and Practical Contributions

The study on commercial surrogacy, through the lens of African-inspired Principlism, contributes significantly to both the theoretical and practical aspects of bioethics and ethical discourse. This framework, diverging from conventional Western ethical paradigms, strongly emphasises communal values and interconnection within African societies. It provides a fresh outlook that is culturally attuned and holistic, addressing the ethical challenges associated with surrogacy in a manner deeply rooted in African communities' societal and cultural norms (Behrens, 2013).

Theoretical contributions are evident in the way African-inspired Principlism reshapes the conversation around autonomy and communal values. It challenges the often individualistic focus of Western bioethics, bringing to the forefront the importance of community well-being and the interconnectedness of individuals within their societal context. This shift encourages a more nuanced understanding of ethical dilemmas, particularly in the realm of commercial surrogacy, where decisions made by individuals such as surrogate mothers have broader implications for their communities and families.

Practically, the application of African-inspired Principlism in commercial surrogacy demonstrates the adaptability of ethical frameworks to diverse cultural contexts. It underscores the need for bioethical discussions and practices to be flexible and sensitive to the socio-cultural backgrounds they operate within. This approach respects individual choices and emphasizes the importance of communal well-being, aligning with the principle of Ubuntu,

which asserts that a person's identity and well-being are intricately connected to those around them.

6.4.2 Relevance to Current Debates in Bioethics

The study's findings are highly relevant to current debates in bioethics, particularly in African contexts where there is a need for ethical frameworks that resonate with local cultural values. In many African societies, where individualism is less emphasized compared to Western cultures, the principles of African-inspired Principlism provide a framework that is more aligned with the communal nature of these societies.

The tension between individual autonomy and communal values, highlighted in the study, reflects a critical aspect of bioethical debates in African contexts. This tension often manifests in ethical dilemmas where the well-being of the community might influence or even encroach upon personal choices. Navigating these dilemmas requires a deep understanding of diverse cultural contexts and a careful balance between local and global perspectives, especially in the face of the globalisation of practices like commercial surrogacy.

By incorporating African-inspired Principlism into the discourse on commercial surrogacy, the study adds a valuable dimension to bioethics. It demonstrates that ethical decision-making in complex matters such as surrogacy cannot be one-dimensional but must take into account the multifaceted nature of human societies. This approach promotes a more inclusive and comprehensive method of addressing ethical challenges, ensuring that the values and beliefs of diverse communities are respected and integrated into bioethical frameworks.

In summary, the study's exploration of commercial surrogacy within the African-inspired Principlism framework significantly contributes to the field of bioethics. It offers a novel perspective that emphasizes the importance of communal values and interconnectedness, challenging the predominantly individualistic focus of Western bioethics. This contribution is

particularly pertinent in African contexts, where it aligns with the communal nature of many societies and provides a culturally resonant framework for addressing ethical issues in commercial surrogacy. As bioethics continues to evolve, the integration of such diverse cultural perspectives will be crucial in developing ethical frameworks that are both globally relevant and locally applicable.

6.5 Practical Implications for Policy and Practice

The insights gained from applying African-inspired Principlism to the context of commercial surrogacy in South Africa offer significant implications for policy and practice, not only within South Africa but potentially in other African contexts as well.

6.5.1 Policy Recommendations

1. **Incorporating Communal Values in Policy:** Policymakers should consider the communal values and interconnectedness that are central to African-inspired Principlism. Policies should foster an environment where surrogate mothers' decisions are respected while considering the broader impact on their families and communities.
2. **Ethical Guidelines for Financial Compensation:** While financial compensation for surrogate mothers is not seen as inherently immoral, there is a need for careful consideration of how this might affect communal bonds. Policies should be designed to ensure that financial gains from surrogacy support the welfare of the surrogate's family and community, rather than disrupting established communal norms.
3. **Safeguards against Harm:** Robust policies must be in place to avoid physical and psychological harm to surrogate mothers. This includes comprehensive ethical evaluations and the involvement of the surrogate's family and community in the surrogacy process, to provide support and mitigate potential harm.
4. **Promoting Harmony and Fair Compensation:** Policies should ensure that commercial surrogacy arrangements are fair and equitable, with a focus on harmony

and just compensation. This involves scrutiny of power dynamics and societal repercussions, making sure that surrogacy practices are not exploitative and are beneficial for all parties involved.

6.5.2 Practical Suggestions for Integrating Findings into Legal and Ethical Frameworks

1. **Respect for Kinship and Identity:** Legal and ethical frameworks should consider surrogacy's impact on traditional kinship and identity constructs. This includes recognising the significance of the surrogate's decision-making process, which should ideally align with the well-being of her family and community, upholding the balance between individual rights and communal well-being.
2. **Cultural Sensitivity in Legal Practices:** Legal frameworks governing commercial surrogacy should be culturally sensitive and adaptable to diverse cultural contexts. This includes understanding the tension between individual autonomy and communal values and finding a middle ground that respects both individual choices and community well-being.
3. **Addressing Globalisation in Surrogacy Policies:** The global nature of commercial surrogacy requires policies that balance local cultural values with global ethical standards. This involves navigating cultural pluralism and ensuring that surrogacy practices are harmonious with both local and international ethical perspectives.

   In summary, applying African-inspired Principlism to commercial surrogacy has profound implications for policy and practice. It necessitates a shift towards policies and practices that are culturally sensitive, ethically sound, and considerate of both individual and communal well-being. This approach fosters a more holistic and inclusive framework for addressing the ethical complexities of commercial surrogacy, ensuring that policies and practices resonate with African societies' cultural values.

6.6 Recommendations for Community Engagement and Public Policy

6.6.1 Role of Community Engagement in Ethical Practices

Community engagement plays a pivotal role in shaping ethical practices in commercial surrogacy. It ensures that a range of perspectives, including those of ethicists, reproductive health specialists, surrogate mothers, and representatives familiar with South African regulations, are considered in decision-making processes. This diverse involvement is crucial in maintaining ethical sensitivity and balancing respect for individual rights with communal welfare. Such engagement, particularly through public consultations, helps in fulfilling the requirement of harmony, as mandated by African-inspired Principlism, by ensuring that community voices and concerns are integral to decisions regarding commercial surrogacy.

6.6.2 Strategies for Effective Community Involvement

1. **Inclusive Decision-Making:** Develop forums for inclusive decision-making that involve all stakeholders, including surrogate mothers, intended parents, health professionals, ethicists, and community leaders. This inclusive approach ensures that a variety of perspectives are considered, particularly those of communities directly affected by surrogacy arrangements.
2. **Public Consultations:** Conduct regular public consultations to gather insights and concerns from the broader community. These consultations should be structured to provide clear information about commercial surrogacy and its implications, allowing community members to provide informed feedback.
3. **Educational Initiatives:** Implement educational initiatives to raise awareness about commercial surrogacy's ethical, legal, and social implications. These initiatives should aim to demystify the practice and address common misconceptions, fostering a more informed and engaged community.

4. **Culturally Sensitive Policy Development:** Develop policies that are culturally sensitive and reflective of the values and norms of the community. This includes ensuring that informed consent forms and legal agreements within surrogacy arrangements are legally robust and resonant with the ethical considerations central to African-inspired Principlism.
5. **Monitoring and Feedback Mechanisms:** Establish ongoing monitoring and feedback mechanisms, allowing communities to voice their concerns and experiences with surrogacy practices. This continuous dialogue can inform policy adjustments and improvements over time.

6.6.3 Recommendations for Policy Development

1. **Integration of Ethical Principles:** Policies should integrate the principles of African-inspired Principlism, particularly respect for the person, communal beneficence, non-maleficence, and commitment to harmony. This integration ensures that policies are not only legally sound but also ethically grounded in the cultural context of South Africa.
2. **Legal Frameworks Reflecting Cultural Values:** Legal frameworks governing commercial surrogacy should reflect the constitutional values of dignity and freedom while being sensitive to the cultural values and communal ethos prevalent in South African society. This approach promotes ethical practices that are consistent with both legal standards and cultural norms.
3. **Protection of Surrogate Mothers:** Ensure that policies offer robust protection for surrogate mothers, safeguarding their rights and well-being. This includes clear guidelines on compensation, healthcare, and legal support, ensuring that surrogate mothers are not exploited, and their contributions are acknowledged and respected.
4. **Balancing Individual and Communal Interests:** Policies should strive to balance individual autonomy with communal interests, acknowledging the interconnectedness of individuals within their communities. This balance is crucial in addressing the ethical

dilemmas posed by commercial surrogacy and in upholding the principles of Ubuntu. In conclusion, the recommendations for community engagement and public policy in the context of commercial surrogacy are integral to ensuring ethical practices that are resonant with African cultural values and responsive to the needs of all stakeholders involved.

6.7 Directions for Future Research

Future research should build on the findings and gaps identified in this study. Areas for future research include:

1. **Exploring Medical Risks:** Investigate the medical risks or complications associated with pregnancy for surrogate mothers, especially considering the amplified risks due to multiple embryo transfers, repeated cycles, and the use of fertility drugs.
2. **Commodification of Children:** Examine the ethical implications of the commodification of children in commercial surrogacy, focusing on how economic motivations might conflict with the principle of respect for persons.
3. **Exploitation Dynamics:** Analyse the potential for exploitation of economically disadvantaged surrogate mothers and commissioning parents, particularly in developing countries with lax regulations.

Potential research questions could include examining the balance between autonomy and communal well-being in surrogacy decisions and how legal frameworks can better protect the rights and interests of all parties involved in commercial surrogacy.

6.8 Closing Remarks

This research highlights the complexity and importance of ethical decision-making in commercial surrogacy, especially within African contexts. It convincingly argues for the legalization of commercial surrogacy in South Africa, emphasizing that future ethical

frameworks and policies should be legally robust, culturally sensitive, and ethically founded. As commercial surrogacy evolves globally, it becomes increasingly imperative to develop frameworks that respect individual autonomy while also valuing communal well-being. The future of commercial surrogacy and bioethics in African contexts hinges on our capacity to harmonise these diverse perspectives and values. By doing so, we ensure that all parties involved in commercial surrogacy are respected and protected and that the practice develops in a way that is ethical, culturally considerate, and legally sound.

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