

Daniela Bandelli

Sociological Debates on Gestational Surrogacy

Between Legitimation and
International Abolition

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*We do not obtain the most precious gifts by
going in search of them but by waiting
for them.*
(Simone Weil)

To all the children

Foreword

Surrogacy is a social practice aimed at the procreation of human beings through the use of biomedical technologies, generally based on a financial contract. Though the number of children born through this procedure is relatively small, surrogacy comes to the fore every now and then. It pops up in the public sphere as new bioethics laws appear on political agendas. Media echo some scandals or *Variety* magazines report the enchanted path of stars or couples to obtain a family. Then the public interest recedes, leaving individuals with repeated hypnotic formulas that discourage and blur the formation of opinion.

Through a thorough review of existing literature and the discussion of the results of an original field-work, the purpose of this brilliant book is precisely to help the reader frame an informed position. Since the beginning of the development of practice in the United States, in the 1980s, the number of books published on the matter has been high and constant, very often based on interviews of surrogates, the so-called intended parents, or actors of this multi-million-dollar business. By embracing another focus, the book by Daniela Bandelli offers an original breakthrough. First, it approaches surrogacy via a wide variety of angles, social, political, cultural, medical, and thus offers an extremely broadly informed review of the present situation. Notably, it presents a remarkable chapter which introduces the fundamental traits of this specific procreative process, its transnational market, and describes the medical health risks attached to surrogacy pregnancies. Secondly, it provides an in-depth analysis of women's movements, the major actors of the debate in the making of public discourses and policies on sexuality, procreation, and its bioethical aspects. Thirdly, the book engages an interesting comparison of surrogacy practices in three very different social, political, cultural contexts: the USA where the practice was born, Mexico where it is rapidly developing, and Italy where it is forbidden and where couples go abroad to obtain children. Undeniably, surrogacy is a very complex and constantly evolving matter regarding the changes in legal regulations, with a moving geography. It is characterized by its diversity: being an American surrogate mother is quite different from being a Mexican or an Indian one.

The reader will be able to find in this book the varied facets of the topic, otherwise addressed in separate publications who focus either on the discourses in favour or against surrogacy, or on the ethical discussions, or discuss results of field-work research near surrogate mothers or agencies involved in the process. Here, all these issues are discussed thoroughly by examining alternately the pros and the cons of the practice.

The book is built as an extension of the former research that Daniela Bandelli devoted to the study of women's movements in relation to domestic violence. The author's attention was attracted by the new visibility of the movements on the international scene, notably through a transnational campaign for abolition against surrogacy, characterized by its distance from conservative movements. Daniela Bandelli is an extremely acute observer of these movements and offers the reader an extensive analysis of their diversity: liberal, radical, socialist who all share the same interest in the practice but hold opposite positions.

The specificity of the book rests in the international comparison Daniela Bandelli has conducted with first-hand qualitative research in three countries, the USA, Mexico, and Italy. Dwelling on the analysis of media, of interviews conducted with association's leaders, politicians, and all those engaged in the debate, Daniela Bandelli reveals the necessity of recontextualizing discourses and policies within each national context and its social specificities. For example, most of the efforts put in place by Texan women's groups are directed not towards surrogacy, but to advancing the pro-choice discourse and improving women's access to abortion, contraception, sexual and maternal health services across the State. In Mexico, women's movements are engaged mainly against femicides and denounce the consequences of Mexico's neoliberal economy on women's lives. For its part, in Italy where surrogacy is forbidden and where couples go abroad to have children, it appears in the public and media discourse primarily in the context of homoparenting, while part of the Italian feminist and lesbian movement strongly opposes surrogacy. The Italian feminists adhered in 2015 to the mobilization for a transnational abolition campaign, started in France in 2016, joined by some gay activists. Each chapter offers a very useful summary of the various opposite positions—broadly speaking, commodification versus autonomy—as framed in the various countries. Through a careful sociological analysis, the purpose is to separate empirical evidence from ideology.

From this comparison, it is clear that women's movements are important contributors in building knowledge, and in contributing to the making of public policies and public discourses. But these discourses—whether they see the practice as a possible source of empowerment for the surrogate and the expression of her will, or the exploitation of women's bodies by a male-dominated system—are framed within various social visions. For instance, the difference of female social positions: exploitation of poor, passive women of Southern countries as opposed to the emancipated Western ones. If decisions appear to express one's individuality, they are embedded in the social context, the culture (e.g. Indian patriarchy against Western freedom), the scope of prevailing feminist ideologies, etc. The synthesis emerging from the comparison of the three countries shows that the abolitionist front

aggregates a diversity of feminist currents, whereas the reformist side pleading for a juridical frame places itself squarely on the neoliberal side, promotes gender feminism and equality. Moreover, Daniela Bandelli observes that the various group's recruitment is quite different: for instance, surrogacy abolitionists rely on voluntary associations or the engagement of such or such important public scientific or media figures, whereas those who promote the legalization of the practice are more often structurally organized. While painting in a detailed manner the scope of its differences, Daniela Bandelli acknowledges that *surrogacy is embedded in* some characteristics of contemporary society, including the imperative to individual choice and self-determination as well as the human domination over nature through technology.

Given the flammability of topic, specially divisive among feminist movements, Daniela Bandelli succeeds in keeping a remarkably balanced position, distancing herself both from the movements who read surrogacy as a possible agenda for feminine empowerment and social mobility, and from those who see it as the commodification of women's bodies.

In her conclusion, however, she takes a bold stand, by suggesting to reposition the debate on surrogacy from the woman's body and the desire of intended parents to give love to a child to the mother-child link. As a consequence of an adult-centric look, concerns about the child are broadly exhausted from the regulatory discourses and Daniela Bandelli contends that the preponderance of feminist categories in the debate on surrogacy reduces the scope of the practice, from a procreative phenomenon to the fulfilment of a child desire. She encourages to refocus the debate on the detachment of the newborn from the woman who gave him life, which can be defined as a form of violence. Although not all readers will be happy with this proposal, they will be able to find in this book many arguments to support or reject it and at least acknowledge the complexity of the topic.

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Martine Segalen

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This book contains all the results and considerations obtained in five years of study on the subject, of which the last three have been dedicated to the research project “Women’s movements and gestational surrogacy: engaging, debating and policy making” (WoMoGeS), carried out under the supervision of Consuelo Corradi at the LUMSA University, and Sharmila Rudrappa at the University of Texas. This book and the WoMoGeS project have received funding from the European Union’s Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 792464.

Without the encouragement and trust received from my mentor Consuelo Corradi, neither this book nor the research project would have ever existed. To Consuelo Corradi, I also owe the theoretical maturity that I have developed over the years, through our constant discussions, always pursuing the balance between audacity and moderation.

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In every research project, fundamental recognition goes to the sources: without the willingness to dedicate their time to me for interviews, share information and opinions as well as keep me updated even from a distance, these pages would be empty. The fellow scholars involved in the realization of publications, workshops, and conferences have also played an important role.

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About the Author

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Acronyms

ADF	Assemblée des Femmes
CADAC	Coordination pour le Droit à l’Avortement et à la Contraception
CBCN	Center for Bioethics and Culture Network
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CGIL	Confederazione Generale Italiana del Lavoro
CGS	Center for Genetics and Society
CORP	Collectif pour le Respect de la Personne
CRR	Center for Reproductive Rights
CSW	Commission on the Status of Women
CATW	Coalition against Trafficking in Women
CATW-LAC	Coalition against Trafficking in Women—Latin America and the Caribbean
EU	European Union
FFMVA	Femmva Feministas Mexicanas contra Vientres de Alquiler
FINNRAGE	Feminist International Network of Resistance to Reproductive and Genetic Engineering
FNFA	Frente Nacional Feminista Abolicionista
GIRE	Grupo de Información en Reproducción Elegida
ICA	Intercountry Adoption
ICASM	International Coalition for the Abolition of Surrogate Motherhood
ISS	International Institute of Social Studies
ISS	International Social Service
IVF	in vitro fertilization
IT	Information technology
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
NGO	Non-governmental Organization
NOW	National Organization for Women
NWHN	National Women Health Network
OBOS	Our Bodies Ourselves

PD	Partito Democratico
PDF	Pour les Droits des Femmes
PRD	Partido de la Revolución Democrática
PCARR	Pro-Choice Alliance for Responsible Research
PGD	Pre-Implantation Genetic Diagnosis
RECAV	Red Estatal Contra los Vientres de Alquiler
RUA	Resistenza all’Utero in Affitto
Swerf	Sex Worker Exclusionary Radical Feminist
Snoq-L	Senonoraquando-Libere
TERF	Trans-Exclusionary Radical Feminism
UDI	Unione Donne Italiane
UN	United Nations
UNAM	Universidad Nacional Autonoma de México
VAW	Violence against Women
WoMoGeS	Women’s Movements and Gestational Surrogacy

Chapter 1

An Introduction to the Problems of Surrogacy and the Demands from Civil Society



In April 2020, during the COVID-19 pandemic when part of the world was in a state of lockdown and many States had imposed bans on the free movement of people, the Ukrainian surrogacy clinic BioTexCom uploaded a video¹ showing about 40 babies crammed in the cradles of the Hotel Venezia in Kiev, waiting to be picked up by their parents from different areas of the world. The clinic invited its clients to contact their respective States of citizenship to ask the Ukrainian Government for special permits to enter the country and take their children home. Meanwhile, the video reassured that the children were in good hands: thanks to the work of nannies and paediatricians, they were all growing well, fed and washed, and their health was constantly monitored. The case was covered in the major international media and the images of the cradles next to each other in the hotel lounge went around the world, putting the spotlight on the growing phenomenon of transnational surrogacy, its organization, and what can go wrong.

Ukraine, starting from 2015 following restrictions introduced by Asian countries, such as India which until then was a leader in low-cost surrogacy, has established itself as one of the most popular destinations for would-be parents from mainly Western Europe. In Ukraine, commercial surrogacy is legal for heterosexual married couples with proven medical conditions that do not allow the woman to carry out a full-term pregnancy (Lance & Merchant, 2016). It is not known how many children are born from surrogacy each year in Ukraine or in the world, and how many have been in the same condition as the 40 shown in the video.

The children stuck in Hotel Venezia provoked reactions of concern both in the country and abroad (Guseva, 2020). These are the words of the Ukrainian Ombudsman for Children's Rights, the: "Commercialization and permission to receive such a 'service' in Ukraine promote the uncontrolled sale of Ukrainian children abroad. The situation with babies in a hotel, which has become public, once again shows the lack of rights of children born to surrogate mothers. The birth of a child far from the

¹ Available at: https://www.youtube.com/watch?v=xPdRx_L96C0

mother is unnatural. In this way, Ukraine simply becomes an international online store for babies. And we don't know the real number of such children that Ukraine 'supplies' in this way".²

The Byzantine and Catholic bishops of Ukraine signed a joint appeal against surrogacy, considering it "a double crime against the dignity of women and against children who are trafficked", as well as "a demonstration of contempt for the dignity of the human person".³

Ukraine's Democracy Development Centre launched a petition for a total ban on all forms of surrogacy in the country.⁴ The same request was contained in the appeal received on June 3 by the International Coalition for the Abolition of Surrogate Motherhood (ICASM). The coalition, founded in 2015 from the initiative of a group of French feminists, asked the President of Ukraine to shut down all forms of "procreative tourism" as well as ban all forms of "trade in women and children".⁵ The letter was signed by as many as 200 women's associations, some already engaged on the issue, others in other women's issues, for the most part operating in Europe, and some based in Canada, the United States, Argentina, and Japan.

The case has had a significant echo in Italy, since Ukraine is one of the favourite countries of Italian couples (Long, 2017). On May 7, a network of Italian feminists wrote to the Italian Ambassador in Kiev: reminding him that surrogacy is prohibited in Italy, the network asked him to collect information on BioTexCom, to report the names of the Italian clients to the Ministry of Foreign Affairs, asking that no special permission be granted as an exception to the lockdown. The network also proposed that the children be entrusted either to the "mothers who brought them into the world", families willing to take care of them or that they be declared as adoptable. This same request was also shared by some pro-life organizations.

The Kiev case showed with the force of images and the impetuosity of an unforeseen event the vulnerability of the three protagonists of this procreative process, located in different places, linked by contractual relationships and constraints, and dependent on the functioning of a complex system made up of infrastructures (airplanes, hospitals), bureaucracies, and economic availability. Delegating the pregnancy creates a situation in which for 9 months an entity, whose status of subjectivity is widely debated, is—by the will of one or two of the suppliers of the gametes with which it was formed—, in the body of a woman who is neither her biological mother nor will be her social mother: during this time, the child's development depends on that woman and medical assistance. At the time of birth, a passage is foreseen to the subjects who in this process have put in place the desire

²The quote is reported from the following article: <https://www.ukrinform.net/rubric-society/3025949-childrens-ombudsman-proposes-banning-surrogacy-in-ukraine.html>

³The quote is translated from the Italian as reported by the following article: <https://www.acistampa.com/story/ucraina-bambini-dellutero-in-affitto-abbandonati-i-vescovi-no-a-questo-traffico-14189>

⁴Source: <https://www.france24.com/en/20200618-ukraine-s-covid-19-lockdown-leads-to-baby-pile-up-and-surrogacy-backlash>

⁵The appeal is available on ICASM website: <http://abolition-ms.org/en/our-actions/call-to-ban-all-forms-of-trade-in-children-and-women-in-the-surrogacy-industry-in-ukraine/>

and intention of a child, money, and a part of genetic heritage, but who could not contribute directly in those 9 months to its well-being, growth, and protection.

The Kiev case also showed the parents' apprehension at not being able to immediately reach the newborns who have the same genetic heritage, which they desired so much, but who according to the law are not yet their children. Furthermore, the difficulties in which surrogates can be found were also revealed: in an article published by the Open Society,⁶ it was reported that some of the surrogates were asked to take care of the newborns, others were simply held in Kiev, apart from *their* children and their families, paid only in part for the surrogacy service performed and with the promise of the rest when the parents arrived. In this last article, the approach to the issue is markedly different from the appeals listed above proposed by those who would like a full prohibition of surrogacy in the world: reflecting the reformist or regulatory position proposed by various subjects of international civil society, the article underlines the need for States to regulate the activities of the various subjects operating in the sector more effectively, and to establish the rights and responsibilities of the women, who are often not sufficiently protected by the agencies which hires them. Finally, the Kiev case also revealed the inadequacy of the protections, the inhomogeneity of the legislative frameworks, and the hypocrisy of states that prohibit the practice within national borders without however discouraging the use of its citizens to practice abroad or without engaging in a decisive way for a ban, or its regulation, on a universal scale.

This was not the first time that a scandal had put the spotlight on the transnational system of surrogacy by showing its criticalities (Saravanan, 2018; Whittaker, 2016). In 2014, there was the case of Baby Gammy: a Thai surrogate gave birth to twins, one of whom had Down syndrome. The Australian intended parents requested the abortion of the sick foetus but the surrogate decided to continue with the pregnancy. The parents returned to Australia taking only the healthy baby with them, while Baby Gammy remained with the surrogate who also filed a lawsuit for custody of the other twin. It was then discovered that the intended father had previously been convicted of sexual abuse. The twins remained divided. In the same year, there was the scandal of a Japanese man who had commissioned 16 children in Thailand through a dozen surrogates. Twelve of these children were placed in social services and the others remained with the surrogates. The following year, in 2015, after the earthquake that hit Nepal, there was the Israeli Government's attempt to rescue about 20 babies for Israeli same-sex couples, leaving behind other children and pregnant women (Shalev et al., 2017). The surrogates were transferred to Nepal from India, since the Indian Government had recently banned surrogacy for same-sex couples. In both Thailand and Nepal, after these scandals, surrogacy was prohibited.

These are among the most discussed cases in current specialized literature, as well as those that have obtained the most media coverage, but it would be incorrect to think that beyond these exceptional events, surrogacy takes place without any

⁶The article is available at: <https://www.opendemocracy.net/en/odr/ukraines-surrogate-mothers-struggle-under-quarantine/>

complications and contributes to creating only happy-ever-after stories. This would be an evaluation induced by commercial communication (Deonandan et al., 2012; Hawkins, 2013) which, privileging emotional messages, presents surrogacy as a safe and controlled medical-technical process, in which the intended parents receive high quality services, legal and logistic assistance, the women are carefully selected and freely choose to act as surrogates, they carry out the pregnancy with professionalism (i.e. with the right detachment combined with the care in adopting all the behaviours necessary to raise a healthy foetus).

There is a substantial amount of scientific literature and testimonies collected by associations committed on both the abolitionist and reformist fronts, which document the risks to which all the subjects involved (children, surrogates, intentional parents, and egg suppliers) are exposed (Darnovsky & Beeson, 2014; Corradi, 2019; Klein, 2018; SAMA, 2012; Saravanan, 2018). There are various risks: health, psychological, legal, and financial. Furthermore, this literature documents the existence of realities that deviate from the reassuring and inviting representations that circulate in the fertility industry and sometimes in the media: pregnancy by surrogacy involves a greater incidence of a series of negative impacts on women's health and the child that I will discuss in Chap. 3; surrogates (and sometimes their families) make a huge physical and emotional sacrifice; the whole process involves great psychological stress for the intended parents, as well as significant costs; it is possible to create expectations of reciprocity that go beyond the contracts and establish unprecedented emotional ties; the relations between surrogate and clients are marked by a strong imbalance regarding the social class and the possibility of asserting claims in the event of any disputes.

As with any complex social phenomenon, especially for emerging ones, different representations are produced by different subjects, stakeholders or not, in which one or another aspect of reality is emphasized, coherently with values and world views, for the purpose of the communicator. Sociology is not immune from this mechanism, as thought is never divorced from the values of its thinker (Weber, 1949). However, unlike the communicator and the activist, the sociologist is not allowed to deny a part of what is real to achieve a goal. In the Kiev case, the lockdown extended the time between birth and the delivery of the newborn to the parents, and therefore revealed in slow-motion, the unavoidable aspect of any surrogacy: the passage of a newborn from one contracting party to another, or from the parturient to the intended parents. This aspect is real and exists regardless of the consideration that can be had of this aspect. Just as it is undeniable that the two subjects are *contractors*, regardless of the lexical preferences.

I have chosen to open this book with the Kiev case to give the reader who is approaching the subject for the first time a series of introductory flashes on various critical aspects of surrogacy as well as on the different, and sometimes irreconcilable, perspectives proposed by social movements and policy makers. For a few weeks, the Kiev case took on the characteristics of a decisive battle for the social movements already committed to the issue: not only did it constitute an international stage for their requests for abolition, but it was also the field in which a precedent that would have indirectly laid the foundations for the legitimization of surrogacy by those States

where the practice is still illegal. In the requests of the Italian abolitionists, it is also possible to see that, at the cost of obtaining this result, the supreme interest of the child and his right to a family with his biological parents is overshadowed: at the cost of not favouring a tacit legitimacy of the practice, it was recommended to give the children up for adoption (as a second option in case the surrogates are not available to take care of them) and to prevent custody to the biological or intended parents, responsible for having commissioned a child abroad through a practice which is illegal in their country.

From the approach of these requests, a fundamental knot of the debate on surrogacy emerges: Is the surrogate to be considered the mother of the child despite the fact that she has no genetic link with him⁷ and that she has kept him in her womb and gave birth, not to raise him, but exclusively to receive an economic incentive and give a child to those who wanted and commissioned it? The principle of *mater semper certa est*, for which mother is the one who gives birth, is defended by the abolitionists, although these women from the beginning of pregnancy learn strategies of detachment from the foetus and in most cases have not neither the will nor the financial resources to take care of the children delivered. The principle of *mater semper certa est*, despite the intentions of adults, however, reflects the point of view of the newborn, who identifies as his mother the one with whom he has established a bodily and emotional bond, notwithstanding the absence of a genetic link.

As will emerge in next chapters, it is precisely the different consideration of the woman–newborn bond that marks the irreconcilability of the positions of those who want to abolish surrogacy and those who defend it and want to regulate it better. For the first, the intentional dissolution of that bond constitutes in itself an uncivil practice, a violation of human dignity and the anthropological principle according to which all human beings are born from the mother, a step backwards of the conquests of freedom of women and an expropriation of their reproductive capabilities. For the latter, that bond is malleable on individual wills, irrelevant compared to the intended parents love for the child and therefore erasable: it does not in itself represent a reason to be opposed to a practice which, however, I point out, precisely to be realized needs both to use that bond for 9 months and to sever it.

In this book, I will address this and other crucial issues of the question, giving account of the various perspectives proposed by the civil society with particular reference to the three countries, the United States, Mexico, and Italy. I have carried out research in these countries over the last 3 years, funded by the European Commission through the Marie-Sklodowska Curie Actions program,⁸ aimed precisely at analysing the public debate and social mobilizations on surrogacy, and in

⁷For the sake of clarity, there was no particular reason for choosing he/him in gendering the child throughout this book, she/her, they/them could have equally been used.

⁸The research project “Women Movements and Gestational Surrogacy: engaging, debating and policy making—WoMoGeS” received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 79246 (Marie Skłodowska Curie, Individual Global Fellowship). It was conducted at the LUMSA University, Department of Human Sciences in Rome, with the partnership of the University of Texas, Department of Sociology in Austin.

particular the contribution that women's movements have given this debate, also in terms of policy proposals.

The following chapter presents the theoretical and methodological structure of my study. Chapter 3 introduces the fundamental traits of the procreative process via surrogacy, its transnational market and the health risks. Chapter 4 will discuss the main themes that recur in studies on surrogacy: I will divide these themes into three levels: individual experiences, social structure, and representations. Chapters 5, 6, and 7 discuss the case studies of United States, Mexico, and Italy, respectively. I will focus on the aspects that distinguish the debate in different countries and the role of women's movements: in the American case I will discuss the possible explanations of a low participation in the abolitionist battle of feminist and pro-life groups; in the Mexican case I will consider the reconstruction of the regulatory attempts that have taken place in the country over the last decade, and then contextualize the rift between radical/abolitionist feminism and (neo)liberal/reformist feminism. Finally, in the case of Italy, I will focus on the prevalence of the abolitionist approach within feminism, in the name of defending female identity and motherhood. At this point in Chap. 8, which contains the most theory and reflections, I will discuss the increasing relevance of the issue for feminism as well as propose a critique of the abolitionist and reformist discourses, by focusing on the macro-frames of commodification and autonomy. In this chapter, I will touch on notions of agency, self-commodification, individualism, self-determination, motherhood, empowerment, technology and dominance over nature, among others. I will argue the possibility to read the planned separation of the child from the woman at birth as a form of violence against the child. In Chap. 9, I will conclude with a few proposals to overcome the present polarization in the debate and conciliate restrictive regulations with a condemnation of surrogacy based on the supremacy of the child's protection over the defence of the adult's desires.

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Chapter 2

The Study's Origins and Methodology



I started to craft the idea of this study as early as 2016 when surrogacy was hitting the headlines for the first time in Italy: feminists, pro-life and pro-family groups were sensitizing public opinion and politicians on the need to keep the prohibition already in place in the country and extend it to an international level. As I will describe in more detail in the chapter dedicated to the Italy case, the danger that these groups wanted to avoid was that surrogacy, increasingly used abroad by Italian citizens, would be legitimized as a way to have children through the reduction of women to reproductive vessels and life to an assembly process. Italy was not the only country where surrogacy at that time became a hot topic of public debate: in France, Sweden, and Spain concerns were also mounting. Moreover, in 2015 the European Parliament condemned “the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity” and considered “that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments” (European Parliament, 2015).

My interest in the topic grew even more when I came to know that a transnational campaign calling for the universal abolition of surrogacy was launched in the United States and was subscribed by many activists in Europe, feminists as well as those belonging to more conservative segments of the civil society. I was fascinated by seeing that, as in the debate on prostitution and pornography in the 1980s, part of the feminist movement and conservatives are in the same prohibitionist side as strange bedfellows (Ferguson, 1984; Goode & Ben-Yehuda, 2010). At the same time, I quickly realized that the sentiment of disapproval towards surrogacy was not shared by all feminists: some in fact think that surrogacy is just one of the most recent spaces of opportunities for women to do whatever they like with their bodies and thus to embrace more and more fully that body ownership and reproductive freedom they strove to achieve. I also came to know that some scholars and even some women's groups in India were defending surrogacy as an opportunity for women's empowerment. I realized that surrogacy as prostitution and pornography is a highly

divisive topic. The feminist movement, as we will see in the literature review chapter (Chap. 4), is not united but split into two factions, the liberals or autonomy feminists who advocate for full women's freedom in all sexual and reproductive issues and the radicals who understand these types of market-driven use of women's bodies as forms of exploitation and abuse embedded in patriarchal system. Moreover, I was observing that there was a contrast between feminist abolitionists and LGBTQ movements, although both of these movements continue to recognize themselves as progressives and find their traditional political interlocutor in the centre-left.

It goes without saying that I was facing quite an intriguing scene and I wanted to understand more about the arguments that were competing the public understanding of what in my social context is a relatively new and emerging reproductive practice. However, as I proceeded with the study, I realized that "new" and "emerging" were not always adequate qualifiers. On the one hand, in Italy I needed to explain what the topic of my study is and it is not uncommon to find reactions of disbelief on the fact that there can be such a practice of having children, and only in the last 2 or 3 years has the issue become of relevance. On the other hand, when I arrived in the United States, in Austin, Texas, it was not uncommon to find myself in front of reactions of obviousness: "what's wrong with surrogacy? What do you need to study about it?" a taxi driver said. As I read the scientific literature and interfaced with colleagues, I noticed how surrogacy is dissected in all its facets and that the way in which scholars write and talk about it in the vast majority reveals a consolidated acknowledgment of the existence of the phenomenon. This might explain why the ideal proposed by abolitionist groups of seeing surrogacy disappear has more hold in Western Europe than in the United States.

In Mexico, I found myself in a situation in some ways more similar to that of the United States and in some ways more similar to Italy: surrogacy entered the debate in Mexico around 2015 and today it cannot be assumed that everyone knows what it is, despite it being present in society as a form of reproductive labour for Mexican women. Mexican feminism, highly committed to the battle against violence against women (VAW) and femicide, within a critique of patriarchy, closely resembles Italian feminism, but against surrogacy it has not yet developed a structured and convinced battle: as will be seen in Chap. 6, Mexican feminism claims that the autonomy of women over her body seems to be more organized and influential, a situation that mirrors the one I found in the United States.

These are just samples of what I will discuss in depth in the next chapters, each dedicated to a country case: for each case, I will focus on the description of the context in which the debate on surrogacy takes place, I will identify the civil society organizations that contribute most to it, in particular focusing on the role of the women's movement.

At this point I would like to clarify the term which I consider important so that the focus of my investigation is clear. Women's movement is a "collective action by women organized explicitly as women presenting claims in public life based on gendered identities as women" (Mazur et al., 2016, p. 657). "Women's movement actors, including individuals and informal and formal groups, are those whose expressed ideas are overtly gendered, identify with women as a group, and are

framed as women representing women” (Mazur et al., 2016, p. 653). In this category, which is to be taken as a conceptual category of social sciences and not as a group of individuals working together or sharing the same opinions on every issue, I include groups and individuals belonging to different streams of feminism, but also pro-life women (Derr et al., 1995), and women who do not agree with the feminist assumption of structural female subordination to men as well as the feminist goal of subverting existing gender relations and heteronormativity. Those in the broader women’s movement endorsing a feminist discourse “seek to change the status of women and challenge women’s subordination to men and the gender hierarchies that sustain it” (Mazur et al., 2016, p. 653). In line with these distinctions, in this study feminist opinion makers, representatives of women organizations and feminist groups, as well as pro-life women are all included in the varied landscape of the women’s movement.

Why did I choose to focus on the women’s movement? How does women’s movement matter in the surrogacy debate and policy making? My previous study was an analysis of feminist discourses on domestic violence: I looked at how the feminist understandings of this social phenomenon, that is a gender-based reading of interpersonal violence rooted in patriarchy and gender inequality, has spread in society and influenced the institutional approach as well as the popular imaginary of the problem (Bandelli, 2017). I became very much aware of the power of the feminist vantage point in setting the lens through which society, the media, policy makers, and also scholars learn how to look at phenomenon that involves women. If, on the one hand, the feminist contribution has been needed to reveal female perspectives on society, this process of what I like to call the “feministization” of the public discourse has also some side effects. In domestic violence, the feminist discourse highlights the sufferance of women victims of male violence, the role of misogyny, gender inequality, and stereotyped assumptions on femininity and masculinity in the persistence of the phenomenon; at the same time, this discourse backgrounds the influence of situational factors, relational dynamics, drug and alcohol abuse, history of violence, as well as the sufferance of men in domestic violence and the active role that women might have in violent dynamics (Felson, 2002). As I was observing the emergence of feminist mobilization against surrogacy, I started to wonder how the “feministization” of the debate on surrogacy would have an influence on the public understanding of this phenomenon. If feminists channel the dissent on the basis that surrogacy is a form of patriarchal commodification of women’s body and maternity, I started to wonder, whether this opposition would turn out to be obsolete very soon when experiments on the artificial womb will be finalized and babies could be produced without commodifying women? I also started to wonder whether an opposition to surrogacy framed in this term would be effective once we acknowledge that often women’s decision to serve as surrogates is the outcome of costs and benefits evaluation and they are not forced to do so. I also wondered whether this feminist frame would be appealing to all those women who use surrogates to have their motherhood desire accomplished: are these women complicit in what feminists view as a form of patriarchal violence against other women? I will come back to these reflections, which during my research journey have been more or less confirmed, and deepened in light of field-work conversations, readings, and social theories.

In addition to my research interest in feminist discourses, there are also more solid answers explaining the focus of this study on women's movement. It is common knowledge that women's movement is the primary actor in the making of public discourses and policies on sexuality, procreation, its bioethical aspects and interlinks with technology (Botti, 2014; Farquhar, 1996; Mazur et al., 2016). Conception, contraception, medicalization of pregnancy, birth, motherhood, and abortion are all topics on which women's organizations have made their voices heard. Since the 1970s, feminism has been one of the most visible agents of cultural change and social policy in terms of procreation and the family (Mazur et al., 2016; Willson, 2010): in Italy, the law on abortion, the result of a crucial battle of feminism, has helped to legitimize a concept of family that developed from individualism and the fragmentation of contemporary society, as a "residue of individual decisions that have their fulcrum in the mother-child dyad" (Donati, 1994, p. 340). Regarding the role of technology in reproduction, women activists as well as feminist thinkers have elaborated some original perspectives (Corradi, 2021; Farquhar, 1996): some posit technology advancements (birth control, fertilization techniques) as an ally in women's emancipation that could relieve women of the burden of childbearing (Firestone, 1970); others look at assisted reproduction with the fear that women will be expropriated of the uniqueness of their female identity, which is given by the potentiality of giving birth (Corea, 1985); technology is seen as emanation of male-dominated science and thus as a tool of patriarchy to take control of the procreative resources of women (Klein, 2018); some express concerns about the loss and devaluation of traditional knowledge of women in pregnancy and birth (Di Pietro & Tavella, 2006; Katz Rothman, 1982).

Surrogacy specifically poses quite challenging dilemmas to feminists: to what extent does it help the emancipation of women, and from what/whom? If *in vitro* fertilization with sperm donation has been welcomed by lesbians and some feminists as an advancement in lessening women's dependency on men to have a family, are gay men to be entitled to the same independency from women? Is surrogacy creating a class of women breeders for other women and men who can afford to delegate pregnancy? I would say that, in the diverse arrays of topics in women's reproductive politics, surrogacy is the one that ignites more conflictual debate and divisions.

When a social phenomenon is debated, a variety of discourse makers and stakeholders participate in which Stuart Hall would call the "politics of signification": "a struggle to create collective social understandings on events and consent to be mobilised" (Hall, 1982, p. 70). They compete to impose on the debate their understandings of the problem, from which policy approaches will be drawn. In my analysis, I will borrow from social movements studies, and specifically from Benford and Snow's (2000), the concepts of diagnostic and prognostic frames: explanations that social movements elaborate to make sense of the causes (diagnostic frames) of social problems and of the cure or recipe that they offer (prognostic frames).

As we will see in Chap. 4, scholars have already dealt with the feminist views on surrogacy and women's mobilization against surrogacy is acknowledged in several studies, although these studies are not necessarily focused on the politics aspects of

this practice. Mine is not certainly the first contribution of this kind, but I will try to add to the existing literature an in-depth account of the arguments advanced in the women's movement, the theoretical basis of their inner divergences, and the relevance that this emerging topic of reproductive politics has in the movement. I will not only describe their discourses and initiatives, but I will try to contribute with a critique of their theoretical underpinnings and ideological approaches.

I pursue these objectives through first-hand data that I have collected in the United States (August 2018–October 2018), where I first focused on the Texan context, in Mexico (November 2018–March 2019) where I conducted field-work in Mexico City and Villahermosa, the capital of the Mexican State of Tabasco, and Italy (May 2020–September 2020), where I also had the opportunity to network, especially in Rome, with feminists and surrogacy discourse makers since my earlier interest in the topic in 2016. The data were produced through in-depth interviews with 50 informants in total: 18 for the American case, 21 for the Mexico case, and 11 for the Italian case. The duration of interviews was 30–90 minutes each. The informants were selected for their participation and expertise in the surrogacy debate or more broadly in the area of reproductive rights, women's rights, child's rights, bioethics, and included feminists, activists, scholars, and journalists. For each case, I conducted a thematic analysis of the media coverage of surrogacy in the principal newspapers (*The Dallas Morning News*, *the Austin American Statesman*, *the New York Times*, *the Washington Post*, *El Universal*, *Reforma*, *La Jornada*, *Il Corriere della Sera*). The total number of articles I analysed is 92: 44 from the Texan-American press, 28 for the Mexican case, and 20 for the Italian one.

My methodology is purely qualitative. For the press analysis, I coded each article with a serial number and I extrapolated the following information that I systematized on a database (manually built with OpenOffice) with the following columns: topic of the article; location/country; sources used by the journalists; whether the surrogacy is contextualized as a reproductive method for same-sex or heterosexual couples; description of the baby, surrogate and intended parents; representation given to the mother–foetus bond. In the analysis of the Mexican press, two more columns were added because they were recurrent themes in the sample of analysed articles: description of surrogacy agencies and role/demand attributed to the State. In the Italian case the State column was primarily dedicated to the role of State bureaucracies in the recognition of parental rights over babies born through surrogacy abroad.

I conducted 50 interviews (18 for the USA case, 21 for the Mexico case, and 11 for the Italian case). Whenever possible I interacted in person, otherwise online. Interviewees were selected on the basis of their engagement in surrogacy debate, for being representatives of feminist groups engaged in reproductive issues, and/or for being experts on surrogacy, reproductive technology, or feminism. Interviewees were approached through networking and snow-ball sampling.¹ I did not follow a fixed list of questions but I tailored each interview to the expertise of the interlocutor. For each interview I transcribed the verbatim and on these scripts, I coded diagnostic

¹More details will be provided in the chapter dedicated to each case study.

and prognostic frames. I conducted the same analysis on 35 additional texts such as op-eds, statements, positioning papers, reports and law proposals written by women activists and other surrogacy discourse makers. This addition enabled me to analyse the view of subjects who I could not reach for interviews or to add more details about the thoughts of key activists/organizations already involved as interviewees. As provided by the ethical protocol of the project, the identities of all the interviewees are not disclosed and thus all the interview's extracts that are reported in these pages are in anonymous form.

I chose these countries to ensure diversity in the social contexts, presence of the surrogacy industry, legal framework, and organization of women's movement. Initially, I planned one more field-work in India, but unfortunately I had to cancel this country from my plans because of complications in the issuing of the visa and subsequent insurgence of the COVID-19 pandemic. My intention was to ascertain to what extent women in the Global South elaborate their own perspectives on surrogacy and to what extent they use the same arguments used in the North, on which principles they are based, to what extent they are based on values and ideologies that are already used to frame other women's issues or are based on factual information about the specific social issue.

This curiosity stems from the acknowledgment that in radicalized pro and against debates, the multiplicity of perspectives rooted in the complexities of the social contexts and linked to other ongoing debates are subsumed in viable discourses (e.g. discrimination, human rights, gender violence) which are adopted as the founding blocks of paradigms for national and international policies. This process of generalization is documented in the literature on the globalization of discourses on contemporary women's issues. For example, Sanghera (2005) criticizes the dominant global discourse on trafficking and resulting policies and interventions insofar these have been constructed through anecdotes, moralist positions, and non-verified hypotheses, in absence of country-level and context-specific studies and by conflating different phenomena such as trafficking and prostitution, and different subjects such as women and children. Another facet of generalization is that perspectives of women in developing countries are often missed in the construction of global discourses on problems affecting women and related policies, such as gender equality, violence, and reproduction, which, on the contrary, build upon conceptual categories produced by "white feminism". In this regard, Gupta (2006) and Ryan (2009) maintain that liberal feminist notions of agency and choice underlying the dominant discourse on reproductive technologies and rights are not easily applicable in those countries where the human capacities of women are hindered by poverty, lack of access to food and health services, and power of the State patriarchal culture.

In surrogacy scholarships, the tensions between developed and developing world have been widely discussed with regard to the concern about the disparity between surrogates and commissioning parents (Pande, 2014; Twine, 2015; Whittaker & Speier, 2010), while the risk that women activists' perspectives in developing countries, which are the main providers of surrogate mothers, are silenced by the formation of a global discourse based on more visible reflections is yet to be taken in serious consideration by sociologists. Does the women's movement in Mexico

provide innovative perspectives and representations on surrogacy or do they speak through discourses that are similar to the ones of their American sisters? How does the division into two fronts (abolitionists and reformists) apply to different countries? Do they use the same frames? These are some of the underlying questions that guided me during this research project.

To sum up, this study was inspired from my desire to understand how the women's movement, which is one important contributor in building knowledge and shaping imaginary and policies on reproduction, contributes to the public discourse and policy making on surrogacy in different countries. I hope the findings that I could reveal during this journey can contribute not only to academia but also to a better understanding of surrogacy as well as the different perspectives that circulate in the public sphere and the challenges to decision makers, at both a national and a supranational level. As we will see in the next chapter, legal frameworks across the world are rapidly changing and each State is taking different pathways of restrictive and permissive regulation influenced by conflicting pressures coming from social movements with different demands and social visions, private sector representatives (e.g. clinics, agencies, lawyers, psychologists, and other fertility professionals), and media hypes on surrogacy scandals. By focusing on mobilization, alliances, and discourses of feminists and other groups in the civil society, my aim is to shed light on the perspectives that are competing to shape the social acceptance and regulation of this booming way to make babies. In particular, I will provide insights on the theoretical underpinnings and frames competing in the public sphere of each of the three countries included in my study to define the problems and solutions in surrogacy. I will also discuss the different relevance that surrogacy has in women's movement in each country, the disagreement and common concerns of abolitionists and those in favour of surrogacy regulation, their capacity to influence policy change and their international network. Ultimately, my aim is to offer a fresh perspective on surrogacy as a social phenomenon whose scope I believe cannot be fully grasped simply through the frames conveyed by either the pro-surrogacy discourse or the abolitionist one.

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Chapter 3

Features of a Booming Reproductive Practice: The Medical Process, the Market, the Antecedents, and the Risks



How It Happens

Gestational surrogacy consists of implanting one or more embryos in the womb of a woman, who is not the supplier of the egg cells and will not be the social mother of the baby at the end of the pregnancy. The latter, at the moment of birth, is given to the intended parents, with usually at least one of the two being the supplier of the embryo's genetic heritage, and therefore the biological parent of the child. There are several actors in surrogacy transactions: fertility clinics, surrogacy firms or brokers, surrogacy agencies, egg supply agencies, in some cases also embryo transfer facilitators and counsellors (Klein, 2018).

Heterosexual couples generally rely on surrogacy when the woman cannot carry out a pregnancy due to medical conditions such as the absence of a uterus, congenital, or because it has been removed, when the woman suffers from fibroids, epilepsy, placenta accreta, or when she has previously had miscarriages (Guseva & Lokshin, 2019). The surrogate must be pharmacologically prepared to host the embryos (SAMA, 2012) and a pre-implantation genetic diagnosis (PGD) is often made to ensure that there are no genetic diseases in the embryos (Jacobson, 2020). If more embryos successfully attach to the womb than the number of children desired by the couple, the surrogate will be asked to undergo a selective reduction of the embryos (Danna, 2014; Forman, 2015). During the pregnancy, the surrogate undergoes check-ups. The birth in most cases is planned and performed by caesarean section (Bromfield & Rotabi, 2014; SAMA, 2012): in this way, the intended parents can be present at the time of birth. The child is immediately removed from the body of the woman who gave birth. The surrogate generally is not allowed to breastfeed in order to avoid excessive attachment with the newborn, although in some cases, she is asked to provide milk and even breastfeed as an extra service (Allen, 2018; Rotabi & Bromfield, 2012; Saravanan, 2018; Sengupta, 2018).

The gametes with which the embryos are formed can come from the intended parents (both or only one) or from third-party suppliers (generally at least one of the

two intended parents is also a biological parent). Heterosexual couples resort to gamete banks in the event that they cannot have a child with their own gametes or when they could transmit genetic diseases. In the case of surrogacy for a homosexual couple, the child is generally the genetic child of one of the two men. Homosexual couples also have the option of either mixing the sperm of the two men, or fertilizing the oocytes with the sperm of both partners and then transferring more embryos to the surrogate. The gametes supplied by third parties can be chosen from catalogues on the basis of physical and genetic characteristics, ethnicity and religion, character, talents, and life results obtained from the “donor” and his close relatives, characteristics that the aspiring parents hope can eventually be passed on to the child (Harrison, 2016; Twine, 2015). The suppliers of eggs are young women aged between 18 and 35: they are tested to make sure they do not have infectious diseases such as HIV, hepatitis, genetic problems and that they do not consume drugs; hormonal stimulation is then administered so that their bodies produce a greater number of oocytes (about twenty) than during a normal menstrual cycle in which each woman naturally matures one a month (Corradi, 2017); the oocytes are harvested through vaginal aspiration under sedation (Stoicea-Deram, 2016). The American Society for Reproductive Medicine (ASRM) states that there must be a valid justification to pay more than \$ 5,000 for an egg and more than \$ 10,000 is not appropriate compensation (Harrison, 2016).

The surrogates are recruited and selected by agencies specialized in surrogacy: a fundamental requirement is that they have already had a child, or that they have successfully had at least one pregnancy. They are chosen based on their appearance, body weight, social class, religion, and lifestyle (Saravanan, 2018). Their service is regulated by a contract, with which they undertake to carry out the pregnancy and hand over the baby at the time of delivery. The contracts can provide for various types of requests: for example, regarding nutrition, sport, housing conditions, trips to take or not to take during the pregnancy. The surrogate may be required to provide her medical records without any right of confidentiality. The contracts may also include medical screening of the surrogate’s usual sexual partner. Furthermore, the contract may also provide for the termination of the pregnancy at the discretion of the intended parents (Danna, 2014; Forman, 2015).

The surrogates are usually paid in instalments at different stages of the process and receive additional rewards based on the number of foetuses. Prices vary from country to country: In the United States, surrogates earn between \$20,000 and 60,000¹ and intended parents can spend more than \$100,000 if they use a surrogacy agency in the United States (Jacobson, 2016) and could save up to 70% less if they choose to undertake the whole process in the Global South (Esparza et al., 2014; Hernandez, 2018). In India, the price can drop to €20,000 and the surrogates receive

¹60,000 US\$ is a base as base compensation for an experienced surrogate offered by a Californian agency. <https://www.westcoastsurrogacy.com/become-a-surrogate-mother/surrogate-mother-compensation>

between €3,500 and 6,000, which they would earn in 5–7 years working any other type of job (Saravanan, 2018).

In some countries, only a reimbursement of expenses is allowed and not a real compensation. This modality is called gratuitous or altruistic surrogacy, to distinguish it from the commercial one (Van Zyl & Walker, 2013). The name, however, must not be misleading: even when the surrogate does not receive a real compensation in money, the service received by the intended parents remains commercial as well as the activity carried out by the various professionals involved (lawyers, doctors, brokers) (Fabre-Magnan, 2013; Stoicea-Deram, 2016); furthermore, the compensation can also be of another nature, in the form of a gift, and not necessarily by virtue of what is established by a contract; finally, as will be discussed in greater detail in the next chapter, altruism, the pleasure of doing good to the couple by giving them the happiness of a child, is almost never the only motivation, or in any case alone, without other personal advantages, is not enough. There are also cases in which the surrogacy agreement is made between relatives (mother for a daughter or between brothers/sisters) or close friends, with or without mediation. However, even in these cases, it is not certain that the basis of the agreement is a pure motivation for help and a completely autonomous choice: even in the agreements between friends and relatives, there may be harassment, blackmail, or simply expectations of availability precisely by virtue of an emotional bond and gender roles in the family (Narayan, 1995).

In some cases, pregnant women spend the pregnancy in their own home, with their family, in others they move away from their community and spend 6–7 months together with other surrogates in clinics, dormitories, or small rented houses (Rudrappa, 2015). During the pregnancy, there may or may not be interaction between the surrogate and the intended parents, with it either being in person or electronically. The same goes for after childbirth: the surrogate is usually not present in the child's life, some intended parents may write or make video calls to keep each other updated on the well-being of the child and the life of the surrogate (Yee & Librach, 2019).

History

Surrogacy is not the first method that humans have developed to procure a child out of natural conception between an adult couple who intend to become parents. Nor is it the only situation in which children are separated at birth from the women who give birth to them. Think of adoption, which is also often carried out in a transactional way. Consider servants who were made pregnant by masters who could not have a child by their wives. In Japan, this practice was called *mekake-bouko*: the servant, at the end of the working period, had to leave the child in the master's house; during the Meiji Government (1868–1912), these women were legally recognized as family members (Yanagihara, 2021). In Nigeria, there are baby factories where young women, consenting or not, are made pregnant to give birth to children who

are sold to childless couples (Alabi, 2018). Surrogacy is also often compared to the custom of African and Asian children who are raised by relatives rather than natural parents (Segalen, 2021).

However, these are very different phenomena: surrogacy differs from each of these practices for various reasons. First of all, due to the use of biomedical technology as well as the fact that the parturient is not the biological mother of the child. Furthermore, surrogacy is distinguished from adoption in that the child is conceived specifically to be given to others: without this intention, the child would not exist. On the contrary, adoption is the *solution* to provide the child with parents when their biological ones cannot or do not want to take care of him: the child exists in any case, whether or not the intention of adopting parents. Among all these alternative methods of family formation, only adoption is comparable to surrogacy for having created a transnational market and having proposed itself as a mass practice. However, surrogacy is preferred to adoption for various reasons including the genetic link that the intended parents can have with the child, being able to have it with them from the first days of life, the streamlined procedures that in the case of adoption involves psychological checks of the couple, the shorter waiting times, and for greater control over the origin, health, and characteristics of the child (Rotabi & Bromfield, 2012). Moreover, in many countries, adoption is not a viable path for homosexual couples and single people, categories of people for whom surrogacy becomes the only option (Smietana, 2018; Navarro, 2020).

The advent of reproductive technologies, initially developed in zootechnics and then also applied to human procreation, has made other methods available to circumvent the impossibility of having a child in a natural way. I propose dividing the techniques of assisted procreation into four levels, each one characterized by the overcoming of certain conditions (or limits) of natural procreation (Bandelli, 2019).

At the first level, there is artificial insemination. It allows for conception in the absence of any physical contact between two human beings of different sexes. At this level, conception is transformed from an intimate fact into a technical and artificial fact, in the hands of a third party who act as a mediator: the actions of the technicians (manipulation of the spermatozoa and insertion of these into the uterine cavity) replace the physical contact between the parents.

At the second level, there is in vitro fertilization (IVF), which can involve either the spontaneous union of the gametes or the introduction through a cannula of the sperm into the ovum (intracytoplasmic). The limit that is crossed in this second level is that of the corporeality of conception, which, in addition to taking place in the absence of any form of physical contact, also takes place outside the woman's body. The first human conceived with IVF was born in 1978: Louise Brown.

At the third level, there is heterologous fertilization, which can make use of both techniques seen so far. In heterologous fertilization, one of the two gametes does not belong to the pair of intended or social parents. In addition to being voluntaristic and relational, conception also pushes itself to produce a fragmentation of parenting and a self-attribution of the parental role dictated by the intention and not necessarily by the genetic link (Nicolussi, 2018). With heterologous fertilization, the following limits/conditions are exceeded: coincidence between biological and social parents;

two-parenting (in the case in which the woman uses a donor and raises the child alone); two-parenting of different sexes (when the woman uses a donor to then raise the child with another woman); correspondence between pregnant woman and biological mother (if the oocytes do not belong to the pregnant woman).

At the fourth level, there is surrogacy. The unprecedented limit that this practice crosses lies in the unity between pregnant woman, biological mother, and social mother: surrogacy inevitably involves a newborn being removed from the body in which it developed for 9 months and being handed over to other people, of which at least one is usually its biological parent. It is an intrinsic fracture of practice (Allen, 2018) and is instrumental in the fulfilling of parental desire (the driving force of all levels of assisted reproduction). I will return to this point in the last paragraph of this chapter.

At the end of the 1970s, Noel Keane opened the first surrogacy agencies in Michigan, which in the mid-1980s became about 20 throughout the United States (Klein, 2018). At that time, however, the surrogates were also the biological mothers, i.e. they were inseminated with the gamete of the intended father. In 1985, the first child was born through the method called traditional surrogacy (Gueronzi, 2020). With the improvement of in vitro fertilization and embryo transfer, traditional surrogacy was replaced with the gestational form, in which embryos formed by the gametes of the intended parents and/or third-party suppliers are implanted in the woman. The absence of a genetic link between the pregnant woman and the child, as well as the direct implantation of the embryos (without contact between the gamete of the intended father and the body of the woman outside the couple) made it possible to relocate the surrogate from mother to a component of the “reproductive team” (Jacobson, 2016), making it less problematic to recognize the parental status of the clients.

Only this last form of surrogacy has led to a multimillion-dollar transnational market being created, along with a public discourse in which the need is claimed to make this method of family formation accessible and legal, as well as international working groups for its policy making. Official numbers on surrogate babies in the world do not exist (Jacobson, 2018): most of governments do not collect data on surrogacy births and there is no reliable information on which the scope of the phenomenon can be identified (Special Rapporteur, 2019).² The International Social Service (ISS) NGO estimates 20,000 babies are born through surrogacy every year (de Aguirre, 2019). It is certain that this practice and the related market have been booming for about 10 years. According to the 2015 National Summary Report on Assisted Reproductive Technology, elaborated by Centers for Disease Control and Prevention, American Society for Reproductive Medicine, and Society for Assisted

²Following a call for inputs on surrogacy to governments, civil societies, and scholars, the United Nations Special Report on the sale and sexual exploitation of children in 2019 informed that only two governments have provided data on the number of surrogacy arrangements: In the United Kingdom, the number of parental orders following surrogacy was: 407 in 2016; 332 in 2017; and 176 in the first 6 months of 2018. In Australia, there were 139 cases of surrogacy undertaken abroad in 2016–2017 and 175 cases in 2017–2018 (Special Rapporteur, 2019, p. 11).

Reproductive Technology (ASRM, 2015, p. 53), the number of transfers for ART cycles using gestational carriers more than doubled, from 2,251 in 2006 to 4,725 in 2015, and the percentage of transfers using a gestational carrier among all transfers increased from about 2% in 2006 to more than 3% in 2015. 2,200 babies were born from surrogacy in America in 2014, more than twice as many as in 2007; if until 1992, the total number of births through surrogacy worldwide was 4,000, today only in India every year 3,000 babies are born (Danna, 2017).

Today, more and more would-be parents resort to this way of giving birth, not only attributable to the classic categories mentioned above (the heterosexual couple in which the woman cannot carry out a pregnancy due to medical reasons and homosexual couples): there are also single men and women who want to fulfil the desire of parenthood regardless of whether there have a partner in their lives (Johnson, 2015), celebrities and professional women who choose to delegate pregnancy so as to continue working. The latter case is defined social surrogacy.³ There are also more exceptional cases, such as when grandparents act as clients using the sperm or ova of the deceased child.⁴

The increasing spread of surrogacy is accompanied by its growing visibility in the public debate, linked to the claims of social movements and regulatory proposals, the chronicle of scandals, disputes for the legal recognition of parenthood, celebrities who undertake this method of filiation (i.e.: Cristiano Ronaldo, Elton John, Ricky Martin, Nicole Kidman, Kim Kardashian, and Sarah Jessica Parker) or cultural products such as TV series and films (i.e.: *When the Bough Breaks*, *The New Normal*, *Top of the Lake: China Girl*). The emergence of traditional surrogacy in the United States initially provoked reactions of dissent and mobilizations from feminists (Klein, 2018), which however were not sufficient to block its widespread diffusion, which as I have already explained occurred with the transition from traditional to gestational surrogacy. Now that surrogacy is no longer only an American phenomenon, but has spread to various parts of the world, the reactions of dissent, as we will see in the course of the book, have multiplied and are being organized both on a national basis and in transnational campaigns which demand its abolition.

Despite this, the regulatory orientation, more or less restrictive, prevails over the abolitionist orientation and surrogacy is normalizing as one of the methods available for having a child. Rodríguez-Jaume et al. (2021) from an analysis of 31 scientific articles on public opinion on surrogacy in different countries of the world, found that there is a general historical trend towards increasing levels of acceptance of the possibility of regulation. According to the review of Spanish sociologists, Canada, Japan, United Kingdom, Iran, Australia, and Spain are some of the countries where

³Check the following articles: <https://www.conceptualoptions.com/what-is-social-surrogacy/> and <https://www.theguardian.com/lifeandstyle/2019/may/25/having-a-child-doesnt-fit-womens-schedule-the-future-of-surrogacy>. Accessed 29 August 2020.

⁴See the story of Indian parents of a 27-year man who died: https://www.bionews.org.uk/page_96375

there is a higher level of acceptance of surrogacy, understood as a method of having a child for infertile couples. Nevertheless, it must also be said that among the various ways to have a child, surrogacy is the least accepted one, the so-called altruistic one more than the commercial one, the traditional one less than the gestational one (Kuchar, 2014).

Biomedical progress alone is not sufficient to explain the spread of surrogacy since the spread or not of a practice that the technique makes possible depends on conducive social factors (Rogers, 1995). Canadian sociologist Maria De Koninck identifies the following socio-cultural factors that encourage the social acceptance of surrogacy: within human rights paradigm and individualism “when some groups call for certain rights to be recognized, their denial is interpreted as discriminatory” (De Koninck, 2020, p. 30); one of the consequences of female emancipation is the raising of the age at which they become mothers, and with it a greater recourse to artificial procreation; procreation from “social duty” has become a “personal issue” (p. 31); the concept of child has changed: “as an extension of self rather than of bloodline, and this status is part of a social context that shapes people’s desire both to have a child and to use all possible means to do so” (p. 32); the technique has invaded the reproductive life (e.g. the medicalization of pregnancy, birth control techniques); the feminist perspective that sees motherhood as an obstacle to emancipation and interprets gender identity as dissociated from one’s own sex has spread; finally, neoliberalism and the logic of efficiency pervade private life. Those identified by De Koninck are also the ingredients of my reading of surrogacy that I will propose in Chaps. 8 and 9: a product of an individualistic society devoted to self-determination in which adult-centric discourses of reproductive autonomy and protection of women from commodification unfold.

Laws and Markets

The regulatory frameworks that the States adopt are extremely varied and inhomogeneous and no international agreement exists to date (Guzman, 2016; Mostowik, 2019; Torres et al., 2019; Stark, 2012). Some countries have laws that expressly prohibit any form of surrogacy (e.g. Italy, France, Spain, Switzerland, Germany, and Poland). Others only allow the so-called altruistic surrogacy (e.g. South Africa, Brazil, New Zealand, Iran, and Canada) and between relatives (e.g. India). Others also allow commercial surrogacy (e.g. Russia, Ukraine, and Israel). The law can establish the conditions under which it can be practiced: for example, only married couples can access it (e.g. Ukraine and Kazakhstan); the woman may be asked to prove the existence of health problems for which a pregnancy would involve a risk for her life and that of the child (e.g. Russia and Vietnam); in some laws, it is also established that the child must be the biological child of at least one of the two members of the couple; some States allow access only to citizens of the country (e.g. Thailand, India, Mexican State of Tabasco). There are also differences on how to register the birth: in Ukraine, for example, the intended parents are considered legal

parents from the moment of conception; in other countries, the name of the woman giving birth is reported on the birth certificate (Mostowik, 2019). Furthermore, there is also the possibility, as in the case of Israel and Texas, that contracts must be validated by a State Committee. In States such as Spain, surrogacy contracts are instead considered null (de Aguirre, 2019). There are also States without any specific laws (e.g. Argentina, Belgium, Colombia, Kenya, Malaysia): this regulatory vacuum can give rise to different interpretations by the courts and even favour the development of the market.

This regulatory patchwork is constantly changing: to cope with the growing use of surrogacy and the speed with which its market is established and developed in a country, States adopt new laws. India has been a world leader in low-cost surrogacy since 2002, with an annual turnover of \$ 400 million and 3,000 fertility clinics operating in the country (Nixon & Timms, 2017). Since 2012, the government has passed a series of laws aimed at containing the phenomenon: first it established access only to heterosexual couples who have been married for 2 years and later instituted a total ban on commercial surrogacy for foreigners, allowing only the altruistic form for Indian couples (Nixon & Timms, 2017). There are other Asian countries that act along the same lines: in 2015, Thailand banned commercial surrogacy and the activity of intermediaries, allowing only free surrogacy to married Thai couples (Whittaker, 2016). In the same year, Nepal introduced a total ban, and Cambodia did so the following year (Bobrzyńska, 2019).

Following the closure of the Southeast Asian markets, low-cost surrogacy moved to Eastern Europe, Central Asia, Africa as well as Central and South America. Other countries, on the other hand, are moving in the opposite direction, towards greater openness. In 2014, Greece changed the citizenship or domicile requirement: if first both parties (intended parents and surrogate) had to have Greek citizenship or domicile in the country, from 2014, it is sufficient that one of the two parties has permanent or temporary residence in the country (Bobrzyńska, 2019). In 2016, Portugal legalized it. Since 2018, Israel has allowed surrogacy, not only to heterosexual married couples but also to single women as long as they provide the egg (Bobrzyńska, 2019).

Sociologist Sharmila Rudrappa explains how the market survives from bans and moves to less hostile countries: “The relatively small network of actors operating in India and Thailand, comprising proprietors of agencies that recruited intended parents, and medical business conglomerates scattered across the U.S., Australia, and Europe quickly restructured their business plans, and reached over to medical personnel across Russia, Ukraine, and the Republic of Georgia to start up once again the cycle of international clientele but now contracting with Russian, Ukrainian, and Georgian women as surrogate mothers. Thus, a few global actors and firms facilitate the rapid movement of the industry across a patchwork of nations, quickly making contacts with local medical personnel and moving clients into these new locations. Efficient networking is also provided by not-for-profit organizations that are market nodes which, through regular workshops, bring in parents with surrogated babies, potential intended parents, surrogate mothers who talk about their experiences, law

firms, gamete banks, infertility clinics, and even insurance brokerage firms that cater to couples undergoing assisted reproduction” (Rudrappa, 2021, p. 290).

Sociologist Sheela Saravanan (2018) points out that many countries of the Global North have bans and effective implementation, while countries of the Global South have difficulty protecting themselves from uncontrolled market development. However, Saravanan also points out that the North-South movement is not enough to explain the configuration of the surrogacy market: indeed, it includes, for example, flows of would-be parents from Western Europe to Eastern Europe, and also the use of surrogacy by wealthy citizens and offered by poorer citizens, within the same country. The surrogacy request does not come only from Western Europe and North America: China is also among the emerging demand basins. According to Twine (2015) Chinese citizens use surrogacy services abroad, especially in the United States, to circumvent their country’s restrictive parentage policies and secure American citizenship for their children.

Due to the diversity of regulatory frameworks from country to country, but also to the difference in costs, the surrogacy market has developed in a transnational way. Given the inextricable link between the procreative process and its market, the former can be read as a typical phenomenon of globalization (Inhorn & Shrivastav, 2010): an economic and social organizational system based on the flows of goods, capital, and people in a world space made less and less distant by technological development, but also based on an accentuated social inequality between a global class of citizens of the world, who benefit from transnational space, and a class that instead remains imprisoned in its condition of local poverty (Beck, 1999).

The movement of people to take advantage of assisted procreation and surrogacy techniques from one country to another is often referred to as “reproductive tourism”: Inhorn and Patrizio (2009) point out that since this expression evokes the fun of holidays, while the experience of people who do it is usually very expensive and stressful and faced due to “the desperate need of a child”, it should be replaced with the notion of “reproductive exile” (Inhorn & Patrizio, 2009, p. 905). On the other hand, however, it must be considered that the intended parents do not move only as a last resort (for example, when in their country surrogacy is prohibited, or allowed only in certain circumstances in which they do not fall): the countries are also chosen based on economic and logistical considerations, on the quality of the country’s medical infrastructure, on the simplicity of bureaucratic procedures, on the ease in bringing the child to their own country with a suitable birth certificate or passport, on the personalization and ethics of the medical procedures offered, on the guarantees obtainable from the contracts, and on considerations regarding the geographical and cultural proximity with the surrogates (Jacobson, 2020; Saravanan, 2018). At this point, it is also worth clarifying that it is not only the intended parents who move, but also the gametes, embryos, and in some cases even the surrogates, who move to another country during the whole process or only for the implantation of the embryos or childbirth (Corradi, 2019; Schurr, 2018).⁵

⁵Varenikova, M. (2020). Mothers, babies stranded in Ukraine surrogacy industry. *New York Times*. Retrieved from <https://www.nytimes.com/2020/08/15/world/europe/ukraine-baby-surrogate.html>

Faced with the acknowledgment that the practice exists and is widely used, even by citizens of countries where it is prohibited, the prohibitionist solution advocated with conviction by some groups of international civil society is struggling to establish itself as a viable approach to policy making. The regulatory approach, whether with a more restrictive intent or more oriented to facilitate access to the practice, is the most common orientation among both national and international policy makers (Torres et al., 2019; de Aguirre, 2019). The complete ban in some countries such as Italy, France, and Germany dates back to laws on medically assisted procreation developed when the practice had not yet reached today's levels of diffusion. These bans are now bulwarks of resistance but do not seem to serve as an applicable model to provide specific regulation for countries that do not have them yet or those in which the practice has spread in an uncertain legislative framework. In other words: obtaining a child through surrogacy is considered at most a possibility that can only be denied if certain conditions and requirements are not met, but not a practice to be prohibited in itself.

Two documents depart from this trend. The first one is the Model Law against Trafficking in Persons published by the United Nations Office on Drugs and Crime (UNODC) which suggested to include the use of women as surrogate mothers as a form of exploitation (Working Group on Trafficking in Persons, 2013). The second is the European Parliament's resolution that unequivocally "condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments" (European Parliament, 2015, p. 29).

There is a "sharp division" (de Aguirre, 2019, p. 476) among the members of the Parliamentary Assembly of the Council of Europe (PACE); in the October 2016 vote on the draft recommendation on Children's Rights Related to Surrogacy, with amendments which recommended a condemnation of all forms of surrogacy as well as a total international ban, neither the agreement with a complete ban as suggested by the draft nor the softer recommendation drawn up by the Committee on Social Affairs, Health and Sustainable Development of PACE was accepted: the latter dismissed the draft and adopted a shorter text in which the prohibition is not mentioned but simply recommended to the Committee of Ministers to consider the desirability of European guidelines to safeguard children rights and to collaborate with the Hague Conference on Private International Law (HCCH).

HCCH began work on the issue of surrogacy in 2010 noting that the application of the International Adoption Convention to surrogacy cases is improper. In 2015, the Expert Group was established to examine the feasibility of a multilateral instrument to regulate international surrogacy: recently in 2020, 200 women's rights organizations, 2,000 signatories from 50 countries participating in the International Coalition against Surrogate Motherhood (ICASM) called on the 86 Members of the

HCCH to end the mandate of the Expert Group working on the parentage issue in the context of international surrogacy arrangements.⁶

Surrogacy is considered by the United Nations (UN) as a way for individuals and couples to fulfil their reproductive rights, with no UN agency having currently promoted any call for a total ban of commercial or the so-called altruistic surrogacy. Among the agencies that have worked on the issue, there is the UN population agency (UNFPA), which, however, does not have an official position on surrogacy: it has warned of the risks of exploitation for women as well as suggested that “more could also be done to raise awareness about preventing and addressing infertility, and in some countries to reform laws on infertility treatment, adoption and surrogacy in line with sexual and reproductive rights” (UNFPA, 2019, p. 123).

In 2019, the UNESCO International Bioethics Committee (IBC) released a report on assisted reproductive technologies and parenthood, in which the problematic aspects of surrogacy are underlined. For some members of the Committee, surrogacy should be rejected on the grounds of the risk of exploitation of the surrogate mothers, the best interest of the child, and the danger for the central position of the family as an institution. The report states: “the main argument for this position is that the lack of international legislation and adequate protection of commercial surrogates opens the door to violations of surrogates’ rights. And furthermore, that surrogacy is incompatible with the protection and respect of the human dignity of surrogates” (IBC-UNESCO, 2019, p. 33). Other members of the committee argued that altruistic surrogacy under special conditions can be accepted, and a third group of members believe that “altruistic surrogacy could be acceptable in some specific cases but doubts whether the conditions required can be met in reality” (IBC-UNESCO, 2019, p. 33).

The UN agency that principally deals with the issue is the Office of the High Commissioner for Human Rights (Special Rapporteur, 2019): at the 37th session of the Human Rights Council, the Special Rapporteur Maud de Boer-Buquicchio presented the first ever thematic report on surrogacy and the sale of children within the UN human rights system. The report concluded that commercial surrogacy “could be conducted in a way that does not constitute the sale of children if it were clear that the surrogate mother was only being paid for gestational services and not for the transfer of the child” (Special Rapporteur, 2018, p. 17). This can be achieved, according to the report, by giving the surrogate mother the status of mother at birth and requiring a non-reimbursable payment for “surrogacy services” before the birth, in order to ensure that the surrogacy is, as the report says, “a gratuitous act” (Special Rapporteur, 2018, p. 18).

In the 2019 report to the General Assembly, the Special Rapporteur “reiterates the urgent need for holistic regulation of surrogacy, in particular when it comes to

⁶The ICASM petition is available at: https://docs.google.com/forms/d/e/1FAIpQLScjaCGzIRWLZz_kYS6Q0XbfzZHdZ1mAXDeKpHJaYTzKUPKDKg/viewform?gxids=7757&mc_cid=c50e15531d&mc_eid=9ff4dcb521&fbclid=IwAR1hBsOOJr3L_o8gCETcxmRJOYHeevluYkImumD0yoKafxhKcLPX-ee67JQ

international surrogacy arrangements” (p. 16) and States are encouraged to “develop international norms through, for example, the Hague Conference on Private International Law project on parentage/surrogacy [...] to build bridges between different legal systems” (p. 19). The rationale of these recommendations is the need that the best interest of the child (and in particular certainty of identity, status, and parenthood) should be at the basis of any decision-making, in the case of both the prohibitive and permissive approaches: “it is imperative that States put in place clear frameworks for the protection of children [...]. In light of the global demand for surrogacy, even the most domestically prohibitive States must deal with the consequences of surrogacy arrangements” (Special Rapporteur, 2019, p. 6). However, in this document, it is also reminded that reproductive rights protected since the 1994 International Conference on Population and Development, include, according to the Inter-American Court of Human Rights, “the choice to procreate through assisted reproductive technologies” as “part of the rights to humane treatment and personal liberty and the rights of the family” (Special Rapporteur, 2019, p. 18).

The best interest of the child is also the approach of the European Court of Human Rights (ECHR): Cases submitted to the Court of Strasbourg raise issues mainly under Article 8 (right to respect for private and family life) of the European Convention on Human Rights. This is not the place to reconstruct the rulings so far issued by the Court on parental recognition in cases of surrogacy; However, I would like to report some observations by Carlos Martínez de Aguirre on the general approach of the Court. The Professor of Private Law at the University of Zaragoza notes that two circumstances are particularly relevant in orientating the Court: the existence of biological ties between the child and the intended parents, and the time that they have lived together. Furthermore, de Aguirre observes that the ECHR “has not expressed a clear position” and “states that its task is not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating this issue”: “the ECHR is aware that endorsing the conduct” of intended parents who engage in “reproductive tourism” to avoid national restrictive law “would be tantamount to legalizing the situation created by the intended parents, in breach of important rules of their national Law. That is why the ECHR emphasizes the relevance of the aims pursued by national Laws when banning or restricting surrogate motherhood” (de Aguirre, 2019, pp. 471–472).

The Risks

The previous sections discussed how surrogacy is a process that includes IVF, the implantation in the surrogate of an embryo formed by an egg foreign to her body, pharmacological treatments both in the egg provider and the pregnant woman, whose body must be artificially prepared for the embryo reception, selective reduction of “excess” embryos, the planning of a caesarean section, deprivation of health benefits (for both the woman and the child) given by breastfeeding, and always the detachment of the newborn child from the person in whom he grew up for 9 months.

This process impacts on the health of both the surrogate and the baby, during and after birth, as well as the health of the egg provider, who can be the intended mother or a third party who sells her gametes on the fertility market. The egg provider, especially if treated more times, is at risk of ovarian hyper-stimulation syndrome, which might result in infertility problems (Cooper & Waldby, 2014).

The number of adverse obstetric and perinatal outcomes, such as pre-eclampsia, placenta previa, premature birth, restriction of the growth of the foetus, and low birth weight, but also structural congenital anomalies (e.g. of the male urogenital system, gastrointestinal, and musculoskeletal systems), hypertension and cardiovascular problems, brain damage and intracranial pressure, and imprinting disorders are higher in artificial procreation (in vitro fertilization, intracytoplasmic sperm injection, and (frozen) embryo implantation), than in a natural conception (Cooper & Waldby, 2014; Darnovsky & Beeson, 2014; Corradi, 2017, 2019; Weinrauch et al., 2018; Allen, 2018; Nicolau et al., 2015; SAMA, 2012; Woo et al., 2017). The greater number of these complications may be due to various factors including the state of infertility, the fact that artificial procreation has a higher rate of multiple gestations, the age of the mother, as well as the supra-physiological hormonal environment resulting from ovarian superovulation (Bellieni, 2019). Fertility treatment also increases the risk of miscarriages, stillbirths, as well as the possibility for offspring to develop neoplasms and cancer, particularly leukaemia and liver tumours (Corradi, 2019). From a health policy perspective, it should also be considered that deliveries from medically assisted procreation have a longer hospitalization time (Nicolau et al., 2015).

In addition to the risks related to artificial procreation techniques, surrogacy has some specific impacts on the child and woman's health, such as: greater vulnerability to cancer for surrogates, who due to pre-implantation hormonal treatments, selective embryo reduction, and caesarean section risk not being able to have other pregnancies in the future (Ness et al., 2002) and a higher incidence of post-partum depression (Ahmari et al., 2014; Lamba et al., 2018).⁷ It is also worth recalling that breastfeeding, which in surrogacy is prevented, along with skin-to-skin contact has the function of maintaining the maternal-foetal bond established during pregnancy, helps the woman to recover from giving birth, increases the infant's immune system, provides protection against infection, helps digestion and absorption of nutrients, and helps to protect the child from lung, intestinal, and tumour diseases in the years to come (Bellieni, 2019; WHO, 2009).

Furthermore, the effect of in vitro fertilization (and surrogacy) processes in the long term on the state of health of the human being, to be fully understood (Lozanski & Shankar, 2019), requires large-scale follow-up and epidemiological studies, since hormonal stimulation and embryo culture produce epigenetic changes in the genes involved in growth and development (Bellieni, 2019). Cecilia Saccone, Emeritus Professor of Molecular Biology at the University of Bari, interviewed in 2017 by

⁷I recommend watching the following documentaries: *Eggsploitation* <http://www.eggsploitation.com/about.htm> and *BigFertility* <http://www.cbc-network.org/bigfertility/>

feminist journalist Simonetta Robiony explained that “the mother transmits mitochondrial DNA that performs important biological functions, the main one being ‘oxidative phosphorylation’, the process whereby most of the energy that cells need is generated from breathing. The human species, like many animal species, has been provided by nature with a sort of ‘quality control’ to ensure that newborns are as healthy as possible. The practice of assisted pregnancy favours the meeting in vitro between the maternal oocyte and the paternal sperm to then implant the fertilized egg in the uterus. In this operation, the mitochondrial DNA, a ‘small but beautiful’ naked DNA, could suffer some damage or it could not perform its function of ‘quality control’ and not work. If the use of in vitro pregnancy were to spread exponentially, we could get to have a less vital, less strong, less energetic humanity. Or we could come to have two types of human beings: those born in vitro, weaker, dominated by those born according to nature, more energetic. Mitochondrial DNA is, in fact, what energizes our cells: damaged it would function badly”.⁸

Once the contract with the birth of the child is concluded, the surrogate, depending on the contract, might have to provide herself any medical treatment she may need. During the pregnancy, a woman’s good health is functional to delivering a healthy baby, but after? In the press, there are countless testimonies of women who fell ill following one or more surrogacy pregnancies⁹; death is an inherent risk of surrogacy and the woman is required to declare in the contract she is aware of the medical risks, including death.¹⁰ In some contracts, it is provided that “if the surrogate is in her second or third trimester of pregnancy and in the event that medical life support equipment is required to preserve and maintain the life of the Surrogate and if requested by the Intended Parents, the Surrogate and her husband agree that the Surrogate’s life will be sustained with life support equipment for a period to achieve viability of the foetus taking into account the best interests and well-being of the foetus. The Surrogate’s husband, or her next of kin, is solely responsible for determining the time at which life support treatment will be discontinued following the birth of the Child” (de Aguirre, 2019, p. 459).

In the case the surrogate wants to bring a lawsuit, she needs to demonstrate that the cause of her illness is directly attributable to the medical procedures and pharmacological treatments to which she was subjected (e.g. repeated implantation of embryos before to remain pregnant, hormonal overdoses to increase the possibility of pregnancy, abortions of “excess” foetuses). It may also occur that the child is born with a pathology that could not be diagnosed during the pregnancy in time to decide to abort: in the media, there are reports of children abandoned by their

⁸<http://www.cheliberta.it/2017/05/18/surrogata-e-assistita-la-scienziata-raccomanda-cautela/>

⁹See the story of surrogate Tetiana Shulzhynska who in 2015 filed a complaint against a clinic in the Ukraine after having developed cervical cancer: <https://www.theguardian.com/world/2020/jun/15/the-stranded-babies-of-kyiv-and-the-women-who-give-birth-for-money>

¹⁰See the story of Michelle Reaves who died from pregnancy-related complications in January 2020. <http://www.cbc-network.org/2020/01/breaking-another-us-surrogate-mother-has-died/>. Also, see the following article about contract assumption of risks <https://collectif-corp.com/2019/02/28/y-compris-la-mort/>

intended parents in the country of birth, where they then are entrusted to orphanages.¹¹

Most of the risks mentioned so far may or may not occur and can be limited or prevented by intervening with medical procedures, through a market surveillance system and legal agreements, etc. However, there is a certain fact that is intrinsic to every surrogacy and cannot be prevented: the detachment of the child from the “environment” in which he began his psychophysical development. This detachment exists, regardless of the different value that we want to attribute to the maternal–foetal bond, to the legal status of the foetus, and regardless of any ethical, anthropological, or sociological discussion on the consequences of the interruption of this bond planned before conception.

The prominence that the genetic link has in the current socio-cultural paradigm of procreation obscures the fact that pregnancy, even when the woman does not provide the child with the genetic heritage, still remains a biological process and plays a very important role in the formation of the new human being (Françoise Héritier, in De Koninck, 2020; Gramolini, 2019). In an imaginary letter published by the *New York Times* in 2017, an intentional mother writes to the surrogate: “you will forever be imprinted on my child. He will have ingested your nutrients, felt your emotions. For his formative months, yours is the voice he will hear every day. Yours is the gait that will feel like home”. These words find confirmation in the scientific knowledge on pregnancy and developmental psychology that explains the function of the maternal–foetal bond. In the uterus, the child’s psychological, cognitive, and emotional development and the learning to relate to other people and space begin through a two-way exchange, which is biological, hormonal, physiological, and sensory with the woman, and continue in a continuum with birth. For example, the endometrial fluid regulates the transcription of the embryonic genome, the newborn recognizes the tone of the voice and the smell of the mother’s milk, and the foetus makes intentional movements starting from the fourteenth week (Nicolais, 2018). During the pregnancy, childbirth and the first hours after birth, neuroendocrine changes are produced in women to prepare her for the care of the baby (Bascañana, 2018; Mendiri, 2018): oxytocin is released in higher quantities for the production of milk as well as the establishment of the bond, with the sudden interruption of this bond possibly explaining why surrogates are at higher risk of post-partum depression. The relationship established during pregnancy is bidirectional and links the weaker subject to the stronger one, who will be identified by the first as a point of reference for learning, nourishment, and protection; it is a functional dialogue for the development of the new human being and for the regulation of mother and child in post-natal care (trans-modal correspondence) (Nicolais, 2018). This exchange is the foundation of the child’s subjectivity as in it he learns how to relate to the other:

¹¹For more details, see the report in Ukraine by the Australian Broadcasting Corporation (ABC): <https://www.abc.net.au/news/2019-08-20/ukraines-commercial-surrogacy-industry-leaves-disaster/11417388>

this grammar will serve him first for sharing emotional states and gestures, then for speaking.

Surrogacy deprives the weaker subject of the relationship with the party responsible for the continuation of his already started psychophysical development. Separating the dyad means forcing the infant to re-learn and overcome the shock of entering the social world without the reassurance of finding on the outside that one body that he already knows from within. The Swedish philosopher Marcus Agnafors (2014) points out that the fracture cannot be erased even if the child, thanks to his adaptive abilities and the love of the family, proceeds in a healthy way in his development. There are still too few studies to truly assess whether there are differences in the way surrogacy born children experience their childhood, adolescence, and adulthood, and it will take some time to assess the consequences of these births on social values and the conception of identity in relation to kinship. The longitudinal studies carried out by Golombok and colleagues give a non-problematic picture: according to the University of Cambridge team, not only do families formed in this way work well but in some parental performances are better than families in which children were naturally conceived and born: for example, in a study of 28 families formed through surrogacy (of which 35% the intended mother is also the genetic mother), Golombok et al. (2017) concluded that mothers in surrogacy families showed less negative parenting, greater acceptance of their adolescent children, and fewer problems in family relationships as a whole. However, in a previous study (Golombok et al., 2011), they discovered that at age 7, there was less positive mother–child interaction in surrogacy families than the natural conception mother–child dyads and that the more positive parenting found when the children were in their preschool years was no longer apparent at age 7. A possible cause of this result according to the authors is that at that age children have a greater awareness of surrogacy.

These results do not change the fact that, as Agnafors pointed out, separation at birth from the surrogate is in itself a harm to the child: the happy ending does not cancel the intentionally created fracture, and this fracture itself represents harm to the child according to Agnafors: “pointing to apparently normal families and teenagers, or the potential or likely development into such, does not suffice to show that surrogacy involves no morally relevant harm, just as it cannot be proven that a man has not suffered a great harm when, say, losing a leg 10 years ago, by showing that he feels fine today, or that divorces are not harmful because children and parents are usually fully functional individuals in the long run” (Agnafors, 2014, p. 360).

Furthermore, it must be taken into serious consideration that the purposeful separation also produces a gap in the knowledge that the child will have of his history (Corradi, 2019). Laura Corradi, a sociologist expert in medically assisted procreation at the University of Calabria, points out that the secret creates an artificial psychological environment around the child who understands that something is hidden from him, even if he does not know what. However, even where the modality of his origin is revealed to the child, or the name of the woman who gave birth to him, through access to the original birth certificate, this remains mere information that the child will not be able to experience: the mere knowledge of the names of the

parents and the surrogate is not enough to guarantee that child's right to know and be cared for by his or her parents, as it is enshrined in the Convention on the Rights of the Child and other international human rights instruments (Bandelli et al., 2020).

It is widely believed that the knowledge of origins is relevant only for children born from egg or sperm donation or given up for adoption, in other words that only the knowledge of genetic origins is relevant for the life of the child, while those of the woman who gave birth to him would not. The explanations given so far on the function of the biological and emotional exchange of pregnancy would already be sufficient to support the opposite. However, I want to add another aspect that makes bond maintenance important: epigenetics linked to family history. Epigenetics, which studies how the environment alters gene activity while not altering the DNA sequence, shows that, since there is an exchange between the molecules of the pregnant mother and the DNA of the embryo, the level of stress of the pregnant woman, the food she eats, the climate in which she lives, the hygienic conditions, the work she does, the pollutants, and other lifestyle factors affect the way the child's genes are expressed, and therefore also impact offspring for several generations (Fischbach & Loike, 2014). Professor Francesco Montecchi, who specializes in child neuropsychiatry, links the theories of psychological transmission from one generation to another, to the epigenome and mitochondrial DNA already mentioned above: Montecchi recalls, through Sigmund Freud and Carl Gustav Jung, that the child is not a tabula rasa and who "is in possession of many things that he never acquired, but which he inherited from his ancestors", and which is a "link in a generational chain of which he is an instrument regardless of his will": "in surrogate pregnancy, with birth, prenatal emotional experiences undergo a caesura [...] The child has the mother's mitochondrial DNA [genetics], the epigenetic activation of the biological family [of the surrogate] which he then loses, after birth, as he goes to another family structure in which he does not find correspondence and continuity to the psychological and biological evolutionary process started during pregnancy" (Montecchi, 2016).

The theme of the fracture, understood as an inevitable harm for the child, will return in the course of the book, especially in Chaps. 8 and 9 in which I will argue the need to subordinate the desire of adults to have an offspring to the protection of the child.

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Chapter 4

Sociological Perspectives Across Individual Experiences, Social Structures, and Representations



A Three-Level Literature Review

Surrogacy generates questions about the impact it has on social relationships and institutions, on shared values, as well as the meanings that life events have within society. More than any other phenomena, those inherent to the existence of life itself, therefore of procreation and death, affect the same idea we have of humanity and raise questions that go beyond the analysis of social coexistence or the culture of a specific social community. I think that the spread of a new way of coming into the world brings with its implications of a much deeper and broader than the implications of the spread of a practice that exclusively concerns already existing subjects. This special relevance, in my opinion, should call for a measured approach in formulating interpretations of the phenomenon, forming opinions, and proposing policies to regulate it.

Although other phenomena can provide useful interpretative keys to mitigate the disorientation that causes an unprecedented practice such as surrogacy, there is a need to be cautious in making analogies that would lead to forgetting the peculiarities of the object of analysis, those characteristics that make it different from all other similar phenomena. It is certainly correct and interesting to read surrogacy in the light of forms of commercialization of the human body or forms of externalization of care to which society has become accustomed over time; however, if we fall into the error of forgetting its specificities, we will lose the opportunity to intercept some implications or to foresee reactions other than those generated by known phenomena. For example, it would be overly simplistic to think given that society has become accustomed to taking care of children of a few months old in a nursery, then also the custody of a pregnancy to a surrogacy agency will follow the same course: in the second phenomenon of externalization, family configurations and the origins of the human being are shaken to their foundations. On a rhetorical communicative level, it can be effective to compare surrogacy to adoption or care work to connote it of “normality” and “goodness”, or on the contrary to interpret it as a form

of slavery or female exploitation similar to prostitution so as to convince the public opinion to consider it as something deplorable. On the contrary, on a level of sociological analysis, phenomena that are different, for the subjects involved, contexts, and methods, must remain distinct.

Scholars from around the world, particularly anthropologists and sociologists who study assisted reproductive technologies and kinship, have long been contributing to the understanding of surrogacy and its social implications: this effort began when surrogacy was still practiced in its traditional form, and has continued with increasing attention over the past 15 years, following the parallel expansion of the gestational form and its transnational market. Although most of the studies deal with the United States and India, along with the spread of customers and markets in other countries, the interest of scholars has also diversified, thus contributing to the knowledge of the specificities of the phenomenon in Ukraine, Thailand, Israel, Canada, France, Italy, Spain, Mexico, Nigeria, Japan, Kazakhstan, and China. Both theoretical papers have been produced that explore concepts such as donating, agency, exploitation, commodification, maternity, parenting, as well as empirical studies, among which various ethnographies with surrogates and aspiring parents, but also with professionals in the sector, as well as studies of speech and representation in the media, analysis of the communication proposed by agencies and clinics, and discussions about policies and legal frameworks.

In the following pages I will provide an overview of the main themes dealt with in this large amount of literature, organizing it into three levels of analysis: individual experience (motivations of intended parents and surrogates), social structure (inequalities, commodification, and motherhood), and representations (media and feminism). I have used this subdivision into levels to bring order to a treatment that is very often contaminated by a dialectic inspired by the modalities of activism, where the goal is the imposition or defence of personal views on the theme and the need for one or the other policy (in this case, the need to abolish or legalize).

For example, one of the most common objections raised to the framing of surrogacy as a form of commodification of women and children or the exploitation of less well-off women is that this interpretation is merely “theoretical”, or that it comes from the privileged professors and feminists, tending to a paternalistic attitude indifferent to the needs of less wealthy women that precludes them an opportunity for empowerment. In support of this objection, the testimonies of the surrogates gathered from many ethnographic studies are discussed, revealing how the directly interested self-narrate a satisfying experience without the perception of exploitation. The error of this objection is precisely that of confusing different levels of analysis which instead sociological analysis must strive to keep distinct, in order to be able to see the relationships, the superimpositions, and therefore to distinguish the empirical social reality from the ideal visions. Specifically, the two levels of personal experience (collected by the ethnographer) and the social structure are confused in this objection, where in the first, data are presented that speak of personal satisfaction and in the second, the development of procreation according to principles and practices is described specific to the market: they are not mutually exclusive aspects but constitute two coexisting dimensions of the same phenomenon. The fact that the rhetoric of

giving a gift is found in the narratives of the surrogates to describe the lived experience in a positive way does not cancel the fact that the system in which this practice is carried out is oriented towards profit and organizes relations as commercial exchanges.

Similarly, the fact that surrogates do not self-represent themselves as “mothers” of the children they give birth to (Berend, 2012) is not sufficient to establish that in the present society, motherhood is no longer defined by childbirth, as it always has been, and is defined mainly by the intention. The same mistake is also made by confusing the representation level with that of structure. For example, the representation of surrogacy in the media as a win-win practice coexists with literature reporting strong inequalities between the parties, and these inequalities cannot be forgotten when wanting to understand how this new procreative practice affects the distribution of roles between men and women of different social status.

The Individual Experience: The Motivations for Participating in Surrogacy

One of the questions that keep social scientists busy is “why do some people take part in surrogacy arrangements?”. From the studies that answered the question by directly asking aspiring parents or observing their behaviour, we learn that surrogacy is often a last resort, the only chance to have a child after a decision-making process in which other ways were also evaluated.

For the 7 Greek women interviewed by Zaira Papaligoura et al. (2015), surrogacy was preferred to adoption since the latter does neither allow to know the genetic heritage of the child nor keep the couple’s infertility unknown, which in Greece weighs heavily, especially on male virility. For the 42 English couples studied by Fiona MacCallum et al. (2003), surrogacy was chosen after a long period of infertility, failed attempts with IVF, or as the only way for the man to have a biological child when the partner does not have uterus. In both studies, the decision to rely on surrogacy was a shared decision between the man and the woman.

Martin Smietana (2018) confirms that also for gay couples (his study is with 37 European and American homosexual men, who had a surrogate child in the United States) the choice of surrogacy is made only in the last stages of their reproductive consciousness and decision process. In a first phase, some aspiration of parenthood was developed, while in a second phase, the various possible ways to have a child were considered. For some, becoming parents had always been a latent possibility, but it only became relevant at a certain point in life. For others, the awareness of wanting a child had always been present. Some felt they had to give up on becoming fathers due to being gay, and only later realized that parenthood was a viable option for them. Once having decided to become parents, the search for the means to realize the project begins: which technique to choose between adoption, co-parenting, and surrogacy; having a home and financial stability; finding the money to pay for

adoption or surrogacy. More than half of the Smietana interviewees considered adoption first, which was subsequently rejected due to the requirements, age, and medical history of the children. The choice of surrogacy is preceded by a search for information on the Internet, readings, comparison with other gay couples, and considerations on the ethical implications (especially for Europeans from countries where surrogacy is illegal). Only later is contact made with surrogacy agencies, for example, through fertility fairs or the web.

Understanding the motivations of the aspiring parents is not as much problematic as understanding the reasons why women are available to engage in a surrogacy transaction. The desire for a child, which is the basis of the intended parents' motivation to turn to this system of procreation, is culturally legitimate and in the public debate, it is not questioned with other possible interpretations. On the contrary, the voluntary and routine removal of the child from the parturient violates the image of the mother and the woman–foetus bond and approval or disapproval in public discourse of surrogacy is played on the different interpretations that are given to the role of the surrogate woman: an independent social agent who embraces a new opportunity of revenues, a victim of globalized social and gender inequality system, a commodified body, a strong and altruistic woman, etc. “Why do some women lend themselves to acting as surrogates?” is a crucial question for sociologists and anthropologists working on the issue (Berend, 2012). The most obvious answer, the need for money, is questioned or at least not considered a sufficient and exhaustive answer: what other reasons are there? Are women acting under pressure or are they completely free to choose based on comprehensive information? Can altruism and willingness to give a gift be two sufficient reasons in the absence of economic compensation? The answers to these questions are often sought through interviews with the directly interested parties, but Helene Ragoné, who is a pioneer of this type of study, warns about the reliability of the narratives as a data upon which to base the understanding of the motivations of the surrogates: a real understanding of their decision-making process cannot rely solely on their narratives as they are often “described as a scripted manner, reflective of culturally accepted ideas about reproduction, motherhood, and family and reinforced by the programs” (Ragoné, 1994, p. 52).

Understanding how deeply the interviewees are convinced of the words with which they explain their experience should be part of a psychological analysis that is not my responsibility, but I still consider useful to look at these narratives in the right perspective in the light of the mechanism that Arlie Hochschild (1983), on the basis of Goffman's theory of social interaction, calls emotional labour: “the management of a feeling to create a publicly observable facial and bodily display; emotional labour is sold for a wage and therefore has exchange value” (Hochschild, 1983, p. 7). According to Hochschild in the profession we put in place a “deep acting”: we try to feel or not feel in a given way, based on what is expected of us to appear professional; this mechanism also occurs in personal and intimate relationships. Hochschild notes that the same mechanism is at work in the surrogates she interviewed in India: “they did the emotional labour needed to avoid a sense of loss

and grief, working on their feelings to protect their sense of self as a caring mother in a world of everything for sale” (Hochschild, 2015, p. 46).

Ragoné’s observation is also relevant in the studies of other colleagues, where there is a certain similarity between the interviewees’ narratives and those proposed by the agencies or clinics, towards which the surrogates are in a subordinate relationship, as well as a certain concern of the surrogates not to be misjudged. The theme most used in the construction of a morally just image of oneself is that of giving a gift, combined with the devaluation of the economic motivation, or the altruistic representation of this same motivation when the money received is used for the good of the family. It is now worth considering in the main studies on the motivations of surrogates, how this rhetoric is articulated, gradually discovering other elements of the individual experience of these unprecedented social subjects.

Ragoné in 1994 published the book *Surrogate Motherhood. Conception in the Heart*, based on interviews with traditional surrogates in the United States; Ragoné subsequently expanded the study by also interviewing gestational-type surrogates and she noted how in the narratives of the latter, the concept of giving a gift is less present, while the surrogates who also supply their eggs emphasize it (Guerzoni, 2020). The surrogates interviewed by Ragoné emphasize the concept that surrogacy is a women’s job, an opportunity to help infertile couples, a vocation or calling. They interpret their decision as an informed choice, and do not point out the class inequality in the relationships that are established with the intended parents. They appreciate being spoiled by them, for example, by being taken for dinner once a month by them. Some even admit that they are happy when pregnant because they feel healthier and prouder in this state and some feel there is a reason to be fatter. Their commitments increase between medical visits, meetings with intended parents, even in other cities, participation in support groups, and social events organized by agencies: they feel they have an important and noble commitment legally established by a contract, which justifies their temporary withdrawal of dedication to their families without the risk of passing for insensitive women who sacrifice traditionally female care roles for a career.

The surrogates interviewed in this study deny that their main motivation is money, money that in most cases they use not for themselves but to raise their family’s standard of living. Ragoné links the devaluation of the importance of money to the rhetoric used by recruiting agencies: giving the gift of life to others is a message that has proven effective in finding women willing to become surrogates, since it allows them to use their procreative function in a commercial context without however betraying the socially shared principle in the West that children are priceless (Zelizer, 1994).

Similar to Ragoné, April Hovav (2019), studying the surrogacy industry in Mexico between 2014 and 2017, discovered that a representation of surrogacy as giving a gift is simultaneously used by agencies, surrogates, and intended parents to make the process more morally acceptable. According to Hovav, agencies exploit the widespread perception that giving a gift and altruism are antithetical to market logic, as if the two dimensions cannot coexist in the same phenomenon. This dichotomy is used to convince potential customers that the service is morally

palatable and “disciplining surrogates to create a docile and compliant labour force” (Hovav, 2019, p. 3). Would-be surrogates in Mexico, generally working-class mestizos, who demonstrate that they are driven by pure economic necessity, are either not recruited or reoriented towards a more favourable attitude to being recruited: agencies want to prevent women from negotiating their compensation or asking for more money from clients. At the same time, the intended parents, who in Mexico for the most part are gay couples from high-income countries, try to preserve their morality by stressing that the surrogates they use are not poor and do not do it for money.

Amrita Pande (2014), who carried out an ethnography at one of the India’s leading surrogacy clinics, argued that explaining willingness to have children for others through motivations other than money is a disciplining device: recruiters, often community-respected midwives, use the sense of guilt of mothers who are unable to feed their children. While convincing them to participate in the surrogacy programme with the prospect of a profit, once hired if they dare ask for more money, they are accused of being business-oriented like prostitutes: amoral figures from which the surrogates, in the recruitment phase, are invited to distinguish themselves, reassured by the fact that with surrogacy there is no contact with the man’s body. According to Pande, through this double rhetoric of money, women are invited, on the one hand, to perceive themselves as good mothers (therefore dedicated to the well-being of the child), on the other, as good workers (who give a service in exchange for compensation).

This last representation, that of the worker, does not fit perfectly with the surrogates interviewed by Corinna Sabrina Guerzoni (2020) in the United States, who do not consider surrogacy a job, but rather a full-time task to help someone: they argue that if their business were a job, then the salary should be much higher than \$ 25,000; the money they receive is perceived not as a salary but as a reward for the physical and emotional commitment of the pregnancy and the expenses incurred (babysitting for their children, fuel to go to visits, work permits, etc.). In this study, as in the others cited, there is a devaluation of money by the surrogates, who instead prefer to motivate their activity as a form of helping other people.

The same mechanism also emerges from Heather Jacobson’s study with surrogates in Texas and California (Jacobson, 2016): profit is not indicated by the interviewees as their main motivation, but constitutes an important extra that allows them to contribute to their family’s financial plans, take a vacation, or save something for their children’s future education. They live the experience as a job that requires them to make a constant commitment, physical and mental, in making decisions about the smallest behaviours to adopt so that the baby is born healthy. Jacobson highlights the pleasure that her interviewees say they receive from pregnancy: the experience of being pregnant satisfies them but they do not want any more children and for this reason, surrogacy seems to be the perfect job for these women. However, they feel guilty for being happy in this business as well as for the sacrifices husbands and children face during their pregnancy for others: according to Jacobson, through using compensation for their family, they find self-justification.

The awareness that pregnancy has a certain impact on their families emerges clearly from the narratives gathered by Elizabeth Ziff (2017) in a particular type of surrogate, women married to men who work in the US military. In the narratives collected by Ziff, the choice to become a surrogate is described through the concepts of sacrifice and duty that characterize their role as wives in the military community: the meaning of their pregnancy is to make a difference in the lives of others, to contribute to the income of the family, to feel useful while their husbands are on a deployment, and gain recognition for their role (Ziff, 2017; Kessler, 2009). They recognize the daily and constant commitment, the physical and mental discipline, and the risks they face, and they are aware that pregnancy, with all its unpredictability, requires being put at the top of the priorities of the family unit, accustomed instead to moulding itself on the work needs of the male head of the house: if it is usually the army that is put first, during the surrogacy, it is the wife's needs that come first of all ("military first" becomes "surrogacy first"). This interpretation allows them to feel they acquire greater power and emancipation than the traditional division of roles. According to Ziff's estimates, military wives are 15–20% of American substitutes: such a large proportion is explained by the difficulty these women have in finding a stable job due to the continuous transfer of their husbands (the unemployment rate is three times higher than other women) (Ziff, 2017). Furthermore, this group of women is particularly attractive to agencies since army medical insurance also covers surrogacy pregnancies.

One common thing in the studies presented so far is that by giving a child to others, these women feel strong, useful, and recognized. The Israeli surrogates interviewed by Elly Teman (2010) describe the moment of delivering the child as their most emotional moment of glory (trophy moment). Seeing parents being moved when they hug the newborn is also the recurring desire of surrogates observed by Zsuzsa Berend in their interactions on the largest moderated public surrogacy website in the United States. Delivery of the child is the final stage of surrogacy, which these women understand as a "purposeful, goal-oriented series of actions that is in many ways its own reward" (Berend, 2016, p. 12). The feeling of empowerment is invoked by a site moderator with these words: "You can do anything that you really want to do, there are no limits with smart and educated women" (Berend, 2016, p. 12). Similarly, Delphine Lance (2017) notes that the slogan "I make families, what is your superpower?" is a very popular slogan among American surrogate-heroines on the web.

The meaning of surrogacy as an act of giving in which the woman acquires centrality and importance is sometimes reinforced by a religious frame. Ragoné (1994) identified a representation of surrogates as donor angels, while Pande (2014) identifies a process of deification of the process of surrogacy: dormitory supervisors teach women to see surrogacy as a divinity or as a divine gift, which allows them to become richer and childless couples to have children. However, the emergence of this satisfying perception of oneself and the actions carried out depends on the cultivation throughout the process of a collaborative relationship with the intended parents, towards whom the surrogates tend to express a more emotional bond than that established with the child (Teman, 2010; Berend, 2016).

The empowerment effect emerges from Sharmila Rudrappa's study (Rudrappa, 2015) in Indian clinics in Bangalore, where most of the surrogates were textile workers with a weekly wage of \$ 100–150. Accustomed to long and exhausting working days, exposed to frequent injuries, supervised and humiliated by their bosses, without the possibility of going to the bathroom, except during the 45 minutes lunch break, these women see in surrogacy a job that is not only more profitable but also less tiring and alienating, as well as more satisfying on an emotional level: they socialize in dormitories with other women and feel more satisfied in “producing” a child, making a couple happy and contributing to the well-being of their family, rather than a piece of clothing that after a few months will be forgotten.

Sheela Saravanan (2018), with an ethnography once again carried out in India, highlights how the feeling of reward and having been useful to one's own family is also accompanied by unpleasant feelings. For example, the surrogates told of a degrading experience in clinics, where they were subjected to the implantation of several embryos and subsequent miscarriages; in the clinics, they did not feel free, they were afraid to make any requests or ask for information, and their needs were ignored or treated with disdain. They were often worried about the family left at home as they spent their pregnancy in the clinic. They complained about a lack of transparency when they were not given a copy of the contract or did not fully understand it. They reported feeling used by the intended parents and disappointed for not having had more contact after handing over the child, who in some cases not only having given birth to but, if the parents were late, also fed, developing an even stronger bond than during the pregnancy. They suffered having to detach themselves from the child, even though they were aware that this was part of their obligation as surrogates.

Some important data emerged from these ethnographies. First of all, it was understood that the economic return is a decisive reward in the willingness of women to have children for others, both in the United States and India, countries that can be considered representative of two very different worlds due to their socio-economic conditions and social position of women in which the surrogacy market has taken root. Nevertheless, the economic reward alone is not sufficient to decide to become a surrogate. It is strengthened through the perception of pregnancy as a pleasant experience and the altruistic sense that is attributed to participating in the process of filiation of others, people who alone without the help of a third woman would be deprived of happiness. The scarcity of opportunities for large earnings also plays its part in pushing women into this market. It also emerged that the surrogates are keen to present their business as morally acceptable and, given the social perception of the amorality of money, especially if linked to the use of the female body, they do so by emphasizing the use of profit for the well-being of the family and not just for themselves, thus devaluing the importance of money in their choice. It is also worth recalling how the devaluation of economic motivation mirrors the rhetoric of giving a gift used by the communication agencies to present their business as something ethical and not at all amoral. Furthermore, the self-represented experience is intertwined with the feeling of increased self-esteem in proving to be strong and selfless women, in having a role in the well-being of others, in receiving

recognition from the family, and in becoming entrepreneurs by improving their standard of living. However, the experience of these women also involves great sacrifices, negotiations with their own feelings, and feelings of degradation that undermine their integrity: during the contract, they lose their autonomy and depend on the requests and wishes of others, who by the nature of the transaction, have priority over the well-being of the woman, who places herself at their service.

The Social Structure: Inequalities and Stratified Reproduction

A recurring theme in the literature on surrogacy is that of inequality, related to the three identity elements of gender, class, and race, as well as to their intersectionality, analysed both as a pervasive characteristic of the organization of the market and at the interpersonal level between the subjects directly involved in the transaction. It is common knowledge that surrogacy is supported and developed precisely by the existence of significant inequalities of economic availability and social class between the women who make their bodies available and those who get a child. This inequality is present both when the service is carried out within the same country and when the clients go abroad.

It is a fact that the users of the services are people with greater economic means than the service providers, who use the earnings to fulfil different types of needs or projects to improve the standard of living of their families. Without the “bioavailability” (Cohen, 2007) of local labour, the market would not spread. However, it is worth pointing out how agencies tend to prefer women who are not among the poorest: their health could be compromised by poor housing conditions, have a non-reassuring aspect for clients, be poorly nourished, and forced into this type of work due to poverty (Rudrappa, 2015). Rozée et al. (2019) even found that the social situation of 96 Indian surrogates tended to be better than that of the general population of women aged 20–34 in terms of education (half had received at least a secondary education), employment (half had been employed before surrogacy), and family income (above the poverty line). The scholars suppose that this result is due not only to the criteria and preferences of recruitment by medical doctors, but also to the fact that while in the early 2000s when the surrogacy industry started in India, surrogates were recruited by brokers (often formerly surrogates themselves or egg donors) through word of mouth, later agencies started to advertise in the press and television. They suggest that “women who have more autonomy and who are better integrated in social networks are more likely to have access to information and to clinics, and so to commit to surrogacy” (Rozée et al., 2019, p. 6).

Notwithstanding these findings, there is no doubt that richer women are not interested in this source of income, but those of the lower-middle working class, who at any moment, due to an unexpected event such as an illness, or a marriage, could end up in poverty are interested (Saravanan, 2018).

On the other hand, the clients mostly belong to the upper-middle class: the difference in income, but also in education and opportunities, between the surrogates and clients is an evident constant. To use the words of Sharmila Rudrappa: “Even when individual clients are genuinely good human beings, feel deep gratitude, and adequately express their everlasting appreciation to their surrogate mothers, they cannot overcome the structural inequalities that exist between them” (Rudrappa, 2015, p. 4). Rudrappa reads the transnational surrogacy market as “a classic case of stratified reproduction that results in unequal transactions because these are exchanges between already unequal social actors” (Rudrappa, 2015, p. 4).

The concept of stratified reproduction is often used in surrogacy studies (Saravanan, 2018; Pande, 2014; Harrison, 2016; Twine, 2015; Rudrappa, 2015): it is a term coined in 1986 by Shellee Colen (1995) to explain the “physical and social reproductive tasks are accomplished differentially according to inequalities that are based on hierarchies of class, race, ethnicity, gender, place in a global economy, and migration status and that are structured by social, economic, and political forces. The reproductive labour—physical, mental, and emotional—of bearing, raising and socializing children [...] is differentially experienced, valued, and rewarded according to inequalities of access to material and social resources in particular historical and cultural contexts. Stratified reproduction, particularly with the increasing commodification of reproductive labour, itself reproduces stratification by reflecting, reinforcing, and intensifying the inequalities on which it is based” (Colen, 1995, p. 78.).

Colen’s concept was taken up by Ginsburg & Rapp who exemplify it in this way: “power relations by which some categories or people are empowered to nurture and reproduce, while others are disempowered” (Ginsburg & Rapp, 1995, p. 3). Harrison (2016) applies this concept in relation to the fact that in the United States the disproportion in the use of reproductive technologies between white and non-white population is significant: at 12.3 percent of the population, African Americans constitute 4.3 percent of users, and at 12.6 percent of the population; Hispanics make up 5.5 percent of recipients. Ryan (2009) notes that while the international agenda for reproductive health for developing countries emphasizes the goal of controlling population numbers and thus making methods of contraception accessible, in the Northern part of the world, the policies are to support the birth rate and therefore to regulate access to methods of reproduction to circumvent infertility. Similarly, the issue of infertility becomes marginal in female activism in the Global South where there is an urgent need to address the effect that government policies of procreative control are having on women’s bodies and gender discrimination (e.g. sexual selection). In the South of the World, women have poor access to medically assisted procreation due to the high costs, also derived from the import of methods developed in the North, and the scarcity of public programmes to support fertility and reproductive health, a problem at the scale of priorities in the health and development agenda of governments in poor countries (Ryan, 2009). This creates the paradoxical situation in which the same women who do not have access to quality maternal and sexual health-care services enter the latest generation of clinics to have children for other people.

Debora Spar (2006), France Winddance Twine (2015), and Laura Harrison (2016) apply Colen's concept to read surrogacy as the historical continuation of a culturally accepted breakdown of reproductive labour. For example, Spar refers to the Middle Ages when aristocratic mothers benefited from the help of nurses, who were poorer women. Twine (2015) recalls that black women in the United States have been deprived of procreative freedom for centuries since the descendants of Africans worked as slaves and produced children for the market, while the children of non-slaves did not have this market value. Twine (2015) specifies that although the surrogates now voluntarily enter the contract, unlike the slaves of the past, this decision takes place within a stratified system of inequalities. Harrison also argues that surrogacy reinforces the hierarchical differences built into the difference in race and the conception of race as a set of biological characteristics transmitted genetically: parents agree to entrust their foetus to a woman with a different skin colour because they believe that the quality and characteristics of their child are determined by the genetics of the gametes and not by the characteristics of the pregnant woman, in fact very rarely are the gametes selected from suppliers of different races. There are also cases of parents who are not willing to entrust their foetus to a surrogate of a different race and vice-versa some surrogates are not willing to work for couples of different races, as they would perceive the foetus as a stranger.

Sheela Saravanan explains the classism of the transnational market of surrogacy, which she defines as post-colonial, with the formula of one third of those who have (haves) against two thirds who do not (have nots) (Saravanan, 2018, p. 23): the former buy a service, the latter provide it. Looking specifically at India, Saravanan points out that in the case of complications during childbirth, the life of the surrogate is given less value and priority than that of the child, with the unwritten rule in light of a hierarchy of value that is attributed to the lives of the rich and the poor, to those of the citizens of the Global North and the South. Saravanan argues that the presence of a large, poor female population has been a fundamental element in the spread of surrogacy in India, not only due to a question of economic need but also because poverty is linked to low schooling and the persistence of traditional practices in which the woman depends on the expectations and decisions of other family members: this socio-cultural background sets the stage for the poor protection of the rights of Indian surrogates, which is an attractive factor for intentional parents. A courteous and submissive attitude is, among other things, a characteristic that agencies take into consideration when choosing surrogates: the more assertive ones are discarded.

Furthermore, the sociologist points out that there is not only a notable unequal economic and bargaining power between the surrogate and clients but also a clear difference in the treatment of Indian surrogates compared to those of countries where women have a greater emancipation. For example, according to the information reported by Saravanan (2018), if in the United States surrogates have access to support groups, legal assistance, health insurance, and maternity-related benefits, the same cannot be said for India, where they are often detained in dormitories, they are not asked to choose the couple to have a baby for, they do not have access to a copy

on the contract, and they do not receive any compensation in the case of a miscarriage.

Pande (2014) links Colen's concept to the surrogate recruitment strategies put in place by Indian midwives, who encourage a certain type of women, those who cannot afford to support more children, to have children for others. They are also convinced through manipulation: for example, they are led to interpret their displeasure at having had miscarriages in the past as evidence that they were not destined to become mothers again.

Gerrits (2016) confirms that there is a stratified reproduction mechanism also at work in the Ghanaian surrogacy market: the customers are Ghanaian citizens of the diaspora and other elites from African countries, the service providers are local women.

Finally, the concept of stratified reproduction also applies to access to surrogacy services by categories other than the infertile heterosexual couple: same-sex couples and singles are categories that are often prevented by law from using surrogates. This is due to the fact that categories other than the heterosexual couple have long been considered traditionally unsuitable for raising children, an idea upon which today there is less consensus: the initial regulation of assisted reproduction was made on the basis of dominant ideas of infertility understood as the impossibility of having a child despite unprotected sexual relations between a male and a female (Smietana et al., 2018).

A fundamental fact emerges from this overview: the surrogacy market feeds on structural inequalities, especially in income opportunities, and is practiced through unbalanced relationships, in which the surrogate is the least protected part, but is compensated economically for her availability.

The Social Structure: Reification and the Market

Surrogacy has been studied by many as yet another form of invasion of the logic of the market in social life, one of the various services offered by the infertility industry which in fact commodifies procreation through the attribution of economic value to parts of the body (conceived as raw materials) and experiences (services). In specialist literature, as well as in the discourses of social movements opposed to the practice, the concept of commodification is applied to the entire reproductive process, the woman's body, the child and life.

One of the reference studies on this interpretation is *Clinical Labor Tissue Donors and Research Subjects in the Global Bioeconomy* by Melinda Cooper and Catherine Waldby (2014). The Australian scholars consider medically assisted procreation as an expression of the contemporary global neoliberal capitalism and highlight how the surrogates, as well as the suppliers of the eggs, do a paid job to carry out a productive process within their bodies: this involves the scanning of biological processes and body self-management to ensure product quality control. Women employed in the procreation industry (and men, as sperm suppliers) are not

hired as the labour force but rather are compensated as suppliers of genetic resources. By signing the contract, the egg and pregnancy suppliers agree to lease their excess reproductive capacity, which gains value once it enters the global market. Cooper and Waldby (2014) highlight how the logic of the accumulation of genetic capital, through strategies and recruitment criteria, pursues a process of class reproduction: the egg suppliers are selected according to the most requested phenotype, height, body mass, absence of hereditary pathologies, and the level of education. The surrogates, on the other hand, are selected—not on the basis of the phenotype given that they do not transmit the genetic heritage—but on the basis of the state of health and the pregnancies already had.

The aforementioned Sharmila Rudrappa (2015) is inspired precisely by the concept of bio-economies treated by Cooper and Waldby, or economies “built from the latent value held in biological materials” and “frontier technology that involves a transformation of life forms such as biofuels and hybrid crops, for the purposes of profit”, to define surrogacy as one of the various “markets in life”: a market that “creates surplus value by harvesting marginal forms of vitality—the foetal, cadaverous, and extracted tissue, as well as bodies” (Rudrappa, 2015, pp. 8–9).

Another milestone book for framing surrogacy as a market is *Baby Business* by Debora Spar (2006): the Harvard Business School professor describes the infertility market as a business that produces “a good that is inherently good. It produces children, for people who want them” (Spar, 2006, p. 196). Spar presents four existing market models for other types of goods that could be taken as inspiration to also regulate the fertility market. The first option is to treat the “potential child” as a precious jewel: only those who can afford it will be able to have it and there will be no risk of too high a demand. The second option is that of prohibition, as with drugs: the effect would be the black market. The third is to adapt the rules adopted for human organs to children: they are distributed not on the basis of the availability of money but on the basis of the level of need, the waiting time, and the compatibility between donor and recipient. The fourth model is inspired by hip prostheses, considered a social good that the market could not distribute without excluding the poorest.

In this reading of surrogacy as a production process, there is clearly a commodification of the woman, reduced to one of her reproductive organs: the uterus is “technically and legally isolated as a component that can be contractually ordered, detached from the selfhood of the surrogate and repositioned in a production chain at the behest of the clinic and commissioning couple” (Cooper & Waldby, 2014). An example of this conception of the (re)productive process is the expression “womb for rent”, a terminology used by those who condemn surrogacy as a form of exploitation and commodification of women.

Along this line of thought, Maria De Koninck (2020) recently wrote the book *Stolen Motherhood: Surrogacy and Made-to-Order Children*, in which she highlights how wrong it is to think that pregnancy only affects a woman’s uterus and that this is comparable to any other organ of the human body. The Canadian sociologist points out that the uterus, if extrapolated from the body, loses its usefulness and that

alone, without the participation of the whole body of the woman, cannot make a foetus grow. De Koninck also emphasizes that the language of economics and that of technology, from which expressions such as carrier and third-party reproduction originate, separate pregnancy (reduced to gestation, a term used in the animal world) from the identity of the woman (a woman *is* pregnant) and from her status as a total experience that involves affectivity, the psyche, and transforms her person.

Similar considerations were also made by Janice Raymond as early as 1991 when the feminist and Emeritus Professor of studies on women and medical ethics published in the feminist journal *Ms*, a harsh article in which she described surrogacy as “a system in which women are movable property, object of exchange, brokered by go-betweens mainly serving the buyer” and as the “procurement of women for breeding” (Raymond, 1991, p. 30). Before Raymond, the feminist Gena Corea (1985) in her *The Mother Machine* had warned about the danger that the segmentation into phases of the procreative process implemented in surrogacy could devalue the very concept of human procreation (even natural) by assimilating it to one of the many production processes subject to the division of work. The eco-feminist thinkers who refer to the thought of Corea see in this commodification of the uterus, an attack on woman’s nature and her procreative potential, whose control has always been coveted by male power: biotechnologies intervene on the composition of being human, allow for the selecting of sex and produce the perfect child, eugenic operations justified by the ideology of the enslavement of nature and woman to man through technology (Corradi, 2017).

From the aforementioned Hochschild study (2015) with Indian surrogates, it is possible to see how that of the uterus-carrier is not only a representation formulated by scholars who analyse the practice from the outside, but also an image induced by the clinics in the same surrogates to facilitate their necessary detachment from foetuses and intended parents. The sociologist argues that this mode of social relationship, as well as self-representation of personal experience, is imposed by a business model to which women without earning opportunities must adapt, but whose purpose is the competitive positioning of the company/clinic in the assisted procreation market. According to Hochschild (2015), women, in order to cope with the scarcity of public services, due to the neoliberal model, embrace the culture of the free market by making the free choice to put their generative capacity up for sale.

The Social Structure: Fragmentation of Motherhood and New Family Formations

Biomedical technologies render it possible to make procreation independent from sexual intercourse and in this way open up to innumerable combinations of parenthood and filiation, introducing new statuses (for example, that of the surrogate) and modifying the characteristics of traditional statuses (for example, to become a father, it is not necessary to have had sexual intercourse with a woman). Parenthood has

always been defined on the basis of the genetic link with the child or, in particular cases, with the social role (in the case of the adoption or recognition of a partner's child). With medically assisted procreation, in some cases the genetic criterion is privileged for the attribution of parenthood (in surrogacy), other times this is considered irrelevant with respect to the intention to be a parent and the bodily bond that is established in gestation (when the woman uses a donor) (Johnson, 2017).

In other words, medically assisted procreation transforms kinship from a fixed and natural system to a cultural product that can be composed as desired. Thompson (2005) analyses the phenomenon of doing kinship by describing how in fertility clinics, patients, doctors, sperm donors, egg donors, and surrogates take an active part in this process of configuring kinship: giving different meanings and relevance to substances that in the body are shared with the foetus, to the genes, to the "relational" stages such as conception and bearing, and to the "custodial" stages, in which embryos and gametes are taken care of, this leads to "the alignment of procreative intent and biological kinship" (Thompson, 2005, pp. 145–148). This process of re-signification is reflected on a structural level in the paradigm shift of filiation, from naturalistic to voluntary: parenting is increasingly understood, both at a legal and a social sensibility level, as a voluntary issue for which the source of parental status is the will of adults, even more than two, who participate in the procreation process (Nicolussi, 2018).

In gestational surrogacy, those who according to various criteria could be considered parents are as many as six: the surrogate, her partner, the egg donor, the intended mother, the intended father of intention, and the sperm donor. Unlike other forms of medically assisted procreation, surrogacy introduces an unprecedented change: if the mother has always been legally and socially the one who gives birth (criterion applied in the legal principle of *mater semper certa est*) and if this criterion is also maintained with heterologous fertilization, in gestational surrogacy, pregnancy and childbirth are experiences that no longer count for the attribution of this status (Jotkowitz, 2011). Moreover, with surrogacy, it is admitted that the social identity of some children, and adults of tomorrow, is that of people without a mother, for example, when the intended parents are two men. It is evident that these are profound transformations in the definition of mother, as well as in the social status of motherhood, points which literature often discusses.

Johnson (2015) underlines that motherhood is no longer an objective fact, but an open concept, subject to redefinition by multiple claim-makers, as well as a status that needs to be articulated, claimed, and debated to be recognized: Johnson uses the concept of "contingent maternities: forms of maternity established through carefully constructed arrangements that can potentially be challenged" (Johnson, 2015, p. 1361). In surrogacy, it is the intention followed by the initiation of the whole medical-legal process, as well as the contract and economic investment to attribute the status of mother. The genetic contribution is also added, which however may not be present in some surrogates, yet the status of mother is conferred to that of intention. On the other hand, nourishing and care during pregnancy, which in rare cases continue after childbirth with breastfeeding (Lance, 2017), do not confer the

status of mother to the surrogate, who manifests at the beginning of the process the “non intention” to become one: the woman who gives birth is given the status of collaborator in procreation or carrier.

On the importance attributed to genetics in the conferral of parental status, the observation made by Riggs (2018) is interesting in relation to surrogacy for gay couples: the biological father minimizes the genetic link to affirm parental equality between him and the partner who does not provide the genetic heritage. In light of these parenting realities, it is worth considering whether motherhood could be male. Stacey (2006) states that gay fatherhood is interconnected with gender roles and as gay fathers intentionally and purposefully pursue nursing roles, overcoming various obstacles, this desire can best be understood as more like motherhood than heterosexual paternity. Equally in lesbian motherhood obtained through the pregnancy of an embryo formed with the partner’s egg, the role of the latter is compared to that of man in heterosexual procreation (Thompson, 2005). These elaborations of meaning on the maternal figure in relation to being either male or female are part of the feminist reflections begun half a century ago on the emancipation of women from the patriarchal belief that nature assigns innate characteristics to the two sexes: in this constructivist conception, biomedical technology is hailed, both by some feminists (followers of Firestone, supporters of the artificial uterus) and transhumanists, as a tool to free women from the burden of motherhood and to concretize genderless mothering (Corradi, 2021).

From this discussion, it is evident that when motherhood is separated from pregnancy and childbirth, as well as from the woman, to be instead associated to intention, the semantic claims on it can be the most varied, just as the number of perceptions, the constructions of meaning and the interpretations of the personal experiences of the subjects who take part in the procreative process can be. Corradi (2021) warns of the confusion that can be generated when pretending to separate two dimensions of motherhood, childbearing and childrearing, without distinguishing the social level from the epistemological one: making this separation on the first level means admitting that the woman who gives birth wants to give away the child or sharing the caring role with a partner or another person; supporting a separation on an epistemological level, on the other hand, questions the identity of the human person with mind and body, not the roles we have as “social agents”.

The fragmentation of the mother that generates enthusiasm among the intellectuals of the constructivist paradigm, however, generates many concerns in those who instead recognize in the female sexual identity, the only possible bodily basis for the experience of motherhood. The feminist philosopher Luisa Muraro (2016) defends the uniqueness of the relationship between mother and foetus, in which the sexual difference of every human being is constituted. According to Muraro, the mother can be replaceable, but the maternal relationship is not. In France, the philosopher Sylviane Agacinski (2019) reiterates that procreation, whether natural or artificial, needs the contribution of the two sexes, and is therefore indispensable from sexual difference. The aforementioned Canadian sociologist De Koninck (2020) points out that even if the experience of motherhood is made irrelevant, as a mere passage necessary to obtain an end, and as the man no longer needs to give a mother to his

child, the woman however, is always needed to give birth, as long as surrogacy is not replaced by ectogenesis.

How much does surrogacy devalue the experience and social role of motherhood? To what extent does it free women from the social expectations of motherhood, and how much does it consolidate the normativity of the female status of mother, making it feasible even when, due to infertility, it would not be possible to achieve it? Similarly, how much does surrogacy represent an emancipation of women and men from the family institution and the social expectations of compulsory parenthood and how much does it reaffirm the centrality of the family, albeit with new forms, as an institution on which society organises itself and for through which the individual finds recognition?

In the aforementioned study on surrogacy in Israel, Teman (2010) argues that surrogacy is functional to the pro-natalist policies of the state based on the centrality of the family: in Israel, remaining childless is a non-socially accepted choice and motherhood is historically seen as a national mission of women, therefore surrogacy is a means, controlled by the state, to create families and carry out compulsory motherhood.

Lewis (2018, pp. 3–4) argues that surrogacy in itself is potentially revolutionary but this force is nullified by the capitalist way in which it is thought and practiced today, in line with the capitalist conception of childbearing more generally: “capitalist surrogacy becomes legible as a dynamic contradiction in itself, containing latent possibilities that are highly relevant to early Reproductive Justice militants’ desire to abolish the nuclear family. When we refrain from casting it in a special realm apart from everyday reproduction, it becomes obvious that the grammar of commercial surrogacy is fundamentally premised on anti-polymaternalism. Cutting kinship into secure and sanitary sections, maintaining strict separation between participants’ life-worlds rather than bridging them, private surrogacy clinicians assure commissioning parents that their surrogate’s body will leave no trace upon its product, *their baby*”. In her recent book *Full Surrogacy Now* (2019), Lewis invites to recognize pregnancy as productive work, to overcome the presumption that children belong to those with whom they are genetically linked, to build a system of collective kinship.

The Representation Level: Public Discourse in the Media

Some scholars have dealt with how surrogacy and its protagonists are represented in the mainstream press and media news (Due & Riggs, 2010; Majumdar, 2014; Markens, 2007, 2012; Riggs & Due, 2013), TV series (Gondouin, 2012), supplier sites of these services (Lozanski & Shankar, 2019), a mix of these and other sources (Harrison, 2016), as well as in the legal (Birenbaum-Carmeli, 2007) and anthropological (Segalen, 2021) discourse. The purpose of these studies is to outline the public discourse on surrogacy by taking into consideration the meanings proposed and conveyed by several voices (discourse makers) through texts available to the

public: within which frameworks is the phenomenon framed? What are the meanings and values attributed to it, the aspects emphasized and those silenced or minimized? What is the recurring rhetoric? What is the relationship between the representation of surrogacy and existing conceptions of family, motherhood, infertility, gender relations? Altruism, commodification, and choice are the recurring themes in the following review, themes that have already appeared both at the level of subjective experiences and that of social structure. I will specifically examine the main studies that focus on the representation proposed by the mass media.

Susan Markens' (2007) book *Surrogate Motherhood and The Politics of Reproduction* is a fundamental text for understanding how surrogacy was presented in the United States between the 1980s and 1990s when the transition from traditional to gestational surrogacy occurred. Markens takes into consideration three horror stories that have marked the American debate and analyses the mainstream press for its primary role in determining the agenda setting and thus orienting policies.

The first in the late 1980s involved a long custody dispute in New Jersey between a couple of intended parents, the Sterns, of whom only the father was the child's genetic parent, and a woman, Mary Beth Whitehead, surrogate, and biological mother of Baby M, the disputed child. The mainstream press analysed by Markens framed surrogacy as baby selling: a "crass commerce", a phenomenon with economic motivations that contrasted with the dominant perception of procreation and motherhood, and that had to be stopped. The result was a State law that prohibited surrogacy.

The second horror story analysed by Markens takes place in the 1990s in California: the dispute for the custody of the child delivered by Ms. Johnson, this time gestational surrogate, for the Calverts, the intended parents. In this case, the maternal link between the pregnant woman and the foetus, emphasized in the case of Baby M, was diminished as the pregnant woman was not the biological mother, while the intended parents by virtue of their genetic link were seen as the only real parents. Surrogacy, says Markens, in this second case was no longer represented as baby selling but as a service that a stranger, motivated by her economic needs and for this reason to be doubted, carried out for a couple to be considered parents in all respects. The message asserted was that surrogacy was not to be stopped since it provided an answer to the pain of infertility; however, it had to be regulated, for example, by preventing an accurate selection of surrogates according to their motivations, and therefore adapting the laws to the advances of medical science. California, subsequently this case, adopted the most surrogacy-friendly legislative framework in the United States.

The dichotomy between good and bad surrogates established on the basis of altruistic or economic motives is also noted by Harrison. Analysing print media, television, documentary film, websites, and databases of surrogacy and egg donation agencies, and court records and other American legal documents, Harrison observes that the public discourse on surrogacy is filled with the same rhetoric of giving a gift that in the first part of this review permeated the narratives of the surrogates. In the media, surrogacy is mainly represented as a relationship of solidarity (women helping women), which is "good" as long as it is not motivated by money, but by

altruism, sacrifice, and empathy, as normative characteristics of the good mother. Like Markens, Harrison also argues that the frame of women helping women removes from the imaginary the idea that surrogacy can be a form of commodification that takes place in a context of imbalance of power between surrogate and intended parents.

In contrast, Due and Riggs (2010), who analysed the current affairs show 60 Minutes aired in 2009 in Australia, which told the story of a couple of gay men from Melbourne who had twins in India, highlight the frame of commodification. According to the authors, the surrogates are represented as “objects available for commodification by those living in the overdeveloped west” (p. 1). The objectification of the surrogate rests on the perception of the uterus as an empty space, chosen by the intended parents to give them a healthy child, and on the presumption that the absence of a genetic link with the foetus, also made evident by the diversity of race, also constitutes an absence of relationship. Pregnancy is downgraded to a “business arrangement” and the right or desire of the intended parents to have a biological child is privileged to that of the women; the latter, as the authors note, to contribute to the formation of the family of others must sacrifice their own families, as well as run the risk of not being able to have other pregnancies for themselves.

Is surrogacy represented differently when it happens in the United States and when it happens in India? This was asked by Markens who in a subsequent work analysed three media accounts from 2008 (*The New York Times* and *Newsweek*), discovering that the internationalization of the sector responds with two competing frames, exploitation/inequality versus opportunity/choice. In the wake of concern about the advent of global capitalism, surrogacy in India was presented in the American media as an opportunity to make money, offered by would-be American parents and that women in poor countries could choose to take in a context of elevated global inequality. Conversely, the compassionate attitude of surrogates who help infertile people to build a family was emphasized when presenting surrogacy in the United States, while the economic nature of their motives was downplayed. Markens concludes that supporting surrogacy is constructed by dissociating reproductive labour from commodification through the rhetoric of female altruism and family-building when the transaction takes place in the United States and is enriched with a rhetoric of empowerment and choice to justify the economic motivations of the Indian surrogates.

Gondouin (2012) has analysed two Swedish TV series and found that surrogacy is represented as a win-win economic transaction between benefactor-couples from the Global North and surrogates in poor countries who are depicted as strong women choosing freely to gestate for others: the frame of aid and giving a gift is intertwined with the economic frame. Even the aforementioned Riggs and Due in analysing the Australian mainstream press (Riggs & Due, 2013), find that intended parents in India are represented as benefactors: this frame mitigates their vulnerability, which is given by the dependence on a third woman to realize the desire for a child and the impossibility during pregnancy to affect the well-being of the foetus, kept in the womb of this woman in a far-off place. These benefactors are represented as “agentic

citizens” of the global market, who cope with their desperation for not being able to have a child by resorting to surrogacy abroad as their only and last solution.

This neoliberal framework is also confirmed by Hvidtfeldt (2016) in the analysis of two documentaries: in *Google Baby* and *Made in India*, intended parents pursue through surrogacy in India a project of liberation from the unsatisfied desire to have a child; they are represented as legitimate customers as well as legitimate parents thanks to the genetic link with the child, while the surrogates are represented as entrepreneurs of themselves.

The Representation Level: Feminism

In this last part of the literature review I will examine three publications that discuss the different approaches of feminism to the topic of surrogacy. I chose these three texts, from the wide range of publications on the subject (Bellotti, 1988; Roman, 2012; Lewis, 2016; Lieber, 1992 among others), because I believe they offer a clear contribution to the systematization of the variety and diversity of feminist positions.

Before starting, I would like to first clarify that feminism is both a theoretical perspective and a social political movement; that scientific elaboration, dissemination, and activism often coexist in the professional lives of feminist authors; that many concepts initially developed within feminist reflections have become so popular that they have become part of culture, a lens through which women and men interpret their private relationships, and values that a society must embrace in order to consider itself democratic or civil; that social phenomena affecting women are mostly studied from a perspective that adheres to this feminist “culture”, and admittedly or not to feminist theory (Browder, 2015; Young, 1999; Touraine, 2009). These dynamics are also present in the production of knowledge, popular and scientific, on surrogacy which therefore includes publications authored by women who are both academic and militant, studies that explicitly use feminist theories, texts developed starting from feminist principles that have become shared culture and values. I have not found it useful to make these distinctions in the literature review developed so far, which instead I have chosen to organize around recurring themes; one of which is feminism and that I will examine in this last part. In these paragraphs, four studies will be reported that show what the main arguments, perspectives, and representations used by feminists in the production of knowledge on surrogacy are. This review allows me to summarize the current literature to which my study can be included and which the following chapters will discuss: the contribution of feminism to the public discourse on surrogacy and to the debate on its regulatory or prohibition policies in the United States, Mexico, and Italy. In reconstructing the different positions that divide feminism in these countries and the evolution of mobilization, the recurring themes in the literature examined in the first two levels will also return, bearing witness to a permeability between the level of scientific production and that of public discourse, as well as activism.

The first text I propose as a starting point for trying to sort out the variety of feminist perspectives on surrogacy, and to classify the different positions in relation to some of the trends of feminism, is the book by Dion Farquhar (1996). In *The Other Machine*, Farquhar identifies the main perspectives on reproductive technologies in the American and Anglo-American debate: the liberal perspective, present in popular and medical discourse, represents reproductive technologies as tools that allow desperate infertile couples to have a child; the fundamentalist one, in which the secular, religious, and feminist soul coexist, represents reproductive technologies, respectively, as a commercialization of life, a serious danger for the traditional family, and a source of oppression of women.

Farquhar makes an initial macro distinction between liberal equality feminism and radical feminism: the first denies the existence of characteristics inscribed in *sexual* difference and prefers to speak of similarity between *genders* by assuming masculinist standards as neutral, standards to which women are invited to approach in order to emancipate themselves; the second, on the other hand, exalts female biological differences as superior to male ones and proposes a redemption of women, and which, recognizing their oppressed status, can fight to create a worldview centred on the nature of women.

Farquhar then dwells on radical feminism and identifies two different positions in it: the anti-natalist position which “extols the virtues of refusing maternity and its corollary mandate, altruism, on the grounds of women’s selfinterest” (Farquhar, 1996, p. 100); and the pro-natalist one that idealizes the experience of motherhood (natural, universal, and ahistorical) as an experience in which the woman realizes herself and expresses everything that is feminine, in harmony with nature. Both eco-feminists and feminists of difference belong to radical feminism and both oppose reproductive technologies since they see them as harmful to the health and integrity of women, tools of patriarchy to expropriate the woman of control over her body and her reproductive capacity, which according to these feminists has always been envied and coveted by males: women are removed from nature, the source of femininity, to be transformed by technology into machines. The spokesperson for this position is the Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINNRAGE) founded among others by Gena Corea, Renate Klein, and Janice Raymond.

According to Farquhar, both the anti-natalist and pro-natalist positions assimilate motherhood to pregnancy and understand it as “overdetermined”, be it “unequivocally bad” (or a desire induced by false consciousness, a source of oppression, and imposed sacrifice) or “unequivocally good” (emotionally satisfying, source of special power). Anti-natalists reject reproductive technologies (but not technologies designed to prevent anti-conceptual and abortive maternity) because they transfer “the control of women from individual men in marriage to “technodocs” within institutional science and technology”. The pro-natalists, on the other hand, “oppose technological intervention into reproduction on the grounds that it fragments unitary maternity, marginalizes “women’s knowledge”, and interferes in natural maternal processes” (Farquhar, 1996, p. 104). The radical feminist discourse and that of religious fundamentalism or pro-life meet according to Farquhar as both contribute

to the conception of female identity as universally maternal: “aborting women are configured in the same way as infertile women; they share the (male) cultural status of absent nurturant maternity” (p. 116).

In the chapter dedicated to surrogacy, Farquhar traces the main opposition arguments invoked by feminists between the 1980s and the early 1990s: surrogacy commercialises motherhood in a class-based way by allowing some more disadvantaged women to become breeders for others who are more privileged; surrogacy violates the natural bond between mother and child; surrogacy re-proposes the model of exploitation of women in brothels with the difference that the sale of the reproductive function is not viewed with prejudice since it does not involve sexual intercourse; surrogacy reinforces the male claim to paternity and weakens the female claim to motherhood.

The second text I want to quote is an article by Beth Rushing and Suzanne Onorato (2003). The authors describe the different positions on reproductive technologies in three main feminist currents, namely the liberal, radical, and socialist, and link these positions to the theories adopted by each stream to explain the causes of female oppression and the function of procreation. Liberal feminists focus on women’s free procreative choice regardless of the social context and would like to ensure equal access to reproductive technologies for all women. This position derives from the fact that, as Farquhar has already pointed out, liberals identify the origin of inequality in the perpetuation of fixed gender roles, which instead should be reformed through the integration of women into the social mainstream. A reasoning similar to that on prostitution is proposed on surrogacy: the woman must be completely free to choose if and how to use her body (even on the market).

Radical feminists, both those who see motherhood as an obstacle to emancipation and those who celebrate female reproductive capacity, point out that these technologies are a danger of oppression because they are developed in a system dominated by men and hatred of women. The goal of the radicals is the subversion of the patriarchal system of oppression of women which is also maintained through male control over procreation: technologies could also help in this process of liberation but instead they are an obstacle since they are designed according to the patriarchal logic of separating the woman from the procreative experience and from the child. On surrogacy, radical feminists think it is a way to make some women into baby machines and others to make them irrelevant.

Socialist feminists trace the causes of female oppression, not in biological difference, nor even solely in male class advantage, but in the way of organizing the social relations of the production of commodities and the (re)production of people: their goal is to transform the distribution of the division of labour in both spheres by basing the new system on the sharing of responsibilities between men and women. Socialists argue that reproductive technologies maintain the state of female oppression because they contribute to the alienation of women from their reproductive work, are used capitalistically for profit, and are developed by men. Socialists oppose surrogacy as a form of commodification of women and children: they see in the expression surrogate uterus, the signs of the alienation that this practice entails.

The third text presented for its contribution to the systematization of the feminist discourse on surrogacy is an article written by the sociologist of law Vanessa Munro (2001). Munro traces the following main arguments in support of surrogacy, which she too agrees in attributing mostly to the liberal current of feminism. The first is the defence of contractual autonomy: the autonomy of women in deciding to become a surrogate must be defended and any prohibition is seen as an attack on female self-determination; on the other hand, there is the contractual autonomy of those who want to enter into a contract with the surrogate and the prohibition is seen as a violation of procreative freedom. Women must be free to enter the market as men have always done: selling their procreative services allows them to pursue paths of empowerment. Finally, there is the argument of the child as the first beneficiary of surrogacy, as a greatly desired child. On the other hand, the main arguments used by the opposing front mostly focus on the consequences on the surrogate: surrogacy involves the exploitation of the poorest or most vulnerable women; moreover, it involves an alienation that is not comparable to other forms of manual labour as it implies the emotional experience of the woman as a woman (Pateman, 1988).

All three texts criticize the feminist perspective on surrogacy since it helps to create a polarized vision not only of the practice itself but more broadly of the categories dear to feminism itself (and to sociological criticism): on the figure of the mother, who Farquar stresses cannot be read adequately with the use of the binaries of good and bad or of the victim and monster; on procreation, which Rushing and Onorato recall as being both a private individual issue and a social and public one. Munro, on the other hand, blames feminism, both for and against, for focusing only on ethical issues and the benefits or dangers to the individuals involved in surrogacy, forgetting to consider the social implications that surrogacy has for all pregnant women (in particular contributing to the dichotomous ideology of the maternal–foetal relationship in which the woman and the foetus are understood as two distinct subjects or “patients” with conflicting interests). According to Munro, a feminist debate placed in this way not attentive to the wider community of women, falls short of the vocation of the feminist theory itself, summarized in the words of Alison Jaggar as follows: “first, to articulate moral critiques of action and practices that perpetuate women’s subordination; second, to prescribe morally justifiable ways of revisiting such actions and practices; and third, to envision morally desirable alternatives that will promote women’s emancipation” (Jaggar, 1992, p. 361).

Finally, I would like to recall a recent work published by Emma Maniere (2017) in the *Babies for Sale* anthology edited by Miranda Davies, as it provides a very clear and useful classification of the two main approaches (abolitionist and reformist) to the policies proposed by feminist scholars. I will adopt this classification in the analysis of feminist positions in the three case studies. The abolitionists, more numerous in Baby M’s time than now, invoke a total ban of a practice that commodifies the woman’s body and children, reconfirms the class and gender hierarchies, and subjects procreation to the logic of the market and alienated labour. The reformists, on the other hand, propose a regulation that can contain ethical pitfalls and protect the parties better: usually based on the testimonies collected in the field (of which abolitionist analyses are lacking), they question the agency,

autonomy and choice in the decision of women to become a surrogate, bearing in mind the daily living conditions of these women (for example, the working conditions and the risks to which they are subjected, for which surrogacy represents the lesser of the two evils). The defect of the reform proposals is, according to Maniere, that of not proposing concrete and particular policy solutions. Maniere identifies a third approach, less common among feminist scholars: the libertarian one, supported by those who consider the current rules sufficient and trust the free market to facilitate reproductive choice. The author notes that there are many common concerns between abolitionists and reformists, most notably the concern that surrogacy involves the exploitation of the woman and an inversion of her agency. Maniere invites both majority factions to consider the issue of the best interest of the children born via surrogacy, currently overshadowed by a priority concern for the condition of women.

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Chapter 5

Surrogacy in the United States: The Horse Is Out of the Barn



The Origins of Surrogacy

The United States are the pioneers and leaders of the international surrogacy market. The first surrogacy agencies (when traditional surrogacy was practiced) opened in the late 1970s and by the mid-1980s, there were around 20 agencies all over the country (Klein, 2017). The United States are now the first destination for reproductive tourism of intended parents from abroad, as well as a country in which babies generated through surrogacy are imported by American citizens who choose to shop for surrogacy services abroad in cheaper markets (Jacobson, 2020). Moreover, American clinics and agencies do not operate only within domestic borders but also abroad.

The official number of babies born through surrogacy in the United States has not been collected and neither has any demographic data on surrogates or intended parents been made available (Jacobson, 2018). However, as already reported in Chap. 3, the National Summary Report on Assisted Reproductive Technology, elaborated by the Centers for Disease Control and Prevention, American Society for Reproductive Medicine, and the Society for Assisted Reproductive Technology reported the following information: the number of transfers for ART cycles using gestational carriers more than doubled, from 2,251 in 2006 to 4,725 in 2015. The percentage of transfers using a gestational carrier among all the transfers also increased, from about 2% in 2006 to more than 3% in 2015 (ASRM, 2015, p. 53). According to the PEW institute, 33% of American adults reported that they or someone they know has used some type of fertility treatment in order to try to have a baby.¹

Surrogacy in the United States is not regulated by Federal law. However, in 2018 the Uniform Law Commission (ULC) proposed an updated Uniform Parentage Act,

¹<http://www.pewresearch.org/fact-tank/2018/07/17/a-third-of-u-s-adults-say-they-have-used-fertility-treatments-or-know-someone-who-has/>

which would provide States with model legislation for the expansion of access to surrogacy.² In 2017, Washington DC stopped the ban and in New York State, the 2015 Holyman & Paulin Child-Parent Security Act—which legalizes surrogacy contracts between intended parents and surrogate—after years of increasing debate was included in the Governor’s Budget in Spring 2020 during the COVID-19 crisis.

Major feminist resistance started in the 1980s when the first clinics were established and a peak of controversy arose around the popular case of Baby M, who was contended by her surrogate mother and intended parents (Klein, 2017): in 1986, Mary Beth Whitehead, contracted as a surrogate by William and Betsy Stern, gave birth to baby Sara, named Melissa by the couple. The birth mother was also the genetic mother of Sara/Melissa (traditional surrogacy), whose biological father was Mr. Stern. She could not bear the loss, asked to have her back and did not return. The police took the baby away, the New Jersey Court ruled termination of Whitehead’s parental rights and the Sterns received custody. Feminists and other birth mothers who had the courage to speak up about their sufferance mobilized to support Whitehead and this contributed to the ban of surrogacy in ten States. In 1988, the New Jersey Supreme Court ruled that commercial surrogacy was illegal, returned parental rights to Whitehead but custody of Baby M was left with the biological father (Klein, 2017).

Further development of assisted reproductive technology and the spread of in vitro fertilization (IVF) enabled the diffusion of gestational surrogacy in the 1990s, which progressively replaced traditional surrogacy as a less problematic (from legal and ethical perspective) option: with the removal of the genetic link between the surrogate and the baby, another Baby M case would have a low probability of happening again, the surrogate was transformed in the public eye as a simple carrier with no rights or connection over the child. With these new conditions, the surrogacy industry started to boom (Jacobson, 2016).

What is the status of the debate in the United States today? Which role do today women’s movement and feminism have in this debate? Who are mobilizing against and why? Who are in favour of surrogacy and why? Which types of initiatives do they promote and with whom do they forge alliances? Most of all, is surrogacy today a feminist cause in the United States? These are the questions leading the research journey I am going to describe in the next paragraphs.

The Research Journey: From Texas to Nation-Wide Debate

During the first part of my 3-year research project I was based at the University of Texas in Austin, Department of Sociology, which was a partner of the WoMoGeS project. I thought I was in a State that would be particularly interesting for a study on

²<https://ifstudies.org/blog/a-new-legal-effort-would-expand-the-practice-of-surrogacy-in-the-united-states>

surrogacy politics and feminist mobilization. Why? First of all most of the studies on American surrogacy are undertaken in California, known abroad as a surrogacy-friendly destination for all want-to-be parents regardless of marital status and sexual orientation. Fewer studies have been focused on Texas, which is another State where surrogacy is legal, although with some more restrictions than California. In Texas, surrogacy has been regulated by law since 2003 with the introduction of Bill HB 729 in the State Family Code. The law prohibits traditional surrogacy and regulates surrogacy contracts between married couples and surrogates, with either the former or latter having to have resided in Texas for 90 days preceding the date the proceeding is commenced. The reproduction politics in Texas are remarkably conservative where pro-life groups have a significant influence on the State Policy and feminists are engaged in pro-choice campaigns. Texas is the State with the most restrictive laws on abortion, one of the highest maternal death rates and the highest levels of uninsured people (Baeva et al., 2018). In light of these premises I was expecting to find a certain level of opposition to surrogacy, at least within pro-life sectors, if not within feminists. In fact, as I will explain later, my hypothesis has been proved to be wrong.

First of all, I looked into the local press to understand the collocation and themes of surrogacy in the Texan public debate. I was also looking for activists and other discourse players to reach as many interviewees as possible in the following stage of the research. I performed keyword searches (“surrogacy” and “surrogate mother”) in *The Dallas Morning News*, a major newspaper in Texas, through the EBSCO databases. I found only 9 relevant articles from 2006 to 2018. On the *Austin American Statesman* (available on Nexis Uni database), I found a total of 18 articles from 1994 to 2018. On these 27 items, 1 is not about surrogacy but a case of a women forced to give birth after being raped by her step-father (in this article the term “surrogate mother” is referred to the victim), 3 are about cattle insemination and cloning (the term “surrogate mothers” is referred to cows), and in 2 more articles “surrogate mother” is used for grandmothers and teachers who take care of children on behalf of their real mothers. Of the remaining articles, in 7 surrogacy is only mentioned, while the focus of article is different: e.g. eggs donor, uterus transplant, information technology company policies for maternity leave, announcement of gay cruise where surrogacy is one of the topics for discussion, etc. I coded articles manually around the following fields: type of sources, country of the story, description of surrogacy, description of surrogate, description of baby, and description of intended parents.

From this task, I realized that surrogacy is not an issue of debate in Texas, and that women activists are not visible sources in press coverage. Articles tend to describe the surrogacy processes, with a focus on the medical and economic aspects and industry arrangements, personal stories, and extraordinary cases (e.g. fraud, woman gives birth to granddaughter; surrogate child killed by his dad; woman who used sperm of her dead son to have a baby through surrogacy). The sources tend to be clinics, brokers, intended parents and surrogates, and experts (lawyers, doctors, and academics); politicians and activists do not appear as sources: political aspects, legislative debate, and controversial positions in the civil society seem to be out of

the radar for the Texas press. Facing these results, I decided to carry out a more thorough investigation to ascertain whether surrogacy might have been a topic of public debate prior and after the modification of the Texas Family Code (as an application of the Uniform Parentage federal Act) with the introduction in 2003 of the Bill HB 729 which regulates surrogacy contracts. I searched for the following keywords in Nexis Uni database (news contents) in the timeframe 1st Jan 2002 to 31st Dec 2003: “parentage act” and “Texas”; “family code” and “Texas” “HB 729”. I found zero articles and I came to the conclusion that surrogacy legalization in Texas has never been an issue of public debate.

However, I discovered that while carrying out this search, two proposals for the improvement in State surrogacy regulation have been advanced by two women: one is a policy analysis drafted by feminist scholar Valerie Hudson, which I will not present in this chapter but in Chap. 9, as an example of regulatory approach that aims to discourage the use of surrogacy, rather than encourage it. The other is a public call launched by former surrogate Stephanie Levesque, which I will discuss later on in this chapter when dealing with the intertwining of surrogacy with abortion in the frame of women’s autonomy.

Given that the press revealed to be an unhelpful starting point for identifying and selecting interviewees, and given that the preliminary findings were suggesting that surrogacy is not a topic of mobilization for women’s groups in Texas, I searched for possible players in the surrogacy discourse among the actors involved in the broader reproductive health and rights debate. In general, I obtained a relatively low response despite the reiteration of invitations to participate, and I also faced a few explicit rejections. I conducted 8 interviews with a feminist scholar, a representative of an infertile people association, a journalist who covered a story on surrogacy, a pro-life activist, a pro-choice activist, an operator of a family planning organization, and an anti-trafficking operator. Three of these interviewees showed to have no or very scarce knowledge of surrogacy and their organizations have never worked on the topic. The unexpected finding emerging from the press analysis and the low response in the recruitment phase led me to suppose that surrogacy is not an issue of political debate and neither an issue of feminist mobilization and policy making in Texas. Even the Stop Surrogacy Now campaign is very little known among research participants in Texas and the campaign’s coordinator confirmed that there is little or no participation from women’s organizations from the State. Most of the effort put in place by Texan women’s groups are directed to advancing the pro-choice discourse and improving women’s access to abortion, contraception, sexual and maternal health services across the State. Women in pro-life and pro-family organizations are focused, on the contrary, on making abortion less accessible and ultimately outlawing it. Surrogacy is seen, both by pro-choice and pro-life women, as a marginal issue compared to the emergency of abortion and low access to reproductive/maternal care.

Having reached such conclusions, I decided to turn my attention from Texas to understand the surrogacy debate at a National level. I looked into two main nationwide newspapers: in the *New York Times*, I found only 13 relevant articles published in 2017 and in the *Washington Post*, I found 8 items. 6 of 21 articles were focused on

the case of Senator Frank: Frank, described as pro-life and a supporter of anti-abortion policies, resigned because of accusations of having asked two of his subordinates to be surrogates for him. Another article was about the new pro-surrogacy legislation enacted in Washington DC; 1 was about American gay parents trapped in a legal limbo in Mexico after the state of Tabasco outlawed surrogacy contracts for foreigners; 1 was a love letter from an intended mother to an imaginative surrogate; 3 were about a TV series touching the topic of surrogacy with commentaries contextualized in India and the United States, and in other articles surrogacy was just mentioned as a way to have children (such as in a reportage reassuring on the adverse effects of in vitro fertilization (IVF) on children, on information technology (IT) companies parental policies, paternity leave). The sources cited in these articles are intended parents, the senator Frank, a gay Senator in New York, academics, fertility industry, and two women activists (the founder of Stop Surrogacy Now campaign and the leader feminist NGOs in pro-regulation discourse in Mexico, which we will encounter again in the next chapter).

As in the Texas case, at the national level too I noticed a certain level of resistance in participating in my study: rejections, no replies, and procrastination of appointments hindered any data collection. I interacted with 10 interviewees: two protagonists of the abolitionist campaign, two representatives of the regulatory front, a representative of anti-trafficking organization, and one of a women health organization, a pro-life author and a pro-family activist, an activist in the movement of donor-conceived children, and a psychologist working with intended parents and surrogates. Along with the interview scripts, I also included in the analysis an additional 4 texts, including a Stop Surrogacy Now statement, a Surrogacy 360 website presentation, 1 op-eds published by a feminist thinker, and a letter by an anti-trafficking organization.

Surrogacy in the Press: Empowered Surrogates, Needy Parents, and Invisible Children

The analysis of the press coverage I conducted suggests that in the mainstream press, in both the Texas and national newspapers, surrogacy tends to be portrayed as one of the available ways to have babies, a journey to parenthood, a voluntary activity for surrogates (they “wish” or “agree” to become surrogates), as well as altruistic, emotionally, and ethically rewarding, as a technological process that enables heterosexual and same-sex couples and infertile women to accomplish their desire of building families, a process with an emotional and financial load, but also as a booming business with some ethical problems. Surrogacy is described as womb renting, exploitation, and an unhealthy practice only in one quote by the Stop Surrogacy Now leader.

Surrogates in the press are described as American women who sacrifice their bodies for others, strong and healthy to be able to face multiple pregnancies and

medical treatments, carefully selected by agencies on the basis of their psychological and physical well-being; they tend to be portrayed as family women, stable in their family life, and most of all they come across as free agents of choice: they decide independently to become surrogates. In contrast, in articles talking about surrogacy in Asia and Mexico surrogates are described as poor and vulnerable. Intended parents are portrayed as couples (heterosexuals or homosexuals) and as women unable to carry out a pregnancy (because of problems in their reproductive system) and with a strong desire and determination to have children to the extent of investing financial means and engaging in the whole process including being present during pregnancy and at the birth. They are also described as victims of restrictive laws or as “desperate” due to their infertility.

The child remains in the background in all the analysed articles. When the child is mentioned, it is described during the pregnancy (through sonogram) and at birth: it is healthy, cute, and adorable, it is the biological child of the intended parents. The relationship between the parents and the surrogates receives more attention than the maternal–foetus relationship, which is transformed into an endeavour, a performance of the surrogate who does her job well, but she does not become too attached to the foetus since it does not belong to her.

The Main Actors of the American Civil Society in the Surrogacy Debate

Internationally, two main fronts seem to come forward in the surrogacy discourse and policy making (Maniere, 2017). This picture applies also to the United States: there is an abolitionist front, which sees surrogacy as a violation of human rights and commodification of women and children, who are deprived of the natural maternal–foetal bond. On the other hand, there is the so-called regulatory or reformist front which sees surrogacy as an opportunity to achieve the individual desire of having a baby and at the same time to participate in others’ reproduction process, an opportunity that should be guaranteed in the framework of reproductive freedom/rights, a possibility that should be regulated to enable health, and rights protection for all the subjects involved in surrogacy arrangements. In the reformist front, there are those in favour of surrogacy, as an opportunity for family formation and reproductive work for women, and those who are not in favour of surrogacy but yet adopt a pragmatic approach and disagree with abolitionist initiatives.

During my field-work, I identified the following leaders of the surrogacy expert debate and representatives of these two main approaches to surrogacy in the United States: the leader in the prohibitionist front is the Stop Surrogacy Now campaign, while the main voices in the regulatory front are the Center for Genetics and Society (CGS), which is working in partnership with Pro-Choice Alliance for Responsible Research (PCARR) and Our Bodies Ourselves (OBOS). These are not the only organizations working on the topic, but just the ones I identified as significant

reference points in a study on surrogacy politics and mobilization and the ones I decided to focus on more closely.

On the abolitionist front, it is also worth mentioning the Coalition for Anti Trafficking of Women (CATW), which frames surrogacy as a form of reproductive trafficking of women. The organization presented a petition to convince Congresswoman Paulin to stop the bill, and harshly criticized the decision of Governor Andrew Cuomo who legalized commercial surrogacy in New York, when during the COVID-19 pandemic the Kiev case was showing to the entire world “the horrors of commercial surrogacy” and by ignoring testimonies and reports on the harms of surrogacy.³

On the regulatory front, another active organization is the Center for Reproductive Rights (CRR), which however I could interact with only after completion of my work in the United States. CRR developed in consultation with a variety of professions, including social researchers, advocates, and attorneys, as well as surrogates, human rights-based guiding principles on compensated gestational surrogacy, aimed at providing a resource to lawmakers in developing legislation to legalize and regulate gestational surrogacy. CRR also engages in advocacy at a global level: for example, it recently submitted an “Expression of concern” to the UN Special Rapporteur on the Sale and Sexual Exploitation of Children written jointly with SAMA and GIRE, which are the main feminist NGOs engaged in surrogacy advocacy, respectively, in India and in Mexico. Their concern is that “framing the practice of compensated surrogacy as sale of children fails to acknowledge the reproductive labour of persons acting as surrogates and implies that human rights adhere before birth, thereby undermining the current human rights framework”. This frame, according to CRR and partners, potentially criminalizes the practice and “mischaracterizes and misapprehends the motivations of intended parents and the women who provide gestational surrogacy services” (CRR et al., 2019, pp. 3–4).

The Stop Surrogacy Now campaign was founded in California in 2015 as an initiative of Jennifer Lahl, founder and president of the Center for Bioethics and Culture Network (CBCN), with 25 years of experience as a paediatric critical care nurse, a hospital administrator, and a senior-level nursing manager. The initial signers included about 100 individuals and 16 organizations from 18 countries who “shared concern for women and children who are exploited through surrogacy contract pregnancy arrangements” and believe that “surrogacy should be stopped because it is an abuse of women’s and children’s human rights”, and “is indistinguishable from the buying and selling of children”.⁴ Today the campaign represents over 20,000 people from all around the world and 22 NGOs. Stop Surrogacy Now’s main goal is to ban surrogacy globally and this is pursued through an educational approach: to raise awareness on the unethical aspects and health risks of surrogacy. This campaign is not a feminist campaign. It tends to be portrayed as conservative,

³<https://medium.com/at-the-edge-of-the-margins/has-new-york-put-women-up-for-sale-503c67764efc>

⁴<https://www.stopsurrogacynow.com/>

although endorsers encompass a variety of voices including feminists, pro-lifers, bioethicists, human rights activists, surrogates, and also gay men and women who disagree with the LGBTQ movement endorsement of surrogacy. Recently the campaign has expanded its networking to the natural childbirth movement in light of the common interest to value the vital connection between mother and child during pregnancy. A more recent strategy of Stop Surrogacy Now is to grow by adding more NGOs than individual signatories, since NGOs can be active as an organized group in the global debate on surrogacy. Stop Surrogacy Now is also a catalyser for the mobilization of former surrogates, who are making their voice heard about the wrongdoings of the surrogacy industry, the risks and sufferance in their experiences in the field.

The campaign influences policy makers in the United States and internationally through public conferences around the world, along with the production and screening of documentaries such as *Eggsploitation* (2009) and *BigFertility* (2018), books, press releases, and the divulgation of scientific research, monitoring of the changes in legislations, petitions to stop legalization, and networking with NGOs and activists in different countries. The campaign has been successful in mobilizing notorious feminists in opposition towards the legalization of surrogacy in the state of New York, and last year was successful in pulling votes away, so Governor Cuomo was never given the opportunity to pass the Bill. As mentioned earlier, the legalization was achieved in April 2020 through the expedited inclusion of the Bill in the Governor's Budget during the COVID-19 emergency (therefore with no debate). Recently Stop Surrogacy Now helped draft and provide expert testimony for a Bill in South Dakota that would prohibit commercial surrogacy (but allow altruistic surrogacy). The campaign faces an uphill battle on the legislation and according to her leader has less influence and financial capacity than those who advocate surrogacy legalization, such as the LGBTQ community.

By networking with NGOs in other countries, the campaign contributes to raise expert knowledge on surrogacy and strengthen the influence of these groups in policy making. Its popularity seems to be higher in Europe—where it is also a trigger for the mobilization of women groups at a country level, for example, in Sweden, Spain, Italy, and France—than in the United States where it was created. It also tries to influence supranational policy makers by having the campaign's leader at side events organized by NGOs at UN meetings such as the New York Commission on the Status of Women (CSW) in 2018 and the 40th Geneva UN Human Rights Council.

CGS is a non-profit organization based in California, established in 2001, and engaged in promoting the responsible use and governance of genetics and assisted reproductive technology. CGS cannot be considered an expression of the American women's movement, although it collaborates with a few feminist groups. CGS has elaborated a set of recommended principles and standards for international commercial surrogacy: it addresses the rights of subjects involved in surrogacy arrangements

(surrogates, intended parents, egg providers, and children) and requirements for clinics.

These recommendations are available on the Surrogacy360 website,⁵ which is an informative project conceived by CGS together with OBOS, but now run by CGS and supported by international funds such as from the Open Society. OBOS is a feminist organization founded in Boston in 1969 and since then has provided evidence-based information to the public on pregnancy, birth, and infertility, all around the world and advocated for LGBTQ rights; in the last 20 years, OBOS has also been actively engaged in emerging issues in assisted reproduction, genetics, and public health, and paid particular attention to the possible risks to women's health and their potential impact on future generations of children. The website aims to provide intended parents with information about the health questions, human rights considerations, red flags, and ethical challenges that cross-borders commercial surrogacy poses. For example, aspiring parents are warned that between them and surrogates "there is usually an unequal power relationship [. . .] due to disparities in the economic position and in access to social and other resources" and that "emphasizing altruism often serves to downplay the reality that surrogates in commercial arrangements are engaging in work and must be afforded just and fair conditions".

CGS also partners with PCARR (which is a coalition of reproductive rights and justice advocates, bioethicists, academics, and community leaders working to promote social justice in biomedical research from a women's rights perspective, who are strongly committed to abortion rights but have diverse positions on surrogacy) on the Assisted Reproductive Technologies (ART) Working Group, which is composed of 150 scholars and activists mostly in the United States. CGS monitors, analyses, and provides State legislators with inputs on changes in the language used in legislations, and it influences policy makers by writing letters to State legislators with joint initiatives with its partners PCARR-ART Working Group. The goal is to raise issues especially around surrogates' rights that need to be taken into consideration while drafting or discussing Bills. To do so, CGS and partners provide policy makers with inputs on how to change the language of their Bills.

CGS works also internationally: it recently encouraged partners to comment on legislations in Canada and United Kingdom; in 2018, it participated in a conversation organized by the *British Journal of Reproductive Health Matters* where the Center brought the reproductive justice point of view and instances on the safeguard for surrogates; in 2014, it organized with the International Institute of Social Studies in the Hague the track of the meeting on the International Forum on Intercountry Adoption & Global Surrogacy (ICA Forum).

⁵<https://surrogacy360.org/considering-surrogacy/principles-and-standards/>

Framing the Problems and the Solutions

Whereas the position of the abolitionists is clear-cut, individuals and groups included in the reformist front are not necessarily in favour of surrogacy but yet adopt a pragmatic approach. “The horse is out of the barn” is a recurrent statement among those who embrace a reformist approach. They reject the abolitionist solution in all matters of private life (family, sexuality, etc.) and privilege a liberal approach that guarantees reproductive rights to infertile and same-sex couples. Among reformists, there are also more radical voices that defend the legalization of surrogacy as a matter of equal access to reproductive technology and right to family formation. The fundamental difference between those who advocate for the prohibition of surrogacy and those who believe that surrogacy should be regulated is that while the former looks at surrogacy as wrong and unethical *per se*, the latter aims to prevent unethical practices in the way surrogacy is performed.

Each front identifies different problems, which I classify as diagnostic frames, and suggests different solutions or prognostic frames (Benford & Snow, 2000). Some frames are shared by both: for instance, it emerges that the two fronts look at surrogacy as a consumeristic practice in which the health of women (surrogates and egg donors) and children as well as the freedom and dignity of surrogates are at risk due to the unregulated and unethical legal and medical procedures put in place by clinics and agencies. In addition, both fronts feel the need for more research, follow-up studies on the well-being of surrogates and children, as well as more information for the wider public and people who consider to step into the practice.

However, while according to reformists there are chances to improve regulations and control of surrogacy actors, for abolitionists the whole industry should be shut down by law. Another difference is that while in reformist discourse intended parents are portrayed as victims of infertility and of unregulated business that hinder their access to reproductive technology (e.g. recurrent use of the passive form of the verb “to deny” such as they are denied travel documentation, information, etc.), in abolitionist discourse, the primary victims are the women and children.

The fundamental distance between the two discourses is the different status given to the maternal–foetus bond: in abolitionist discourse, the surrogate is represented as the mother insofar pregnancy and motherhood belong naturally to the same person; the deprivation of the bond that is established during the pregnancy is a harm that in any surrogacy practices, no matter how well they are regulated, remains non-avoidable. This aspect marks the bottom-line for any attempt to reconcile the visions of the two fronts.

Diagnostic frames applied by abolitionists:

- surrogacy is a system of exploitation (unethical, profit-driven, unregulated, and unethical industry) of vulnerable women, it implies a reduction of women’s autonomy and freedom during pregnancy as in slavery;
- surrogacy is a form of commodification of women (disposable) and children (baby-buy), and a human rights violation;
- surrogacy is a product of liberalism and capitalism applied to life;

- surrogacy implies hazards for women and children's health and lack of information;
- surrogacy implies deprivation of mother-foetal bond;
- in surrogacy there is an inequality of the power between the surrogates and intended parents;
- surrogacy is a result of gender inequality and patriarchy;
- surrogacy is supported by a spreading culture of the "right to have babies" and by a conservative pro-family mindset.

Prognostic frames applied by abolitionists:

- surrogacy should be outlawed through national and international laws;
- there is need for cultural change and for more diffusion of information about the details of surrogacy, medical literature and surrogacy cases that have gone wrong;
- follow-up studies on surrogates and children should be conducted by clinics and independent researchers;
- social movement of surrogate children will come forward in the future and will show the wrongdoing of surrogacy on children;
- restrictive regulations should be promoted to discourage the practice.

Diagnostic frames applied by reformists:

- in surrogacy, women's health is at risks because of medical and industry practices, such as multiple embryos implantation, hindered contacts between the surrogates and intended parents, denied disclosure of information on the risks and rights;
- intended parents and surrogates are not adequately informed on the health risks and rights;
- in developing countries, surrogates' freedom is restricted, they are exploited because vulnerable;
- world-wide heterogeneous regulations make intended parents, surrogates, and children's rights less achievable and more uncertain;
- surrogacy is the result of liberalism and consumerism;
- surrogacy is hostage of a polarized debate.

Prognostic frames applied by reformists:

- medical regulations, such as the prohibition of multiple embryo implantation and mandatory testing for all gamete donors, should be introduced;
- for starting surrogacy agencies stricter requirements should be required;
- mechanism of supervision and control on surrogacy industry actors should be created;
- legal and medical counselling for intended parents and surrogates and mechanisms to ensure fully informed and free consent (contracts in surrogate's mother language, for example) should be guaranteed;
- more research on health and well-being of children and surrogates should be conducted.

Low Engagement of American Women's Movement: The Problem with Autonomy

Surrogacy is still marginal in the American women's movement, but in recent years the attempts to legalize commercial surrogacy in New York have increased feminists' concern and triggered their engagement. Although sometimes American feminists make their voice heard with publications, petitions, and speeches, pro or against State legalizations, surrogacy has not reached neither the status of cause nor the status of working issue as, for example, abortion, violence against women, sexual harassment, breast cancer, etc. (Lesley, 1995; Ruzek & Becker, 1999). On the other hand, surrogacy has become the core issue of the ad-hoc transnational campaign Stop Surrogacy Now, which, as already mentioned, cannot be considered fully an expression of the women's movement, although it is predominantly endorsed by women. If we apply the definition of women's movement given by Mazur and colleagues already mentioned in Chap. 2, the campaign is not a "collective action by women organized explicitly as women presenting claims in public life based on gendered identities as women" (Mazur et al., 2016, p. 657). Although some of the initial signatories of the campaign are feminists, the campaign cannot be regarded an expression of the feminist movement insofar the campaign goals are not those of changing "the status of women and challenge women's subordination to men and the gender hierarchies that sustain it" (Mazur et al., 2016, p. 653). As already clarified earlier, the composition of the campaign's supporters is relatively heterogeneous.

Although main feminist organizations do not have any public position on the topic, individual members publicly may express opinions and sign petitions. This applies to National Organization for Women (NOW), one of the key feminist organizations in the country: at a central level, the organization seems not to come forward with a unitary position but one of former NOW board of directors, Kathleen Sloan, publicly condemned the practice as exploitative and dangerous for women and children with the following strong words: "commercial surrogacy is a predatory, profit-driven industry that preys on marginalized women, creating a breeder class for the wealthy, be they heterosexual or homosexual. It subjects women to life-threatening health risks to produce custom-made children and children being intentionally severed from genetic and biological sources of identity—human rights be damned. In essence, it is the ultimate manifestation of the American neoliberal project of capitalist commodification of human life to create profit and fulfil the narcissistic desires of an entitled elite".⁶ Moreover, NOW New York chapter endorsed the Holyman & Paulin's Bill, by stating that existing law, "which bans enforceable surrogacy arrangements, is premised upon old medical technology—when the surrogate was the genetic mother of the child" and is no longer appropriate since "now people are building their families through the common and widely

⁶The quote is reported from: <https://www.thepublicdiscourse.com/2017/04/19109/>

accepted practice of gestational surrogacy, where the carrier has no genetic connection to the child".⁷

Another example is the National Women Health Network (NWHN): the organization today does not engage in surrogacy activism, neither pro nor against, and does not agree with the abolitionist demand because it endangers the autonomy of women. However, back in the 1990s, NWHN publicly described surrogacy as a form of commodification of women and in the early 2000s, one of organization's representatives spoke about the market forces and the dangers for women's health of surrogacy and egg retrieval. However, NWHN does not agree with the abolitionist demand because it endangers the autonomy of women.

Pro-life women and pro-life obstetricians do not engage in the issue and/or rejected to participate in the study. Only one family activist and one Catholic author participated in the study and expressed their critical stance against surrogacy, although they are not engaged in any ad-hoc projects.

Some organizations complain about the lack of human and economic resources as a cause for their disengagement from surrogacy activism and their lack of expertise on the issue. However, I think that such a low engagement deserves a deeper reflection than one of lack of resources. The reflection that I will attempt in the next paragraphs will integrate knowledge on the representation of surrogacy and its social acceptance in the United States, the theoretical framework of feminist mobilizations on reproductive rights, and ideological conflicts with pro-life groups.

First of all, it is worth recalling from the introductory paragraphs of this chapter that the public debate on surrogacy in the United States, as well as main feminist resistance and mobilization, started back in the 1980s when the first clinics were opened and a peak of controversy inflamed around the Baby M case. However, with the progressive shift from surrogate motherhood to gestational surrogacy in the 1990s, and thus with the removal of the genetic link between the "carrier" and the child, the practice has been repositioned in the public debate from "baby selling" to a way of family formation enabled by technological progress and generosity of women who are willing to share their gestational capacity with those who desire a baby but cannot naturally have it. Industry discourse has also contributed to portraying surrogacy as unproblematic by portraying surrogates as nice women happily making autonomous decisions to help other women and couples.

This representations seems to perfectly fit with the dominant guiding principle of American feminist advocacy on body issues, women health and reproduction, which is one of individual autonomy. More specifically, feminists tend to interpret women's autonomy as the freedom and right to dispose and decide fully on her own body with no interference whatsoever (from the State or from men) (Petchesky, 1995).⁸ The woman's autonomy framework has been applied intensively to affirm women's right to decide on their sexual and reproductive life regardless of family

⁷The quote is reported from: <https://mailchi.mp/cbc-network.org/memo-to-new-york-state-senators?e=9ff4dcb521>

⁸For further discussion, see Chap. 8

pressures and dominant patriarchal social norms and has been the master frame of abortion campaigns (Esacove, 2004; Jaggar, 1973). Abortion continues today to be the cornerstone of the American feminist fight for the recognition of woman's autonomy, and in recent years of Trump's administration, the feminist concern and mobilization against a perceived backlash in women's rights has even intensified (Meyer & Tarrow, 2018). In this context, I think that any critique against surrogacy is seen as an attempt to limit the claimed autonomy of women to decide over their bodies: feminists, who still today need to fight for access to safe and legal abortion, might be very careful not to make a misstep in favour of their opponents by admitting that individual autonomy on body and reproduction can, at times, be limited. During the protests against the nomination of Judge Brett Kavanaugh at the Supreme Court, feminist protesters were wearing red-and-white costumes from the *Handmaid's Tale*, Margaret Atwood's novel in which an imaginative future class of women are forced to breed for a conservative male class. The novel is often cited as a metaphor of surrogacy but feminists recontextualized the symbol to protest, not against surrogacy, but against the threat to women's abortion rights, which Kavanaugh represented.

Having said that, it is worth noting how during a surrogacy pregnancy the "woman's right to choose" on the foetus is not guaranteed at all. Taking into consideration the following case from Texas. Stephanie Levesque is a surrogate who gave birth to a child despite his biological parents asking her to abort because of a heart defect discovered at week 16 of the pregnancy. Although Texas law states that no gestational agreement can "limit the right of the gestational mother to make decisions to safeguard her health or the health of an embryo", and this provision should prevent forced abortion, in reality surrogacy agreements limit the woman's autonomy and her power to take decisions over the embryos and the foetus. Levesque on her blog (www.lucaslaw.com) elaborates on this point and underlines that surrogates who refuse to implement the intended parent decision to have the foetus aborted can be sued and asked to pay a financial reimbursement. This concretely hinders the possibility of the woman to exert her right to decide on her pregnancy termination. She suggests a correction in the Woman's Right to Know Act (HB 15/SB 835), which provides that, before having an abortion, women must undergo a sonogram and wait 24 h. According to Levesque, the intended parents should also attend the sonogram. She suggests that agencies represent not only the interest of the intended parents but also those of the surrogate.⁹

Feminists who engage in the surrogacy debate are aware that the status of women's right to choose during pregnancy for others is questioned. This problem could be taken up either as a terrain for advocating to stop a practice that provides for the suspension of this right, and as a ground upon which to make requests for regulation. The second option is taken by OBOS that recommends that women have "agency in decision-making regarding medical interventions—including

⁹To read Levesque's proposal: <https://lucaslaw.blog/2018/12/21/lucas-law/?fbclid=IwAR35sRykiZx3bbRRIMA-uMGR-CoNLJ46botdvYGKmEyS0b13eHvKGSPlmso>

termination (or continuation) of a pregnancy—freedom of movement, and daily activities”. OBOS goes further and recommends that “parentage should be assigned at birth to the gestational mother—as one of the legal parents—and remain in place for 72 h, when parental rights would be relinquished by her”. This recommendation is based on the observation that “a pre-birth judgment of parentage, is unworkable, as there is legally no child until birth. Granting the intended parents rights to a fetus (i.e., supporting foetal personhood)” collides with “the right to abortion”.¹⁰ Through these recommendations, OBOS takes the opportunity to reaffirm the women's right to choose and to highlight the distance from pro-life groups that consider embryos and fetuses as living subjects with human rights.

Why is surrogacy not a field of activism for the latter? To be honest, not so much the low engagement of feminists, but that of pro-life activists, men and women, were absent players in the surrogacy debate and politics, was the aspect that most astonished me during the exploration of the American scene. Why do they not oppose a reproductive practice that commonly implies the implantation of multiple embryos and subsequent selective reduction (according to the genetic parents' preferences and decisions)? Is the pro-family/natalist imperative prioritized? A pro-life activist interviewed for this study said that on the basis of their fight against abortion as well as their endorsement of the adoption of frozen embryos produced in surplus during IVF cycles is their wish to protect the dignity of embryos. According to a report in *Christianity Today*,¹¹ the concern to give frozen embryos a chance to transform themselves into children is one of the reasons why couples and surrogates who believe in the Christian faith and are opposed to abortion, choose the path of surrogacy. The disengagement of pro-life groups from the movement that opposes surrogacy probably mirrors the fact that in the United States among surrogates there are also Christian believers who are willing to use their reproductive capacity to bless others. Contributing to the silence of pro-life women might be also the fact that surrogacy is not strange as a family formation method for a few prominent conservative and anti-abortion politicians (see, e.g., The case of Senator Frank reported in the press analysis) and that the coalition supporting the legalization of surrogacy in New York is also composed of religious (Christian-based) groups.

To conclude, from this case study I draw the hypothesis that the radicalization of the debate on abortion might be a crucial hindering factor for women's mobilization on surrogacy. Although current literature on social movements shows that single-issue coalitions of groups that disagree on other different topics have the potential to achieve concrete results, the fear of being accused of inconsistency may prevail, where the consistency measurement is built on a conceptual and political dichotomy (Whittier, 2014). As one of my interviewees said, if you are progressive, pro-women's rights, pro-choice, pro-abortion, you are expected to be also pro-surrogacy. It follows that if you are against surrogacy, you struggle to be

¹⁰These recommendations are included in a working paper yet to be published on OBOS website.

¹¹<https://www.christianitytoday.com/ct/2018/march/surrogacy-surge-us-christians-bioethics-ivf-reproduction.html>

identified as progressive and are possibly identified as being anti-choice, and thus associated to conservatives who oppose abortion and gay rights.

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Chapter 6

The Mexican Case: The Differences between Autonomy and Radical Feminism



Why Mexico Is an Interesting Case

The surrogacy market in Mexico has grown since 2012, especially in the state of Tabasco, and in the last decade there have been several attempts to regulate the practice. At the time being there is no Federal law on surrogacy,¹ and at a State level surrogacy is regulated only in the states of Tabasco and Sinaloa, whereas surrogacy agreements/contracts are explicitly considered invalid in the state of Coahuila where the Civil Code provides (art. 491) that the mother is the one who gives birth (Esparza & Hernandez, 2014). Surrogacy is also illegal in the state of Querétaro.

In the last 7 years, the national debate and international attention towards surrogacy in Mexico have intensified and the discourse on the need to regulate has gained increasing visibility. Surrogacy is an emerging concern in Mexican feminism: a few women's groups in Mexico City mobilize on this issue, some asking for a proper regulation and others demanding a ban. This made Mexico an interesting case for a study on surrogacy politics: not only has this practice boomed in recent years but restrictive regulations were also introduced in the state of Tabasco in 2016 following this boom. In addition, there are ongoing discussions on whether and how to regulate the practice at a Federal level. It is also interesting that out of the three countries that I explore in my research, Mexico is the only one where surrogacy has developed primarily as a form of reproductive labour for women delivering babies most of all for foreigners. The Mexican market is shaped by the geographical proximity with the United States, which is the hub of international fertility industry. Of the three case studies, Mexico is also the country where women are more vulnerable to pervasive poverty, trafficking, violence, adolescence pregnancy, maternal mortality, and denial of legal and safe abortion.

¹On a political level, Mexico is actually a Federation of States, and, at this time, there is no law which regulates surrogacy at a Federal level.

Another aspect that makes this country interesting is that Mexican feminism is very active and variegated, with it being well-known internationally for the fight against *femicidio* (femicide). How does Mexican feminism make sense of surrogacy? Is it a marginal issue when compared to the plague of violence and poverty? Do they frame reproductive labour as a form of violence or as an opportunity of empowerment? Does the issue intersect with the demand of legal abortion? Before addressing these points by entering into the details of the field-work, I would like to spend a few paragraphs to retrace the main initiatives that were carried out in an attempt to legalize and regulate a field that was spreading with no adequate rules and controls.

History of Regulatory Attempts

The surrogacy market in Mexico has developed, especially in the state of Tabasco, since 2012–2014 when Thailand and India, the two world leaders in low-cost surrogacy market, started to introduce restrictions with the aim to counteract an uncontrolled expansion that would have turned the countries into the “world’s womb”, to borrow a vivid expression used by Wanlop Tankananurak, a member of Thailand’s National Legislative Assembly.²

The state of Tabasco established on the international surrogacy market as the new “Eldorado” for different reasons. First of all, because in 1997 it was introduced in the Civil Code (art. 92) a provision on cases of babies born from surrogacy: the article said that in the case of gestational surrogacy (when the surrogate is not the biological mother) the mother of the child is the one who ordered it, whereas in the case of traditional surrogacy (when the carrier is also the biological mother) the transfer of parental rights is to be processed as a full adoption. This article opened the door to the surrogacy industry and did not provide adequate regulation, as occurred in the state of Sinaloa where “the regulation of surrogacy was introduced in 2013” and “its restrictive legislation, particularly in regards to same-sex couples and non-Mexicans, has largely prevented the state from becoming a surrogacy destination with the political, judicial and media presence of Tabasco” (GIRE, 2017, p. 7). Besides legislation, another conducive factor for the development of surrogacy in Tabasco was the geographical proximity with the Yucatan peninsula, which at the same time is a territory with a large portion of indigenous population and migrants (from indigenous communities of other Mexican States such as Chiapas, and from other countries such as Guatemala, Ecuador, and Honduras; part of the migrant groups in Mexico are directed to the United States) as well as a popular tourist destination from the United States and other countries (with Cancun in Quintana Roo as the main hub for international flights and tourist accommodations) (Olavarría, 2019). Surrogates

²Reported by ABC <https://www.abc.net.au/news/2015-02-20/thailand-bans-surrogacy-for-foreigners/6163810>

are not only from indigenous and migrant groups: according to Olavarría surrogates belong to the low middle class, and are housewives, police officers, accountings, nurses, supervisors in factories, unemployed, and university students.

The laboratory procedures are often carried out in fertility clinics in Mexico City, whereas the birth takes place in Villahermosa, the capital of Tabasco; surrogates are recruited by surrogacy agencies, often foreigners, which advertise on the Internet the recruitment criteria and in some cases also arrange the hospitalization of pregnant women in rented houses. Agencies are not necessarily registered in the country, their legal site can be in the countries where the “demand” comes from, while they work in partnership with medical equips, lawyers, and psychologists in the countries where the “offer” of reproductive labour is higher (Olavarría, 2019). Most of the clinics operating in 2016 resulted not being registered in the Federal Commission for the Protection from Health Risks (COFEPRIS), only 1 of the 83 legal clinics registered across the country was in Tabasco.³

The uncontrolled development of the surrogacy industry raised concerns about the need to protect women from wrongdoings, exploitation, fraud, and abandonment of children.⁴ A resentment with gender-nationalist flavour also mounted: “Mexican women are exploited by foreign men” is a recurring phrase I encountered during my field-work. The United Nations Committee on the Rights of the Child in 2015 reported that “the regulation on surrogacy in the State of Tabasco not providing sufficient safeguards to prevent its use as a means to sell children” (United Nations Committee, 2015, p. 19).

This situation led to the introduction in 2016 of a restrictive legal reform aimed at containing the spread of surrogacy in the state of Tabasco and related abuses. The reform established that only Mexican citizens (included Mexican nationals living abroad), married or cohabitants, are allowed to sign surrogacy contracts with local surrogates, with no mediation from any third parties (agencies); surrogates must be between 25 and 35 years old, be in good health condition, not having been pregnant in the previous 365 days, and they cannot serve as surrogates more than twice; moreover, it has been established that the intentional mother must provide evidence of any medical conditions that hinder her to carry out a pregnancy and she must be between 25 and 40 years old. The reform also established the obligation to inform the local Health Secretary and Civil Registry and to deposit the contract at the Public Notary; it was also provided that no more than 2 embryos can be implanted and that a

³Vitela, N. (2016). Acusan descontrol en renta de úteros. Carece Tabasco de padrón de clínicas y médicos autorizados. Rechaza Cofepris tener competencia para supervisar la subrogación. *Réforma*, 3 January 2016, p. 2.

⁴An extract from the press (translated from Spanish): “Because of the benevolent law in Tabasco, women who rented their wombs, also to foreigners, contracted HIV, were abandoned and cheated. In some cases, surrogate mothers changed their minds once the baby was born and this resulted in legal battles. In other cases, homosexual intended parents had to fight extensive litigations to obtain the registration of the child. Also, there was rumours about the possibility that criminal organizations in international trafficking was benefiting from the Tabasco law” <https://laverdadnoticias.com/quintanaroo/Cancun-el-paraiso-para-alquiler-de-vientres-20190413-0123.html>

doctor must verify that the surrogate does not put in danger the well-development of the foetus (GIRE, 2017). Despite the restrictions, there are diffused concerns that irregularities still occur and that the new rules are bypassed: a common thought is that since the request for children cannot be satisfied in a legal manner, it would find other less transparent ways and this would render women and children even more vulnerable to trafficking and abuses.

The situation in Tabasco also sparked law proposals in the National Parliament: Senator Mely Romero Celis and other members of the Partido Revolucionario Institucional (PRI) Parliamentary group presented on 13 October 2015 an integration to the General law on health (art. 61 Ter and 462 Ter), approved by the Senate on 26 April 2016 but later sent back to the House of Representatives for further discussion (Albornoz & González, 2017). This reform would have enabled access to surrogacy only to married or cohabitant couples, heterosexuals, Mexicans, and with medical incapacity to procreate.

On 1 March 2016, Deputy Sylvana Beltrones Sanchez presented a different proposal which would have introduced an additional requirement: between surrogate and intended parents there must be a family connection. In the same year, on 24 March 2016, a roundtable on surrogacy was held by the National Commission for Human Rights which gathered together policy makers, judges, scholars, international organizations, and the civil society.

Years before this debate, another attempt to regulated surrogacy was advanced in the Federal District (since 2016 called Mexico City), which stands out on the national scene for its progressive policies for women, including for the 2008 law on abortion. Maricela Contreras Julian, representative of centre-left party Partido de la Revolución Democrática (PRD) and at that time President of the Health Commission, presented a law on surrogacy which established the following conditions: the embryo must belong to a heterosexual married or cohabitant couple, with proven medical impairment to procreate, surrogacy cannot be remunerated, the surrogate must be in good health and both parents and surrogates must live in the Federal District; it also provided the establishment of a surrogacy birth registry. Aimed at fighting against the trafficking of children, this proposal received consensus but in 2010 it was declared invalid for being discussed beyond the constitutional time.

Nearer to the present, the last proposal on medically assisted reproduction is authored by Senator Olga Maria Del Carmen Sanchez Cordero Davila (Sanchez Cordero's Bill from now on). This Bill provides for the establishment of a national registry of assisted reproduction, it provides that services are accessible to infertile and same-sex couples. The Bill also establishes sanitary requirements for clinics, prohibition for cloning and eugenics, 1–8 year of limitation of liberty for those who carry out assisted reproduction without the consent of the woman, and punishment for obtaining gametes and embryos illegally. In the explanatory memorandum of the text, (which is almost identical to the one presented by Romero Celis in 2016), surrogacy is mentioned as one of the techniques of assisted reproduction which, as the text specifies, enable millions of people to satisfy their desire for an offspring; on the other hand, in the text of the law (nor in the explicative memorandum part)

surrogacy does not appear. However, there is widespread concern that this law would endorse surrogacy and open up the path for legalization.

The Research Journey in Mexico

I started to prepare for the field-work by selecting articles on surrogacy in the Mexican national press to understand the collocation of surrogacy in the broader political/public sphere as well as to identify women groups and other discourse players that I would reach out as interviewees in the following stage of the research. From preliminary contacts with a few informants in the country I understood that surrogacy was an emerging topic of debate for some feminist groups in Mexico City while it seemed that in the state of Tabasco there had not been a similar phenomenon I could investigate on: therefore, I decided since the start of my case study to focus on the national debate. I performed a keyword search “maternidad subrogada” on the following principal national newspapers: *El Universal*, *Reforma*, *La Jornada*. I also updated the search and the analysis of the press after the conclusion of field-work in May 2019 insofar the debate was ongoing. I found in total 79 articles (including duplicates): 60 on *Reforma* (since 2004), 10 on *La Jornada* (since 2015), and 9 on *El Universal* (since 2014). For the thematic analysis I only considered the most relevant articles published since 2015 (a total of 28), whereas I used the remaining articles to become familiar with the Mexican context and prepare the field-work.

From this preliminary exploration of the press, it emerged that surrogacy in Mexico is debated as a social problem and a topic of policy making, and that its media portrayal is constructed through the voices of politicians and institutional representatives, experts (academics and lawyers), and social movements (e.g. feminists, child’s rights, and LGBTQ). Articles focus (or mention) the issue of the legal reform on surrogacy in Mexico (either federal and focused on the state of Tabasco), the political debate around the necessity to regulate it (or prohibit), the surrogacy industry and agencies practices, and problematic aspects of the practice (e.g. health risks, the legal limbo in which intended parents and babies were trapped after the reform in Tabasco, uncontrolled agencies, exploitation of vulnerable women, etc.). Only 5 articles did not fall into these subjects: one was about a surrogate baby born in China from the gametes of his dead parents, one was about gay parents in Spain, and 3 articles informed about surrogacy and international celebrities. This was a quite different picture from the one that resulted from the analysis of the American press where surrogacy seemed to be debated not as a problematic issue that the institution needs to tackle but rather as a viable process to have babies through technology and altruism of strong women.

My very first contact with the civil society was with the *Feministas Mexicanas contra Vientres de Alquiler (Femmva)*: they invited me to speak at one of their public conferences in November 2018 in Mexico City. Since my stay in Mexico City, I closely followed activities undertaken by this young feminist collective, such as the preparation of an appeal to the *Secretaria de Gobernacion Olga Sanchez Cordero* and

media relations. Through Femmva's facilitation and the visibility, I received among their network after the public conference I came into contact with other feminists in Mexico City and also organized a short mission to Villahermosa, the capital of Tabasco.

In Mexico City, I also participated as an observant to a feminist march against Violence against Women (VAW), a seminar on bioethics and gender at the Universidad Nacional Autónoma de México (UNAM), presentation of a book on surrogacy by a Mexican academic, and at the Foro México Unido por los Valores y la Familia organized by the Senate's Commission on Health. I interviewed 21 informants including 10 feminists, 2 child's rights activists, 3 public officials, 3 academics, 2 lawyers, and 1 politician. Pro-life and pro-family activists did not reply to my several invitations to participate. I conducted a frame analysis on the 21 interviews scripts and on some additional texts, including the explanatory memorandum of the Sanchez Cordero's Bill, 1 article by a prominent journalist engaged in child trafficking,⁵ 1 feature article by international scholars with expertise on surrogacy in Mexico,⁶ the Grupo de Información en Reproducción Elegida's report (GIRE, 2017), 1 opinion paper written by one of GIRE's expert,⁷ 1 feature article in a leftist magazine,⁸ a published interview to Maricela Contreras Julian,⁹ and a TV-interview to feminist Marta Lamas.¹⁰

Surrogacy in the Press: A Problematic Social Issue to Be Tackled by the State

The picture that I got by analysing press articles is that surrogacy in the Mexican public/media discourse is recognized as a social problem that institutions are asked to tackle: the press coverage is focused on the legal and social aspects of surrogacy, and the articles are related to the institutional/political activity (e.g. the reform in Tabasco, roundtables, law proposals and comments, presentation of studies and report, press conferences). Surrogacy is presented to the public opinion as a problematic practice which creates controversies, for instance, on whether foreigners should use Mexican women to have babies, homosexual couples should have babies through surrogacy, surrogacy is exploitation of women or an opportunity of revenue. It is also discussed as a practice that exposes women especially but also intended parents and children to several risks. Among the risks mentioned: in the case of

⁵<https://aristeguinoticias.com/2906/mexico/uteros-en-alquiler-articulo-de-lydia-cacho/>

⁶opendemocracy.net/beyondslavery/carolin-schurr-laura-perler/trafficked-into-better-future-why-mexico-needs-to-regulate

⁷<https://www.letraslibres.com/mexico/revista/gestacion-subrogada-no-abolir-el-debate>

⁸<https://www.animalpolitico.com/2018/12/gestacion-subrogada-morena-regulacion/>

⁹<http://mexicofertil.com/gestacion-subrogada-entrevista-con-la-diputada-maricela-contreras>

¹⁰<https://noticieros.televisa.com/videos/gire-presenta-documental-de-flavio-florencio-deseos/>

medical complications surrogates are likely to receive poor assistance; the risk that intended parents do not take the children and abandon them and the surrogate; the risk of malformation for children born through medically assisted reproduction and surrogacy; the risk that surrogates are not paid; the risk that the child stays in a legal limbo without a nationality and access to health and social services.

In the press coverage on surrogacy, the State is accountable to mediate between the different requests and rights (e.g. rights to family formation and obligation to protect vulnerable women from exploitation) by regulating a sector which is at the moment characterized by arbitrary procedures, a lack of quality standards, violation of human rights, and permeability to criminal organizations.

Surrogacy agencies are given centrality in the media portrayal: they are often described as those who control the process and the industry, as foreigners, working in an unregulated manner, money makers who take advantage of poor women (paid less compared to the amount of money spent by intended parents).

Surrogacy is described as a reproductive technique and service, as a form of reproductive exploitation, as womb for rent (*vientre de alquiler*), as a form of commodification of children and violation of their human rights, as a form of commercialization of life, as a form of trafficking, as the only way to have a baby for homosexuals and women unable to carry on a pregnancy, as an international and unregulated market/business, and as an increasing and spreading practice. The following recurring arguments concur to the negative portrayal of surrogacy: the exploitation of women, the legal incertitude for babies, the health risks for surrogates and babies. On the other hand, the description of surrogacy as a scientific procedure, and as a way to family formation concur to the positive portrayal of surrogacy, which just needs to be better regulated to avoid the problems earlier introduced.

Surrogates are associated to the following characteristics: as women who are poor, often indigenous but also from urban areas such as Mexico City; women who are vulnerable and incapable to understand the contracts, with lack of employment opportunities and thus who rent their womb for money. Surrogates are described as women who are asked to follow all sorts of contract requests (such as aborting, refraining from colouring their hair, or having intercourse), whose health and psychological status can be affected (e.g. infertility, abortion, post-birth depression) and who are paid very little money for their service.

Intended parents are qualified mainly as foreign homosexuals, couples and singles, and as infertile Mexican couples. They are also portrayed as subjects with the right to have babies, whose rights are violated by restrictive and discriminatory laws or bureaucratic incertitude. They are described as people who can afford to pay for surrogacy, thus wealthier than the Mexican surrogates.

The child is described as a subject whose rights are violated, by the very fact of being generated through surrogacy insofar this is a form of commodification, or by restrictive legal frameworks and institutional initiatives. The child is also represented as vulnerable of abandonment, trafficking, and health risks. In the analysed press coverage, the relationship between the surrogate and the child is not described.

Principal Discourse Makers in Mexican Civil Society

GIRE is the most expert organization in the debate on surrogacy and it strongly advocates for its regulation. It is a feminist organization established in 1992, with professional staff, an office in Mexico City and receives funds from various sponsors, including from North American foundations.¹¹ GIRE is specialized in the defence of reproductive rights and its guiding principles are the autonomy of women and the opposition to punitive and prohibitionist approach in women's issues. In the area of sexual and reproductive rights (especially for the legalization of abortion), GIRE works in alliance with other feminist NGOs but these partners seem not to be engaged in the specific area of surrogacy, which remains an exclusive competence of GIRE.

The organization had a leading role in debates about the surrogacy reform in the Mexican State of Tabasco, where it also intervened by providing legal support to intended parents, mostly same-sex couples, who found themselves trapped in a legal limbo after the law was passed in 2016. GIRE expressed strong perplexities on this restrictive reform of surrogacy in Tabasco, and in 2017 GIRE published a report (in Spanish and English) entitled *Surrogacy in Mexico. The consequences of poor regulation*, in which the urgency for better regulation to protect the subjects involved in surrogacy is strongly advocated. On the same topic, GIRE also produced a video-documentary entitled *Deseos* (desires).

GIRE participates in consultation events at an international level such as those organized by the International Social Service (ISS) in Geneva and expert meetings organized by the United Nations. It also collaborates with American organizations such as the Center for Genetics and Society (CGS), which we have seen in previous chapter is one of the leading actors in the surrogacy regulation front.

While conducting my field-work, Femmva was the only vocal feminist voice against the legalization of surrogacy. However, it has been almost inactive since 2020, after completion of my field-work. As mentioned earlier, Femmva is a spontaneous group of feminists primarily active in Mexico City: it was founded in June 2017 as a secret Facebook group, which months later developed into a public group. It does not have NGO status and it relies on the active daily voluntary work of 5 women and some degree of engagement of 15 more. Femmva organized public conferences, engaged with the media, took public position on law initiatives, wrote a petition to the Senate asking to repeal a Bill (Sanchez Cordero's Bill on assisted reproduction) which would mean the green light for surrogacy. Femmva is part of the transnational campaign Stop Surrogacy Now but it is not involved in international round tables or in dialogue with international organizations. Femmva allied with the chapter for Latin America and Caribbean of the Coalition against Trafficking against Women (CATW-LAC).

¹¹Information disclosed during an interview with GIRE and reported in the list of sponsor published in GIRE's report (GIRE, 2017, p. 3).

More recently, while I am writing this book and thus after completion of my field-work CATW-LAC and a new Frente Nacional Feminista Abolicionista (FNFA) launched the Latin American Manifesto against reproductive exploitation, promoted by 96 organizations, to oppose any legislative initiatives in Central and South American countries aimed at legalizing or regulating what in the document is defined “wombs for rent”: “an unambiguous manifestation of discrimination, violence and violation of the human and fundamental rights of women, girls and boys, is contrary to the provisions of the international conventions and treaties to which our countries are signatories and whose observance is mandatory by virtue of a constitutional mandate”.¹² This document is the outcome of weekly online meetings between the International Coalition for the Abolition of Surrogate Motherhood (ICASM), a feminist coalition founded in 2018 in France, (which we will encounter again in Chaps. 7 and 8) and a few feminist groups in Latin America.

Femmva once carried out a communication activity with the support of Early Institute, which is the most expert organization in Mexico opposing the spread of the practice and attempts of legalization. This institute is a child’s rights think tank, it is not a feminist group and is perceived as a conservative organization. During the reform in Tabasco, Early Institute in Mexico City promoted the first awareness campaign on surrogacy on Twitter (#ExplotaciondeMujeresconFinesReproductivos), through Billboards and public events, with the aim of alerting vulnerable women about a new type of reproductive exploitation as well as to mobilize politicians (Olavarría, 2019).

During my field-work, I came across another feminist abolitionist group called L’Escola. It is composed of a dozen activists engaged in helping women in disadvantaged communities to identify and pursue their life projects, to know their rights and empowerment opportunities. Activists sensitize Mexican women about the danger of being offered to birth babies for others and about the risks of surrogacy. L’Escola was established in 2015 in Mexico City from the encounter with a feminist lawyer from Spain and in 2017, it opened its headquarter in Spain as a non-profit international organization.

From these paragraphs, it is worth noting how there is a striking difference in structure and relevance between the two feminist organizations that at the time of my field-work I identified as representatives of the reformist and abolitionist demands. GIRE’s staff is consulted by Mexican institutions, they participate in expert groups on assisted reproduction in Mexico and spoke at the UNAM’s bioethics unit. GIRE’s events have widespread visibility and its founder Marta Lamas is considered the most influential feminist in Mexico: she is also the founder of Sociedad Mexicana Pro Derechos de la Mujer Semillas, of Instituto de Liderazgo Simone de Beauvoir, of *Debate Feminista* journal, and a key figure in the de-penalization of abortion in Mexico City. The current Secretary of Government Sanchez Cordero (and author of the aforementioned Bill proposal) has been an ally of GIRE in abortion campaigns.

¹²Latin American Manifesto. (2020). https://drive.google.com/file/d/1VIHvt_iK4W2xYdWJT_RQayb93YTfEg3/view

On the other hand, Femmva is a spontaneous network with no professional staff and no funds, based on the voluntary work of a few women. Femmva does not have direct access to surrogates and therefore Femmva's understanding of personal stories of women is drawn from other informants, literature, and the media. Femmva's alliance with CATW-LAC, which do have offices, funds, professional staff, and an international network, has never formally been concretized. The collaboration with Early Institute, which is also a structured organization with resources and expertise, was carried out for one single activity and generated dissent among Femmva sympathizers because they were unavailable to negotiate their radical feminist identity by being publicly associated with a group known as conservative. These are all barriers for Femmva to effectively influence policy makers.

Framing the Issue. Arguments on the Basis of Regulation and Abolition Demands

As found in the American case, in analysing the different positions that characterize the Mexican debate on surrogacy, the two fronts of reformists and abolitionists emerge. The divergence of the two fronts resides mostly in the meaning given to surrogacy and on the recipes to counteract the risks: some see surrogacy as wrong per se insofar it is a form of exploitation of women and sale of children, others see surrogacy as an opportunity for women to cope with poverty and start a process of empowerment by expressing their free choice to use their body; the former believe that surrogacy should be abolished and the latter that it should be regulated.

Protection of women and children's rights is a common concern, however according to abolitionist surrogacy is per se a form of violation of those rights. Poverty is identified by both fronts as a major factor of the diffusion of surrogacy. Additionally, there is a shared concern about the vulnerability of women to abuse, fraud, and the possibility that they engage in contract requests they do not fully understand. While there is a consensus that widespread illegality might affect the surrogacy market and put participants at risk of violations, reformists believe that this risk can be minimized through adequate regulation and that prohibition would just contribute to rendering surrogacy a profitable illegal activity. This latter position, which is one of pragmatism is a core argument in reformist front. Both agree that the government should take action: regulating (enforcing and supervising on abuses and wrongdoings) or outlawing. Debate with the participation of the civil society and institutions, circulation of scientific and factual knowledge are needs emerging from both fronts.

The categories of reformists and abolitionists work well theoretically to systematize the debate and surrogacy politics but one needs to acknowledge that the line between the two fronts sometimes blurs: although there are a few expert organizations with clear-cut positions, other interviewees who are not at the forefront in the surrogacy debate express milder views. For example, some wish very strict limitations to discourage the use of surrogacy (by foreigners, by homosexuals, by everybody) and others aim at ensuring that surrogacy is arranged in a fair and safe way by

all participants (parents, surrogates, agencies). There are those who want that surrogacy be undertaken only among relatives and friends outside the market, and those who endorse the need for regulation not because they agree in principle that surrogacy represents an expression of women's autonomy or that the desire of having a child should be pursued with any means and protected as a right. Rather, some think that surrogacy needs regulation so as to reduce the vulnerability of women and children and because they do not believe that prohibition could be an effective approach in a context like Mexico characterized by widespread illegality.

Having set these premises, let me summarize in the list below how surrogacy is framed by both fronts. Again, I adopt the concepts of diagnostic and prognostic frames to systematize the principal problems that are identified and the possible solutions. Later, I will describe in more depth the arguments on the basis of both regulatory and abolitionist demands.

Diagnostic frames applied by reformists:

- violation of rights of intended parents, women, and children is caused by heterogeneous regulatory frameworks (State by State and internationally) and poor regulation in contracts
- lack of regulation increases the risks of human rights violation and trafficking
- surrogates are vulnerable to abuse because of the lack of awareness, poverty, power imbalance between them and intended parents, as well as the conflicts of interest with agencies and health services that are paid by intended parents but are supposed to protect the well-being of surrogates too
- surrogate's autonomy is hindered in the case of intended parents' decision on selective abortion and also when agencies arrange the pregnancy by keeping surrogates in dormitories
- demand of babies from LGBTQ people is caused by an induced desire of family as a form of conformism with capitalist/patriarchal institutions
- lack of factual information, awareness, and reflection in society on surrogacy implications and procedures
- some interviewees think that the market is the main problem, while surrogacy would not be a problem if arrangements are made privately among friends and relatives

Prognostic frames applied by reformists:

- regulating surrogacy at a Federal level
- working on international guidelines
- ensuring access to surrogacy (to have babies and to engage in reproductive work) to everybody with no discriminations
- ensuring surrogates full expression of autonomy and control over pregnancy
- protecting surrogates from the eventuality that intended parents abandon the child
- protecting the child's right to identity, nationality and right to know their origin (including being born from a surrogate)
- arranging multiple payments during the pregnancy and not only at birth
- avoiding conflict of interest to protect the health and right of surrogates
- promoting research on the well-being of children and surrogates

- establishing a national register of surrogate babies and surrogates
- institutional supervision over human rights violations
- fostering expert debate with the civil society and institutions
- some interviewees wanted that surrogacy is accessible only to: infertile Mexican couples, outside the market without intermediaries, with no employment of poor women

Diagnostic frames applied by abolitionists:

- surrogacy is a form of reproductive exploitation of women (also a new form of slavery) in which the industry (foreign and national) makes profit
- surrogacy is a form of commodification of women and children
- surrogacy is a form of sale of children (against international conventions)
- surrogacy prospers because of women's poverty, lack of work opportunities, low awareness on rights and early pregnancies
- surrogacy is the expression of patriarchy: male power takes advantage of female reproductive capacity, women have interiorized motherhood desire as normative femininity, women are socialized to competition rather than solidarity with other women, women take for granted that their bodies can be exploited
- surrogacy appears a problematic within a neoliberal culture where everything can be bought (including body, sexuality and persons)
- acceptance of surrogacy spreads also because selling children is a common practice in poor communities (children are given away to other families with the wish to give them a better future) and also for human trafficking
- politicians have connections with infertility industry
- widespread illegality is conducive of surrogacy prosperity and wrongdoings
- surrogacy causes psychological sufferance for the child and the surrogate

Prognostic frames applied by abolitionists:

- outlawing surrogacy
- fostering the debate through fora (roundtables, consultations) with the civil society and institutions and avoiding polarization along other reproductive and sexual issues (abortion, prostitution)
- information campaign on the risks, implications, and unsuccessful stories
- intervening on the structural causes of women's poverty and vulnerability: community-based economic and social development
- awareness campaign with disadvantaged women
- fostering international alliances to increase expertise and influence

In order to understand the argumentative basis of the widespread demand of regulation, I analysed more closely the position advocated by GIRE and the preamble of the Sanchez Cordero's Bill. I identify three core themes: one is that the achievement of parental desire should be pursued by all available means and therefore assisted reproduction technology should be widely accessible; the second theme is that women should be free to choose how to use their reproductive capabilities including to gestate for others. Both prescriptions are presented under the rubric of progress as the desirable direction of the modernization process: the

State law needs to be updated to modern times to enable couples to achieve their parental desire through technology and to enable women to express their autonomy.

The third theme does not point at the ideal principles of social or individual aspirations, as the first two do, but argues that regulation is the only doable path insofar prohibition would fail to prevent that surrogacy becomes an illegal market: regulation and legalization would be the only effective way to protect women's rights since prohibition of surrogacy would on the contrary encourage illegality and trafficking and therefore would render women more vulnerable to abuses and exploitation. Pragmatism is also suggested as a recipe for the acceptance of structural female poverty and unemployment, conditions that cannot be eliminated but rather could be mitigated by giving women a new job opportunity: surrogacy. This approach emerges, for example, in the following article on *Open Democracy*: "A ban merely serves as a fig leaf to hide a demonstrable lack of engagement with the structural problems women, and particular single mothers, face in Mexico's neoliberal economy: lack of employment options, insufficient access to health care, non-enforceability of alimony payment of fathers, and a general lack of social benefits. There is a better way. Mexican State bodies and international organizations must work hand in hand to formulate, implement, and monitor regulations that ensure adequate living conditions and improve the legal situation of surrogate mothers in the transnational surrogacy industry [...] formulate and ensure the enhancement of policies that regulate and control the different actors in the surrogate business".¹³

Considering now the first two themes in more detail: artificial procreation accessibility to fulfil parental desire and women's autonomy in using their bodies.

The Sanchez Cordero's law proposal on medically assisted procreation builds its arguments on the necessity to update existing laws according to available scientific and technological advancements, in order to enable a modernization process of the country, which is already occurring in other spheres of policy making such as education, economy, and energy. The explanatory memorandum of the law remarks that in the past the moral and psychological burden of infertility could not be alleviated due to a lack of knowledge of technological and diagnostic tools; however, nowadays technical solutions developed over the last 40 years (since the first test-tube baby Louise Brown was born in United Kingdom in 1978) enable to satisfy the desire of filiation and the human right of family formation. The law aims, through the regulation of medically assisted procreation, to ensure that citizens could access quality services. Access to these techniques is understood as an expression of decisional freedom in reproductive life, which is acknowledged by the Mexican Constitution since 1974 with specific reference to family planning. The law proposal explicitly presents itself as a necessary normative update to face issues that are typical of modern times, to guarantee the well-being of everybody, a goal that so far

¹³ opendemocracy.net/beyonDSLavery/carolin-schurr-laura-perler/trafficked-into-better-future-why-mexico-needs-to-regulate

has been hindered by ideological positions, such as the attempt to acknowledge the juridical status of embryos.

The necessity to improve access to scientific advancements to achieve parental desire is also argued by GIRE: “assisted reproduction is an advancement of science, which is fundamental for the rights of everybody to have a family and for the rights of reproductive autonomy”; surrogacy is one of these techniques, which “helps people to exert their rights to have a family with the number of children they wish”.¹⁴

The woman’s autonomy principle is often highlighted in the definitions of surrogacy used by regulatory discourse makers: central is the independent role of woman in the decision on whether to participate in other people’s reproductive process, by sharing her body. For example, in GIRE’s report surrogacy is defined as “an arrangement in which a woman *agrees* to carry a pregnancy for another individual or couple who intend to parent the child born of this pregnancy” (*italics mine*) (GIRE, 2017, p. 9). The same position also emerges in the following extract written by one of GIRE’s expert: “To criminalize surrogacy as a form of human trafficking means to suggest that women are unable to decide in an independent manner whether they want to gestate the product of others; it means to assume that there are always abuses and coercion and there is no free exercise of rights in surrogacy”.¹⁵ This form of “participation” according to GIRE is to be acknowledged from an economic perspective: “GIRE considers that the commonly-held narrative, suggesting that surrogacy must be undertaken for strictly altruistic reasons, is based on gender stereotypes and overlooks surrogates’ reproductive autonomy” (GIRE, 2017, p. 13). In GIRE’s video-documentary *Deseos* a woman in Tabasco is interviewed: she is already a mother and divorced, she reports that she freely decided to become a surrogate as a project to gain enough money to open a small business and buy a motorbike. In a nutshell, surrogacy is presented as an opportunity for women, an opportunity which should not be limited: GIRE even interprets as discriminatory the age limit for serving as surrogate, which was set by the 2016 Tabasco reform.

The autonomy envisioned by the discourse described so far refers to a more intimate dimension, a sort of autonomy from emotions and physical bonds: the woman does not necessarily become attached to the baby she carries, therefore taking this assumption for granted is to be viewed as a symptom of conservatism and stereotyped femininity. This argument is conveyed by the following testimony: Marta Lamas, founder of GIRE, declared on Televisa that pregnancy should not be mystified, that there is nothing wrong in the decision of women to make babies for other couples, either heterosexual or homosexual, who want so much to become parents.

The perspective advocated by Femmva is the opposite: the core argument they use in opposing legalization attempts and spread of surrogacy in the country is that it implies the commodification of women whose body and reproductive capacity are

¹⁴Ramos, C. (2018). Gestación subrogada: Morena apuesta por regular en lugar de prohibir. Animalpolitico, 10 December. Retrieved from: <https://www.animalpolitico.com/2018/12/gestacion-subrogada-morena-regulacion/>

¹⁵<https://www.letraslibres.com/mexico/revista/gestacion-subrogada-no-abolir-el-debate>

exploited by the industry and intended parents, who are generally wealthier and more educated than surrogates. In Femmva's view, this market flourishes because of female poverty and Mexican women engage in reproductive labor because they live in disadvantaged social status and have little opportunity of employment. Surrogates are seen as vulnerable subjects, belonging to disadvantaged groups such as indigenous, poor, and migrants, often poorly educated and with a lack of awareness on their rights and opportunities to achieve life goals. In addition to poverty they are encouraged to work as surrogates by a patriarchal culture of female inferiority and disposability for sex and reproduction that they have for longtime absorbed.

The commodification frame advanced by Femmva (which also circulates among feminist abolitionists in other countries such as Spain, France, and Italy) resonates with feminist anti-prostitution campaigns and more broadly with the feminist discourse on gender-based violence against women (VAW).¹⁶ I would say that surrogacy is explained through the Marxist feminist theory of power, which explains women's status, VAW, and exploitation as structural phenomena due to the power imbalance between men and women embedded in patriarchy (Dutton & Nicholls, 2005; Felson, 2002). Gender inequality is implied to be the common cause of lethal intentional violence, as well as sexual exploitation for pleasure and economic exploitation of gestational capacity. Motherhood and gestational capacity as a principal marker of femininity are seen as resources that male-dominated societies for centuries have attempted to control and make profit out of them. From this vantage point, Femmva believes that the best way to hinder reproductive exploitation is to eradicate structural inequality by promoting community-based social development, women's entrepreneurship (e.g. fair trade, handy-craft), and State-based policies to give women work opportunities, education, and protection from abuse.

A Principles-Driven and Polarized Debate: The Two Streams in Feminism

By comparing GIRE and Femmva discourses, it emerges how they rely on irreconcilable principles about: how women should achieve emancipation and gender equality; prioritization of women's rights in relation to LGBTQ's rights; motherhood as a marker of female identity; to what extent structural inequality (female poverty) should be accepted or resolved and how. On a broader scale, the divergence between GIRE and FEMMVA reflects the theoretical frameworks of two major streams of feminism already introduced in the literature review in Chap. 3 (Farquhar, 1996; Rushing & Onorato, 2003): radical and (neo)liberal.

¹⁶The discourse on gender-based VAW in Mexico has been for decades applied with emphasis on the so-called *feminicidio*, a national emergency of women being killed by men in contexts of criminal organization as well as domestic violence.

Although streams of feminism can be classified in different ways and vary historically, the following definition of radical feminism can be adopted for the sake of clarity: “the acceptance of the existence of patriarchy alongside a commitment to end it; second, the use and promotion of women-only space as an organizing method; third, a focus on all forms of male violence against women and their role as a keystone of women’s oppression broadly; fourth and finally, an extension of the analysis of male violence against women to include the institutions of pornography and prostitution” (Mackay, 2015). In talks and interviews conducted during the fieldwork those who identify themselves as radical feminists tend to remark that women are the political subjects of feminism, that sexual difference is constitutive of women’s identity (by opposing the gender feminism who on the contrary believes that gender identity is totally self-determined), they remark the fact that women are subjugated in patriarchy, and they envision sisterhood and self-consciousness as a way to emancipation; while they believe that women should be fully in control of their body, they oppose recipes of emancipation based on self-commodification. Liberal feminism (also called equality feminism) originally pursued to reveal “the gendered exclusions within liberal democracy’s proclamation of universal equality, particularly with respect to the law, institutional access, and the full incorporation of women into the public sphere” (Rottemberg, 2014, p. 419). Differently, the neoliberal feminism “offers no critique—immanent or otherwise—of neoliberalism” and “the neoliberal feminist subject is thus mobilized to convert continued gender inequality from a structural problem into an individual affair” (Rottemberg, 2014, pp. 419–420).¹⁷ Neoliberal feminism is also called autonomy feminism and often overlaps with gender feminism when it comes to themes of sexual/gender identity.

Femmva strongly positions its engagement against surrogacy within a radical feminist imperative and think that those who justify surrogacy in the name of women’s autonomy are blind and complicit to women’s commodification, and thus that they are not “real feminists”. Femmva believes in autonomy as a central principle for women’s emancipation but does not consider a form of autonomy the sale of sex and reproduction, which on the contrary they see a degrading activity that women do as last resort. Femmva’s opposition to surrogacy not only pursues the goal of stopping the exploitation of women but also, through the pursuit of this goal, aims to reaffirm an authentic nature of feminism, which in their view is distorted and endangered by other kinds of “fake feminisms” who embrace cultural imperatives of self-exploitation.

On the other hand, neoliberal or autonomy feminists such as GIRE and its partners take a distance from Femmva’s position since they believe that women’s ownership over their body and over the decisions of using their unique reproductive

¹⁷Neoliberalism is a concept that has gained popularity in social sciences since the 1990s; it is a controversial term with very broad and incoherent definitions that vary depending from the vantage point and tend to be employed in critiques of existing capitalist structures and discourses. It points at an economic and social system as well as at a political ideology and experiment inscribed in late capitalism, laissez-faire, and free market, characterized by deregulation and privatization of the welfare state, commodification of everyday life, and centrality of individual free choice in the value system. (Ganti, 2014; Venugopal, 2015)

resources to improve their social status, or simply to contribute to somebody else's desire of having a baby, should never be restricted. They call for the rights of women to decide on how to use their reproductive capacities, including gestating for others: the modern Mexican woman is capable of making informed choices for themselves, and she should not be hindered in their opportunity to ameliorate their economic status by taking the opportunities offered by different kinds of markets. We have seen how woman's autonomy also entails autonomy from emotions and physical bonds: it is believed that the woman does not necessarily become attached to the baby she carries, therefore taking this assumption for granted is viewed as a symptom of conservatism and stereotypization of femininity.

How important is surrogacy for Mexican feminism? Certainly, concern about women's vulnerability in surrogacy is increasing but, with the exception of those with specific expertise and ad-hoc activities (such as GIRE, Femmva, and CATW-LAC among those organizations I got in contact), knowledge on surrogacy tends to be anecdotal or based on broader conceptual categories (such as women's rights and autonomy, exploitation of women, etc.) rather than on a detailed understanding of the practice (e.g. some do not know that surrogacy implies selective abortion and that often the surrogate has a little say in that, some do not know that the surrogate needs to be treated with drugs to prepare the body for the implant and that this also occurs in the so-called altruistic surrogacy, health risks for the child and surrogate are often ignored, the dimension of the industry is sometimes underestimated, etc.). The lack of diffused factual knowledge alongside an a-critical application of feminist frames such as commodification and autonomy (borrowed from other discourses such as prostitution and abortion) might be major factors contributing to the polarization of the debate between abolitionists and reformists; this polarization does not apply only within the feminist movement but is also shared by those who are in the process of building an opinion on the issue. In other words, the formation of consensus and dissent is heavily influenced by a passionate advocacy of principles, which work as orientation devices for activists who have not yet accumulated sufficient expertise on the topic and for the general public too.

Neoliberal feminists working in the sexual and reproductive field (who are potential discourse makers on surrogacy) tend to endorse woman's autonomy as a non-negotiable and absolute principle and to apply it to surrogacy as an a priori dogma, although they have accumulated only limited knowledge and reflection on what surrogacy concretely is and means for women. Emblematic of this tendency is the following testimony given by a feminist activist working at one of GIRE's partner organizations. The interviewee since the very start admitted that she does not have any direct experience or expertise on surrogacy, but she nevertheless accepted to interact with me to talk about reproductive issues in general. She was not aware of the details of surrogacy such as the selective reduction of multi-embryos implantations. This lack of knowledge did not refrain from her expressing an a priori endorsement to the cause of regulation of surrogacy, uniquely in light of the unquestionable principle of the woman's autonomy, which leads all activities run by the NGO she works for: "If I decide to be a surrogate womb, it is my rights to use

my body, make a contract and have that job and buy me an apartment faster than what I can do it by doing another kind of work. It is a means of work. It is the rights of people to choose, and this slogan works for everything: having a tattoo, deciding which part of your body you want to work with (hands, genitals or your wombs). You should be able to make your choice for yourself whereas the State should make the conditions for you to be cared for”.

I found this same attitude, although with different levels of passions, in two other public officials and a few academics I interacted with during my field-work. These are the words of a public official in a governmental institution for women’s empowerment, who had never been involved in any initiative regarding surrogacy; she built her own knowledge on the topic on a personal capacity and her main source has been the GIRE’s report. “It is a complex issue, I don’t know, personally I would say that regulation is needed because a woman has a right to her body. Just as she should have the right to terminate the pregnancy, she should also be able to lend her uterus”.

We have seen earlier on when discussing the arguments on the basis of the regulatory demand that the women’s autonomy principle intertwines with a broader discourse of modernization, which nowadays is a discourse with certain popularity and legitimization. Modernization is the core principle of the new government established in January 2019: Mexico deserves to become a modern country and this goal should be achieved through the emancipation of women, technological advancement, fight against criminality and illegality. Gender equality is a crucial theme in public expectations from this new political era and for the first time in the political history of Mexico, almost 50 percent of the Members of Parliament and of the Cabinet are women. It is worth noticing how access to safe and legal abortion is the number one cause of Mexican feminism and there are strong hopes that this goal will be achieved soon under this new government. Woman’s autonomy is the theoretical base for feminist pro-choice demands of abortion legalization and we have seen in the American case that any limitation to the woman’s autonomy is seen as a goal for the abortionist cause: since the pro-surrogacy discourse is deeply built right on the woman’s autonomy principle, opposition to surrogacy is perceived as an obstacle to the full application of this principle. In the case of Mexico, I would recontextualize this thought by saying that the woman’s autonomy principle is embraced often uncritically as an unquestionable priority to be achieved, and often invoked also by those who do not have any solid knowledge on surrogacy procedures and implications, as the principle for which surrogacy should be regulated.

Suggestions to “Deradicalize” the Debate

Building and circulating knowledge on surrogacy practices, procedures, implications, and testimonies is a priority to balance the present situation in which most of the expert information comes mainly from one feminist NGO and one child’s rights think tank: many actors (in the civil society, academia, politics, public administration, and media) will sooner or later face the urgency to take a position and contribute in policy making and they are likely to face the inconsistencies of

arguments based on theoretical principles. There is need for a debate, circulation of information and dialogue between institutions and the civil society: consultative working-groups would be a useful tool to inform policy makers in their attempts to regulate surrogacy. However, given the different vantage points of different actors it is preferable that arguments are based on literature and facts, as well as national and international cases and testimonies of surrogates and intended parents, rather than on broader principles, which might bring about the same polarization that it exists between feminists.

Feminist abolitionists need to strengthen their organization and influence on institutions and the wider public in order to balance a debate that at the moment is heavily influenced by regulatory positions and knowledge produced by feminist organization GIRE. Abolitionists have the opportunity to strengthen their role, access to institutions, and visibility among the wider public through strategic alliances with international actors such as the Stop Surrogacy Now campaign and ICASM (and indeed recent launch of Latin American Manifesto suggests that this strategy is being pursued) but also with national actor such as Early Institute and other organizations working on child's rights. An alliance with organizations that are positioned in the conservative spectrum would imply for feminists to put their ideological priority on the side and privilege the concrete goal of raising public awareness on the need to abolish surrogacy and influence policy makers towards it.

On a more ground level, there is a need to increase knowledge and awareness of vulnerable women groups about the possibility that they might be approached by agencies or other actors and offered to gestate for others: women need to be informed about the legal and health risks implied in this kind of work. This can be a very concrete area of engagement for feminist groups in Mexico.

As I will discuss broadly in Chap. 8, the child's rights perspective needs to be integrated in (Mexican) feminist abolitionist discourse: the frame of the commodification of women is weak in a pervasive culture of self-exploitation, but protection of children from commodification would be a more powerful argument. Feminism should acknowledge that surrogacy is fundamentally different from the debate on prostitution: surrogacy does not only involve an exploiter and an exploited, but there is a third subject being commodified and hurt, the child, who is detached intentionally at the very moment of birth from the body in which he started to develop and feel; the child is the only one with no choice and no agency among the subjects involved in surrogacy.

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Chapter 7

The Italian Case: A Strong Opposition in the Name of Women's Sexual Identity and Motherhood



Why Italy Is an Interesting Case

Gestational surrogacy in Italy is prohibited: Law 40 of 2004 on assisted reproduction provides from 3 months to 2 years of reclusion and a €600,000–€1,000,000 fine for those who realize, organize, or advertise the trade of embryos and gametes as well as surrogate motherhood. Despite this prohibition, Italian heterosexual and homosexual couples go to foreign countries such as to Ukraine, Russia, Greece, the United States, and India (prior to the restrictive policy introduced in 2016 by the Indian Government), to become parents through surrogacy (Osservatorio sul turismo procreativo, 2012). Currently, there are no data available on how many children per year are born through surrogacy abroad for Italian clients. However, it is estimated that every year 100 Italian women¹ use surrogacy abroad to have babies (because hindered by medical issues to carry out pregnancy) and the demand of surrogacy services abroad from Italian citizens is increasing (Osservatorio sul turismo procreativo, 2012). Although Italy seems to comply with the prohibition of undergoing surrogacy within national borders, some judgments and verdicts that recognize couples', including same-sex ones, parental status on children born to surrogate mothers abroad on the principle of the best interest of the child, could signal a growing acceptance of the practice.²

¹https://www.ansa.it/canale_saluteebenessere/notizie/sanita/2019/06/19/maternita-surrogata-associazioni-presentano-proposta-legge_7590be0c-c2e1-491e-b142-cf0d35ef1b84.html

²On the issue of parental recognition of same-sex couples on babies born through surrogacy abroad, two sentences marked the debate in Italy. In February 2017, the Court of Appeal of Trento established that the prohibition of surrogacy is not sufficient to deny the recognition of parental status of two men who had engaged in a parental project through surrogacy in Canada. However, 2 years later, the Supreme Court (*Cassazione* 12,193/2019) ruled that the execution of a foreign judicial order that recognizes a legal parentage status between two children and their non-biological father cannot be allowed in Italy: the prohibition of surrogacy provided by Law 40 is a public order principle, which builds on the acknowledgment that the will of parenting is not limitless and on the

In the debate on Law 40 which started in the 2000s, surrogacy was only marginal: despite pro-life groups in 2013 having promoted a committee to reaffirm that there can be only one mother, surrogacy hit the headlines and reached widespread public opinion not before 2015, during a fiery debate around the reform of family, gay marriage, and stepchild adoption.

Italy is an interesting case for a study on surrogacy politics for the following context-specific aspects: for Italian couples surrogacy is a reproductive option only if they are available to go abroad and behave in a legal limbo; the debate on surrogacy is primarily contextualized within the debate on homoparenting; feminists, pro-lifers, and pro-family groups mobilize for the universal ban of surrogacy as well as for the enforcement of national prohibition; the civil battle against surrogacy is played primarily on the cases of the recognition of parental rights over children born from surrogacy abroad.

I will start this chapter by telling how I conducted the research in Italy. Afterwards, I will report the findings of a media analysis. Then, I will give accounts of the debate that developed around Law 40, which I think is necessary to better contextualize the following debate and mobilization on surrogacy, which will be the focus of the following section. At this point, I will turn to the frames and demands of both the abolitionist and regulatory fronts. In conclusion, I will summarize the characteristics that differentiate the Italian case from other two.

The Research Journey in Italy

As discussed in Chap. 2, the whole idea of this study stems from, and is influenced by the observation of how Italian civil society since 2015 has shown more interested in what was becoming a hot topic in the political debate regarding the family. In the summer of 2017, I started to reach out to those feminists who were taking a public position: I attended two public conferences and I conducted 8 in-depth telephone interviews with women belonging to or associated with Italian feminist groups and analysed texts disseminated by feminist movements and opinion leaders on their websites, magazines, and through the media. I also interviewed 3 men belonging to the Italian pro-life movement which is engaged in calling for an international abolition.

Once I started to work on the WoMoGeS project, I organized a kick-off meeting at my University LUMSA where I invited activists, journalists, institutional representatives, and experts with different positions on the topic: participation was marked by the absence of activists in favour of surrogacy and institutional representatives. Another important event for networking was the conference I organized at LUMSA in April 2019, where the international guest speaker was Jennifer Lahl,

faculty of each State to permit or prohibit surrogacy (as established by the European Court of Human Rights in *Mennesson e Labassee c. Francia* in 2014).

founder of the Stop Surrogacy Now campaign.³ In spring 2020, during the COVID-19 lockdown I started the actual investigation for the WoMoGeS Italian case. As in the other cases, the first activity was the analysis of the press coverage. I performed a keyword search “maternità surrogata” (surrogate motherhood) through the UniNexis database on the main national newspaper *Corriere della Sera*. Out of 193 articles, from 2009 to May 2020, 139 had been published since 2016, the year with highest number of articles (73): as previously mentioned, in that year surrogacy came to the forefront of public discussions during a fiery political clash over the approval of the law on civil unions, which was passed in May of that year.

I did a thematic analysis on 20 articles published in 2018 and 2019. I coded and read each of the 20 articles by looking at the following themes: topic of the article; countries where the story is situated; reported sources (e.g. politicians, activists, intended parents, etc.); whether surrogacy is contextualized as a reproductive practice for homosexual or heterosexual couples; description of surrogacy, intended parents, surrogates, and the children; description of the surrogate–foetus bond and relationship between the intended parents and the surrogates. These themes are the same as those applied in the press analysis for the United States and Mexico cases. One more theme, dedicated to the judiciary, political, and administrative bodies mentioned in the articles, was added to reflect the specific characteristics of the Italian press coverage, which pivots around litigations on the registering the birth of children born abroad through surrogacy.

From May to July 2020, I conducted 11 interviews either over the telephone or on online platforms. Interviewees were selected among my existing network, which was built since my earliest engagement in surrogacy research in Italy. The majority of interviewees that I was able to reach are opponents of surrogacy: 1 gay activist, 2 feminist bloggers/journalists, 2 feminist activists, 2 pro-life activists, 1 bioethics expert, 1 academic; only 2 interviewees are representative of the regulatory front (1 bioethicist and 1 advocate for civil rights). I made several attempts to engage with additional potential participants who do not belong to the abolitionist front, but this attempt resulted in no replies or rejections to participate. I filled this gap by including in the framing analysis not only the 11 interviews scripts but also 20 additional texts such as op-eds, law proposals, calls for actions, and appeals. In addition, I used knowledge and data acquired during my earlier exploration of the topic in 2017.

Surrogacy in the Press: The Children Born Abroad and the Domestic Debate

From the analysis of selected press coverage, it appeared clear that surrogacy in Italian public/media discourse is approached primarily in the context of homoparenting. Although the majority of couples resorting to surrogacy internationally

³<https://www.lumsa.it/nascere-da-madre-surrogataimplicazioni-sociali-etiche-e-psicologiche>

are heterosexual, discussions on surrogacy in Italy tend to intertwine with those on homoparenting and are influenced by a media portrayal of surrogacy as a method for gay men to have babies. Several articles address the complex questions on the civil registration of children born abroad from surrogacy and recognition of the parental status of couples once arrived in Italy. Denied recognition of parental status to same-sex couples and subsequent Court cases are recurring topics in the news.

In the articles analysed, space is also given to the debate on surrogacy and the opposition of instances. The case of pro-life posters in Rome removed because they are considered homophobic is news; the opposition of the women of the Partito Democratico (PD) for the appointment of a man in favour of surrogacy as head of the civil rights department of the party; the divergence on the subject within Arcilesbica (the major organization of lesbian women in Italy) is also news. The sources that are voiced are various: parents, feminist activists, civil rights activists, bioethicists, lawyers, politicians, ministers, and mayors.

Surrogacy is described as a reproductive practice which is illegal in Italy, while allowed in foreign countries such as Canada and the United States, where aspiring parents are forced to turn as the only way to have children and start a family to crown their stable unions. It is acclaimed by some as a form of civil right which is denied in Italy and condemned by others as a form of scheduled merchandise with a contract and commodification of women and children.

Law 40: A Slippery Ground for Feminists

For the debate on surrogacy to be placed correctly, it is necessary to mention what happened during the drafting of Law 40 of 2004 on medically assisted reproduction and the following referendum, since it is precisely in that piece of legislation that surrogacy finds its explicit prohibition, still in force in Italy. Law 40 also bans heterologous fertilization, limits the use of these techniques to heterosexual couples of childbearing age and proven sterility or infertility, limits the maximum number of embryos that can be implanted to three, and forbids to freeze embryos and carry out scientific research on them (Fineschi et al., 2005). The law, requested and pursued since the second half of the 1990s to regulate a field in which biomedical progresses could result in normative uncertainty, ended up being the subject of a long battle between political parties and the civil society, culminating in 2005 with the call for a referendum promoted by the secular segment of society (defending science as a means of affirming the right to be parents), defeated by the Catholic front (which encouraged abstention in defence of the human rights of the embryo (De Marco, 2011)). However, some of the prohibitions imposed by this law, such as cryopreservation and heterologous insemination, have been circumvented by jurisprudence over the years.

The debate on Law 40 and its referendum focused on the criteria for eligibility to assisted reproduction, the protection of the rights of the persons involved, the risks related to medical practices, and the meaning of human life in the embryonic phase

(De Marco, 2011). Feminists were divided: while some, in the name of women's freedom to have children through new technologies and heterologous fertilization, including outside of a heterosexual relationship, supported the abolition of a law considered too restrictive; others opposed the revocatory referendum, aiming at defending the naturalness of procreation from the domination of biomedical technology that, under more liberal laws, would eventually reduce women to reproductive machines by controlling their production capacity and denying their dignity. This divergence was oversimplified into a sexual dichotomy between men-defenders-of-the-law and women who "hate embryos and foetuses". The women who choose the latter side of the debate found themselves labelled by their very "comrades-in-arms" as obscurantists and "priests-lovers", due to the widespread fear that defending the statutory restrictions laid down by Law 40 could provide the discursive basis for further political initiatives aimed at chipping away at the legal achievements in the field of abortion (Di Pietro & Tavella, 2006).

The new focus of the debate on surrogacy is today causing some of the feminists opposed to this practice to rethink their positions, previously in favour of the technicalization of conception and in particular to heterologous fertilization; others, instead, are opposed to surrogacy but continue to accept heterologous fertilization as it does not question the unity and coherence of the figure of the mother coinciding with the woman who physically gives birth. In this regard, it is interesting to note that part of the Italian lesbian movement strongly opposes surrogacy, due to the necessary preservation of the child–mother relationship established during pregnancy. This is an extract from their appeal launched in 2016: "Babies born under contract are programmed to be separated from their mothers at birth, not for reasons of force majeure such as when the mother dies or decides not to recognise them, causing them to be put up for adoption, but in a predetermined way, taking away their optimal source of nourishment and interrupting their privileged relationship with the woman who gave birth to them, which is also a source of reassurance".⁴ Because of their anti-surrogacy positions lesbians have been accused of "ideological involution" and excluded from the Italian LGBTQ movement (Gramolini, 2019).

The Mobilization against Surrogacy in Italy: Initiatives and Frames

Surrogacy began to be a topic of public debate in 2015–16 in the context of the inflamed debate around the family reform that would have regulated same-sex marriage and stepchild adoption. At that time, the media were giving a great deal of visibility to the case of Nichi Vendola, a leftist politician and advocate for gay rights, who with his male partner had a child through surrogacy in Canada. Conservative groups linked to Catholic civil society and the Church (such as pro-life and

⁴<https://politicafemminile-italia.blogspot.com/2016/09/lesbichecontro-lutero-in-affitto.html>

pro-family advocates) and part of the feminist movement claimed that the legalization of stepchild adoption would have indirectly legitimized and encouraged the use of surrogacy in other countries. On this supposed link, it is worth mentioning that recently in 2019, Monica Cirinnà, the member of parliament who had been since 2015 the main supporter of the introduction of stepchild adoption is also one of the supporters of a recent law proposal aimed at legalizing surrogacy for all, with no discrimination based on sex-orientation. This Bill is proposed by the association for freedom in research Luca Coscioni, and radical organization for civil rights Certi Diritti, and was presented in a public conference held at the labour union Confederazione Italiana Generale del Lavoro (CGIL).

A women's movement in Italy, led by the feminist group Senonoraquando-Libere (Snoq-L) (if not now when—free), started to call for a universal ban of surrogacy on 5th December 2015. Snoq-L was born in 2013 from split of a feminist group (called Senonoraquando) which was established in 2011 for completely different purpose, namely, to protest the widespread sexism in institutions and political culture, and who then took first place in the campaign against femicide.

Snoq-L embraces surrogacy as its main theme of mobilization in a wider framework of reflection on women's freedom and motherhood. "The risk is that we adapt to a current idea of freedom which is an instrumental use of oneself. I belong to the generation that fought to claim their desire and autonomy but I didn't do it to be able to sell myself on the market" are the words of a leader of the group. Snoq-L launched an appeal to the European Union to ban surrogacy because for women it represents a retreat in the path of freedom conquered over the years: "We cannot accept, just because technology makes it possible, and in the name of alleged individual rights, that women return to being objects available: no longer of the patriarch but of the market. We want surrogacy to be banned" reads the appeal.⁵ According to feminist abolitionists on the reproductive market, women do not enjoy full freedom: neither freedom from need (since it is assumed that having real job opportunities and earnings women would not participate in this market); nor freedom to choose consciously based on risk assessment and ethical implications; not even freedom to decide what will happen to their body while providing the service (e.g. having the final say if the clients want an abortion). These are the words of another feminist in the abolitionist front: "Think of the illiterate women forced by their husbands or mothers-in-law who do not understand what surrogacy involves, who try to escape and go mad when they understand that they have to part with the newborn. Very few of them have the awareness required to see it as a form of emancipation. And is this worth the pain of a whole host of them? How I wish there were other ways of emancipation, I think it is terrible that there are no other ways for some women than to become prostitutes or sell their children".

The Italian feminists do not mobilize alone: since the start in 2015, they adhered to the Stop Surrogacy Now campaign and followed the mobilization underway in France: French feminists led by Sylviane Agacinski and Collectif pour le Respect de

⁵<http://www.cheliberta.it/2015/12/04/appello-che-liberta/>

la Personne (CORP) on 2nd February 2016 organized an assembly in the French Parliament to request an international convention for the total abolition (Paris Charter) together with other two organizations CADAC (Coordination pour le Droit à l'Avortement et à la Contraception) and CLF (Coordination Lesbienne en France). The Paris event was attended by some Italian feminists who the following year organized a similar initiative: an international meeting in Rome of 23rd March 2017 called "Moherhood at the crossroads: from free choice to surrogacy. A global challenge". The meeting resulted in a recommendation to Convention on the Elimination of All Forms of Discriminations against Women (CEDAW) in which the signatories call for banning surrogacy as a violation of women's dignity and human rights.

This major event was the trigger for Italian feminists to form a network and together they organized several initiatives to raise awareness on the need to oppose the spread throughout the world and any legalization attempts of surrogacy. Among the groups in the network, in addition to Snoq-L, there is also a new feminist group arising from the initiative of feminist blogger Marina Terragni in 2015 with the precise purpose of opposing surrogacy and called Resistenza all'utero in affitto (RUA) (Resistance to womb for rent). Other feminist participants are: part of Arcilesbica, Unione Donne Italiane (UDI), one of the oldest feminist associations in the country, Resistenza Femminista, a feminist group against prostitution and pornography, and RadFem, feminists opposing prostitution, biomarkets, and erasure of sexual difference.

Interestingly, as in the transnational abolitionist campaign, also in Italy surrogacy abolitionists include some gay activists who dissociate from LGBTQ dominant pro-surrogacy position. This is how one of these exponents explains his opposition to surrogacy: "I am against it because no adult, neither single, nor heterosexual or homosexual couple, can sign a preventive contract to sell or buy a child. This is also confirmed by European and world international charters, which prohibit the sale of people's parts to third parties. Why do two men have to use a woman, even if she agrees, it doesn't matter? There is something unspoken in the homosexual community that I think is serious: there is a delusion of omnipotence whereby in order to have a child genetically for one of the two partners, one uses the body of a woman. If gratuitousness existed, the theme would remain the same: there is no adult who has the possibility of giving a child to others and cancelling the mother. The theme of the mother being culled, whether pregnant or biological, questions why it is necessary to do so".

In September 2016, a group of lesbians led by activist and sociologist Daniela Danna launched a position paper against surrogacy in which they asked States to reaffirm the *mater semper certa est* principle, to protect children from commodification, and thus to oppose all attempts of legalization: "In the name of women's self-determination and the rights of babies, we, the signatories of the declaration: reject the commercialization of women's reproductive capacities; reject the commodification of children; ask all countries to maintain the rule of elementary common sense according to which the legal mother is the one who gave birth and not the signatory of a contract or the origin of the oocyte; we ask all countries to respect the

international conventions for the protection of human and child rights of which they are signatories and to firmly oppose all forms of legalization of surrogacy on a national and a international level, abolishing the (few) laws that they have introduced".⁶

The conference in Rome was followed by numerous anti-surrogacy initiatives. One of these was an investigative video report published in July 2016 by feminist journalist Monica Ricci Sargentini, sympathizer of the prohibitionist front, on the main Italian newspaper *Il Corriere della Sera*: the reportage revealed how a Californian agency advertised surrogacy to potential clients at a hotel in Rome, an activity that is explicitly prohibited by Law 40. Following the reportage, the public prosecutor opened an investigation. In 2016, one of the most renowned feminists and philosopher Luisa Muraro published a small book entitled *L'anima del Corpo. Contro l'utero in affitto* (Muraro, 2016): Muraro, in contrast to the assumption that women's bodies are available, exalts the special bond between mother and child. In the same year feminist blogger and coordinator of RUA Marina Terragni published *Temporary Mother. Utero in affitto e mercato dei figli* (Terragni, 2016) in which she frames surrogacy as a market that exploits women and deletes the mother from a new-patriarchal regime, and in doing so it satisfies the historical male envy of women's reproductive power. In 2017, Snoq-L's leader and academic Francesca Izzo published a book entitled *Maternità e Libertà* (Izzo, 2017) in which she reflects on the epochal shift in the significance of motherhood and freedom.

In 2017, the feminist network promoted a survey which revealed that 71% of Italians would like that surrogacy remained illegal. The survey was conducted on a sample of 800 adults: 48% was unconditionally against a possible legalization, 23% was favourable to altruist surrogacy only.

In 2018, Italian feminist groups joined the appeal launched by the international coalition ICASM asking candidates running for the 2019 European Parliament elections to engage in the battle for a total abolition of surrogacy.

In 2019, the feminist network convinced, through hearings, the Mayor of Milan to stop transcribing birth certificates with two dads. The network demand was (and is) one of transcribing only the biological parent while the partner should go through the process of special adoption (adozione in casi particolari). Later, this position has been also confirmed by the Supreme Court (Cassazione, Sezioni Unite).

To celebrate the International Day against VAW on 25th November 2019, the Equal Opportunity office of the City Council of Rome held a public conference on surrogacy where representatives of Snoq-L spoke. This event, despite its local scope, is worth mentioning insofar it acknowledges surrogacy as a form of VAW.

In 2020, Snoq-L launched a petition to the Italian left-wing parties (which were ruling the government) inviting them to take a united and clear position against surrogacy as undertaken by the Spanish left-wing parties (de Aguirre, 2019) that recently included in their governmental agenda the support to abolition of surrogacy.

⁶<https://politicafemminile-italia.blogspot.com/2016/09/lesbiche-contro-lutero-in-affitto.html>

Finally, there is the Kiev case which I dedicated the introduction of this book: during the COVID-19 lockdown the feminist network asked the Italian Ambassador in Ukraine to reject any permit that Italian commissioning parents could have asked for to travel and pick up their babies and ensure that custody of the babies commissioned by Italian citizens be assigned to their surrogates or alternatively to adoptive parents. In July 2020, on the wave of the Kiev case, the Deputy President of the House of Representatives (former Minister to Equal Opportunity) Mara Carfagna, presented a law proposal to render surrogacy a prosecutable crime abroad. A *Snoq-L's* activist underlines that Law 40 is not to be reformed but rather to be enforced, case by case, through the following discouraging mechanisms as part of a coherent administrative and institutional response: consulates should inform judiciary authorities in Italy about irregular entries and suspects of surrogacy; only the biological parent can be transcribed in Italian civil registries, while the other parent should go through special adoption process (*adozione in casi particolari*) which implies family assessments by the Children Court (*Tribunale per i Minori*); the name of the surrogate should be transcribed in civil registries; surrogacy should be included in the list of crimes that are prosecutable abroad (as for sexual tourism); bilateral agreements between countries should be signed; an observatory on illicit publicity of surrogacy should be established at the Ministry of Interiors; foreign agencies that advertise surrogacy in Italy should be prosecuted.

According to feminist abolitionists the problems (diagnostic frames) with surrogacy are the following:

- surrogacy commodifies women and children's bodies: it reduces women to reproductive machines, pregnancy to a job, and children to objects/products
- surrogacy is a form of VAW
- surrogacy deprives women of freedom during pregnancy
- surrogacy exploits vulnerable women who are already subjugated by economic needs and family pressures; surrogacy also takes advantage from women's altruistic inclination and from the mystique of motherhood
- surrogacy is an expression of patriarchal envy towards female reproductive ability
- surrogacy is dangerous for women and children's health and deprives children of their identity
- surrogacy impedes the relationship between the mother and the newborn, as well as family continuity
- surrogacy is a form of market invasion in human life
- surrogacy increases global inequality
- surrogacy is a form of appropriation of female identity (which builds on her capacity of giving birth); the so-called gender feminism approves this appropriation
- surrogacy is legitimized in the name of an assumed right to offspring and a culture of individual limitless rights which is encouraged by left-wing politics
- surrogacy is presented through edulcorated media coverage of celebrities having babies and narratives of individual autonomy

- surrogacy is encouraged by low control/enforcement of the Law 40: automatic transcription by Italian authorities of foreign birth certificates, lack of coordination between Italian authorities abroad, foreign countries and Italian civil registries, non-criminalization of Italian citizens having babies through surrogacy abroad, are all conditions that contribute to increasing the use of surrogacy abroad.

The solutions or the envisioned cures (prognostic frames) according to Italian feminist abolitionists are the following:

- universal ban of surrogacy to be achieved through UN and EU declarations (as for the international condemnation of slavery and female genital mutilations)
- application of international agreements such as: the European Charter of Fundamental Rights, the CEDAW, the Universal Declaration of Human Rights, the UN Slavery Convention, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Council of Europe Convention on the Adoption of Children, the Council of Europe Convention on Action against Trafficking in Human Beings, the Council of Europe Convention on Human Rights and Biomedicine
- case by case enforcement of Law 40 through coherent administrative and institutional response involving consulates and judiciary authorities in Italy
- the name of the surrogate should be transcribed in civil registries
- surrogacy should be included in the list of crimes that are prosecutable abroad (as for sexual tourism)
- an observatory on illicit publicity of surrogacy should be established at the Ministry of Interiors
- foreign agencies that advertise surrogacy in Italy should be prosecuted.
- simplification of adoption process, which should also be open to same-sex couples
- lobbying on international organizations to contrast the influence of infertility industry
- reaffirmation of the *mater semper certa est* principle (the mother is the one who gives birth)
- coalitions and coordination within feminism should be strengthened
- left-wing parties should take a unitary position against surrogacy
- sensitization of public opinion on implications and risks of surrogacy
- principles of human dignity and integrity of non-usable bodies should be reaffirmed, the belief in limitless rights and genderless culture should be contrasted.

Parallel to the feminist mobilizations, politicians from the conservative area and Catholic pro-life and family activists have also been very active in recent years in countering the spread and attempts to legalize surrogacy. Among the main initiatives, the pro-family organization *Generazione Famiglia* (Italian branch of French *La Manif Pour Tous*) launched an appeal asking the Council of Europe for the total

ban of surrogacy and on 2nd February 2016 *Provita* NGO convened a press conference at the Senate where it was invited as the main speaker Elisa Anna Gomez, American surrogate who conducted a long legal battle to obtain permission to see the child she had gestated for a same-sex couple (Gomez died in 2016 under unclear circumstances). Also, some Parliamentarians in the Christian-democratic area proposed to extend the prohibition of surrogacy provided by Law 40 to cases of Italian citizens using surrogacy abroad and returning to Italy with children. Surrogacy was also a topic of political debate during the 2018 Parliamentary election campaign insofar the defence of traditional family was one of the main points of the right-wing parties agenda. At that time *Provita and Generazione Famiglia* (now merged into one NGO) organized a visual communication campaign, with Billboards in Rome, Milan, and Turin, to sensitize public opinion against surrogacy. The Mayor of Rome, Virginia Raggi claimed that one of the Billboards that was showing two men carrying a baby inside a shopping cart was homophobic and against children's dignity, and thus ordered the immediate removal and a fine for the organizers; however, the advertisement authority (Gran Giurì dell'Istituto di Autodisciplina Pubblicitaria) soon after ascertained that the Billboard was regular and not offensive. In February 2019, several Senators of the right party *Legambiente* presented a law proposal to embitter the penalty already provided by Law 40 and to explicitly forbid the registration of children with two male or female parents.

Although feminists and Catholics are willing to discuss surrogacy, they do not organize joint initiatives and they remark that they are not allied. Such firmness in maintaining distances derives from different views on family, women's emancipation and gender roles in modern society, and especially due to divergent views on abortion. Pro-life and pro-family organizations base their strong opposition to surrogacy on different premises than those of feminists. While feminists view surrogacy as an expression of the patriarchal culture and male-dominated biotechnology, pro-life activists see surrogacy as an advanced form of disruption of the natural order, and as a violation of the child's right to be conceived and brought into life by his own parents (Vitale, 2017). Despite these different underpinnings, the frame of women and maternity commodification, which is primarily a feminist frame, is applied by pro-life groups too (Giorgi, 2016); on the other hand, feminists speak not only about the commodification of children but also about commodification of life, which is the dominant frame of pro-life groups; motherhood, the mother-fœtal bond and surrogates' sufferance are exalted by both fronts; health risks for surrogates and children are also common topics of concerns for the two fronts. Even if these groups remain very distinct, feminists opposed to surrogacy, as in the debate on Law 40, are accused of having the same conservative positions as both the Church and the right. Not only that, they are also accused of homophobia for not allowing gay men to have the same parentage rights as lesbian women.⁷

⁷<https://www.avenire.it/famiglia-e-vita/pagine/femministe-anti-surrogata-omofobe>

Feminism of Difference and the Non-abolitionist Front

Surrogacy is without doubt a divisive topic for feminism, both internationally and in Italy. Not all feminists in Italy agree with the abolitionist demand and outside the network who explicitly asks for the total ban, there are other feminists (such as those linked to the feminist magazine *Leggendaria*) who are more open to reflect on the possibility of allowing surrogacy, altruistic or even commercial. If in the other case studies, I have called this front reformist or regulatory, in the Italian case I do not think these names reflect their approach. This is why I prefer to simply call this front non-abolitionist. One of these feminists years ago told me “I would not call myself a reformist, but a feminist who rejects a binary logic”.

What I observed is that while opposition to surrogacy is visible, insofar it generates events and coalitions, to my knowledge in Italian feminism, there is no established and organized front that advocates for surrogacy legalization. I cannot even identify any feminist NGO engaged in reproductive rights, such as GIRE in Mexico, that offers policy makers with expert consultation on how to better regulate surrogacy. The regulatory demand comes from other civil society groups, such as same-sex families and civil rights organizations, which nevertheless get support from some feminist groups and individuals. These pro-surrogacy organizations build their demand on the principles of non-discrimination in becoming parents: the possibility to have babies should be freely pursued as inviolable rights to self-determinate one own's personal life (by everyone, singles and couples of all sexual orientation), also through access to assisted reproductive technology. They recall that the European Court of Human Rights on 26th June 2014 ruled that the prohibition of surrogacy is a violation of children's rights to family life and a violation of article 8 of the European Convention of Human Rights to the respect of private life. The other core principle in the legalization demand is the autonomy of women in deciding whether to use their body to help others to have babies. The prohibition established by Law 40, according to these advocates, renders aspiring parents (and subsequently children born through surrogacy) more vulnerable to risks and legal incertitude insofar their only chance to have babies is going abroad (reproductive tourism).

Non-abolitionist feminists minimize the unprecedented significance of subrogation by interpreting it as a modern version of practices that have been always existed, such as children who were born from servants and raised by their masters, or cases of mothers who choose to give their newborn child away (for adoption). Moreover, they suggest considering surrogacy as a procreative practice in which the centrality and power of women can be reaffirmed, and as a possibility to redefine parentage. The freedom of women to decide whether to gestate their own or others' embryos, and whether to become mothers of their own or others foetuses, should not be limited. Some reject the abolitionist demand because they hope that the practice can be regulated in such a way as to provide only reimbursement for expenses and greater protection for the subjects involved, and they want to be open in principle at

the possibility that surrogacy can also be practiced outside the market, without any money transactions, between women of the same family or friendship network.

Others, on the other hand, consider opposition to payment as a moralistic position. I propose an exemplary excerpt of this position by an opinion maker who is favourable to legalization. "I'm still waiting a strong argument for the condemnation of commercial subrogation: shouting at the scandal that there is money is not a good argument, I do not do anything about this reason unless we prove that all trade is immoral and harmful". Me: "this is about trade in human beings though. It is very different from the potato trade". Interviewee: "It is not a trade in lives but in functions. It is also a huge debate related to the huge question of whether we can truly dispose of our body. We also have to choose what to do with our functions".

The choice not to adhere to the abolitionist appeal also derives from an a priori rejection of any prohibitive approach to women's agency, especially when this approach is based on a paternalistic representation of the woman-victim who does not know how to choose independently. The feminist sociologist Tamar Pitch in *Leggendaria* magazine writes about the punitive feminism on the basis of the demand for the universal abolition of surrogacy: "Today the self-assumption of the status of victim seems indispensable to be recognized as political protagonists and interlocutors. With an aggravating circumstance, compared to 20 years ago, that 'our' political subjectivity is built through the definition of 'others' as victims, with the consequence that 'we' speak and the 'others', the 'victims', they are spoken by 'us', and therefore reduced to silence. And if, as it happens, the others want to say something different, for example, by refusing the status of victims, one can always resort, perhaps giving it another name, to the old category of false conscience" (Pitch, 2017, p. 26).

Furthermore, there is a distancing from positions, such as the abolitionist one, which reaffirm the biological basis of female and maternal identity. In the words of an interviewee: "The ban responds to the logic of enhancing the biological data of the maternal dimension, when instead the new techniques of assisted reproduction have introduced a range of subjects within the practice". Consider the following extract again from the feminist magazine *Leggendaria*. In the Snoq-L's abolitionist appeal feminists Maria Luisa Boccia and Grazia Zuffa (Boccia & Zuffa, 2017) see an expression of "biological reductionism", and invite to "re-signify the procreative, parenting and filiation relationships. Starting from the meaning, which has always been absent in the symbolic and social patriarchal order, of being *born of a woman*. It is 'this fact' that has not found a symbolic inscription, or an adequate representation. *We are still born of a woman*. The adverb indicates that technologies are unable to replace the sexed body, nor to dispose of the uterus, as a reproductive organ, separated from the woman. The question is whether this necessarily does with the woman who generates, *the mother*. We think not; not always and however. Today as in the past. Today differently from the past" (p. 10). Again, the two authors propose to speak of "female paternity" for the egg donor, understood as a "female father by analogy with the male experience, by reason of the 'offer' of the genetic patrimony" (p.11). The authors maintain that "the father is reduced from a symbolic figure to gametes and the paternal-patriarchal order of filiation to biological procreation" (p. 11).

This critique of the biologism of motherhood and female identity is highly interesting to understand the configuration of Italian feminism on the theme of surrogacy. Italian abolitionists can be traced back to difference feminism, a stream of feminism which highlights the uniqueness of female nature and the power of women's reproductive capability. This stream, inspired by and developed in dialogue with French feminists, has been dominant in Italian Second Wave feminism. Difference feminists reject the constructivist approach to sex identity which is instead promoted with increasing visibility by the so-called gender feminists. The latter believe in the full self-determination of one's own identity regardless of one's biological sex: motherhood in this view is not a typical trait of the woman but it can be played by all genders (Cavarero, 1999; Greer, 1999). The following extract of a conversation with a feminist in the abolitionist front well explains the theoretical rationale for the opposition to surrogacy based on sex difference: "with surrogacy emerges the homologation of female freedom to that of the neutral element, built on male identity. We are reaching a decisive point in the internal confrontation of feminism: what is woman? If this battle is lost, the fundamental element of the initial feminist battle is lost". These are the words of a feminist scholar: "Constructivism made us think that motherhood is a construct, as if female emancipation were freedom from a natural destiny. In Italy, there has been great resistance to gender feminism. The message that motherhood is a construction that dispossesses the person from his nature. Today there are two major rethinking underway: on the concept that women's emancipation occurs with the entry of the market, and the revision of the assumption that freedom means liberation from one's own nature".

The division between difference feminists and gender feminists is not only theoretical but is sometimes expressed also in terms of the conflict and polarization on the following issues: call for regulation/abolition of sex work, recognition/rejection of transgenders as women, and support/opposition to surrogacy. In Anglo-American social movements, feminists who frame sex work and reproductive work as neoliberal forms of exploitation of women's body and defend the typicality of female sexual identity are labelled as Trans-Exclusionary Radical Feminism (Terf) and Sex Worker Exclusionary Radical Feminist (Swurf): these categories have also entered the Italian feminist scene as derogatory labels for surrogacy Italian abolitionists.⁸

To sum up, according to non-abolitionist feminists, prohibition (and not surrogacy per se) represents a problem because:

- it would endanger women's self-determination and freedom to choose whether to use their pregnancy for others
- it reaffirms biologism in the definition and meaning of motherhood (backlash of achieved freedom to be woman regardless the status of mother)

⁸<https://abbattoimuri.wordpress.com/2016/10/28/dici-terf-femministe-radicali-trans-escludenti-e-trovi-le-femministe-della-differenza/>

- it is based on paternalistic views of women as victims who are incapable of making choices
- abolition would open the door to criminal organizations

They think it is important to:

- continue reflections and debate on surrogacy by avoiding moral categories, by collecting evidence and analysing legal frameworks of countries with permissive regulations
- be open to redefining parentage and family models
- reaffirm the concept that motherhood is a free choice and does not necessarily correspond to pregnancy

Conclusive Observations on the Unicity of the Italian Case

What is different in Italy from other case studies in the United States and Mexico is that in Italy the public debate on surrogacy arose from, and therefore it is marked by a strong opposition from feminists and Catholic groups. In Italy, in contrast to the other two cases, feminist abolitionists have a prominent role in rendering surrogacy a hot issue of discussions within institutions, the civil society and the media. While a universal ban and enforcement of existing prohibition are causes for feminists in Italy, legalization of surrogacy is not (yet). It seems that feminists who disagree with the call for abolition are more open to surrogacy in principle than in practice, as if they would not surrender to the fact that, faced with the scenarios opened by the combination of biomedical technology, globalization, and inequality, some limits to women's freedom need to be established: abolitionists belonging to difference feminists set these limits in the female sexed identity and defend the centrality/power of the mother in humanity; feminists who do not agree with the surrogacy prohibition believe that women should be free to embrace new opportunities of emancipation (also from their own female identity) by using creatively their reproductive capacity.

It is worth noticing how surrogacy in Italy, unlike the other two case studies in the United States and Mexico, is prohibited and is not physically undergone within national borders; nevertheless, opposition is stronger and more active than in the other two case studies where surrogacy is at some level regulated and thus undergone by local women. Therefore, we can say that Italian feminists are engaging in a battle that presently does not closely pertain to the exploitation or commodification of women in Italy; it pertains to the commodification of women in other countries of the world, and more broadly to the theoretical notion of "the woman", whose reproductive ability is devalued as an exploitable function. Opposition to surrogacy hinders the possibility that it is being legalized and it expands a form of reproductive work in Italy too, where an economic crisis is rampant.

Surrogacy mobilization in Italy is characterized by consolidated relationships between activists in the civil society and politicians in the institutions and thus by

engagement of politicians in surrogacy opposition (mainly through law proposals and public statements). Whereas the position of the right-wing parties is clearly against surrogacy and politicians in this area cooperate with pro-life and pro-family groups, on the other side, the position of the center-left parties, which in the last decade have strengthened their engagement in civil rights and gender equality, is not clear and homogeneous. This situation poses some identity problems to feminism, whose traditional political interlocutor has been the left-wing parties, and whose identity is that of a progressive movement.

Coalitions that transcend traditional ideological divisions and divergences on other social issues would render opposition stronger. In particular, feminists and conservative groups such as pro-life and pro-family could consider starting a single-issue alliance on surrogacy while maintaining their different views on abortion and family. Shared concerns about health and psychological risks for surrogates and children could be developed into a scientific-based argument for joint opposition to surrogacy. By the same token, feminists could consider the possibility of dialogue with political parties in the conservative area although they are traditionally perceived distant from feminist visions of women's emancipation. This kind of openness could also offer the opportunity to modify pre-assumptions about "enemy's" values and visions.

In light of this diffused and structured opposition to surrogacy, Italy might become a model of strict prohibition if policy proposals aimed at enforcing Law 40 (e.g. through case by case administrative response and prosecution of surrogacy undergone by Italian citizens abroad) are approved. On the other hand, it is unlikely that in the near future surrogacy will continue to be a hot topic in the Italian political debate: the Italian population will need to face heavy effects, in terms of economic crisis and reorganization of daily life and family, of anti COVID-19 policies (such as lockdown, social distancing, smart-working, distance-learning, and school closure). These are risk factors that may render Italian women the target of international recruitment of surrogates, a possibility that should be taken into consideration in policy making as well as in any reform or enforcement of Law 40.

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Chapter 8

Abolitionist and Regulatory Arguments into Perspectives



The Growing Relevance of Surrogacy in Feminist Mobilization

Over the last few years, while I was doing the WoMoGeS¹ study, I witnessed the growing interest of feminism in surrogacy and the structuring of national and international initiatives, alliances, and networks. In the United States, with the debate on legalization in New York, the issue has gained a visibility within the public debate that it did not have in previous years and has prompted feminism to take a stand. In Mexico, following the conclusion of my field-work, a national abolitionist front was founded which also worked regionally with other feminist groups to launch the Latin American Manifesto (see Chap. 6). In Italy, the mobilization started in 2015 has never stopped and abolitionist feminists do not miss an opportunity to insert their requests and demands in the public discourse. If in the first year of the WoMoGeS project I would have concluded that the fight against surrogacy is a battle limited to Western European feminism and that elsewhere it is carried out by different souls of the civil society united in the international campaign Stop Surrogacy Now, today my conclusions are different: feminism, after a period of hesitation, is embracing the issue and transforming it into one of its “causes”.

In addition to the remarks on the recent mobilizations in the three countries, the decisive signal that makes me say that surrogacy is becoming a feminist cause is the birth of the International Coalition for the Abolition of Surrogate Motherhood (ICASM) in 2018. ICASM was founded from the initiative of four French feminist associations: Collectif pour le Respect de la Personne (CORP), Coordination pour le Droit à l’Avortement et à la Contraception (CADAC), CQFD Lesbiennes féministes et l’Assemblée des Femmes (ADF). These four associations were the leaders of the abolitionist mobilization that began in France in 2015, which was then also

¹www.womoges.wordpress.com

undertaken by the Italians. The four associations had a solid international network, which continued to strengthen and expand in the years to come. Today the Spanish abolitionist coalition *Red Estatal Contra los Ventres de Alquiler* (RECAV) also sits on the ICASM board with a representative of the Swedish Women Lobby, of *Pour les Droits des Femmes* (PDF) du Québec and of the Italian *Senonoraquando-Libere* (Snoq-L).

Even if Jennifer Lahl, leader of Stop Surrogacy Now, was invited to the launch of ICASM as a speaker, and although the dialogue continues, it is worth noticing that ICASM was created from the need felt by French feminists to distinguish themselves from the abolitionist cause not specifically feminist, such as Stop Surrogacy now which is endorsed by a plethora of subjects, including those belonging to the pro-life and conservative world. According to one of the founders of ICASM, there was the need to establish an abolitionist front that was in the feminist and progressive identity. To guarantee this position, participation in the coalition is subject to recognizing oneself as feminists and adhering to the pro-choice principle in terms of procreation. Article 2 of the Statute states: “The Association thus created is defined as a structure that promotes the rights of women on feminist positions and in particular: equality between men and women; emancipation and autonomy of women; legal access to abortion and contraception; equality between heterosexual and homosexual”.²

In light of these observations, I read ICASM as an initiative to mark the territory of the abolitionist mobilization and claim a feminist space within it. The claim stems from the fear of indirectly contributing to the strengthening of pro-life and pro-family instances, as well as to the ideas of traditional family-based societies defended by right-wing parties, which feminists, not only French, see as a threat of withdrawing the rights and recognition of status won by women from the post-war period to today. Nevertheless, with this political and civil society area, radical and difference feminists share not only the concern about the commodification of procreation (Giorgi, 2016), but also the concern for the popularity that gender feminism and transsexualism are having at the expense of the recognition of feminine peculiarities anchored in sexual identity (Baden & Goetz, 1997; Bandelli, 2017).

The Stop Surrogacy Now campaign represents a transnational platform in which groups with different ideologies and agendas have the opportunity to join forces in a common cause and promote a secular debate, respecting the differences and divergences that its participants have on other issues, regardless of sharing broader social visions. Stop Surrogacy Now deserves credit for alerting the civil society and international public opinion to the unprecedented expansion of surrogacy and its critical aspects, as well as for having strongly contributed to the initiation of feminist mobilization in the United States, Europe, and other countries around the world. Today, it is a well-established platform, with not only excellent communication skills but also detailed scientific knowledge of the phenomenon, both in its medical, bioethical and commercial aspects. It also has a good capacity to collect first-hand

²<http://abolition-ms.org/en/statutes/>

testimonies, which are all assets that the abolitionist feminist front needs to strengthen in order to compete with the reformist front.

Abolitionists, Reformists, and the Undecided

The three case studies show that the categorizations of feminist positions and currents reported in the literature review (Chap. 4) are current and applicable. We learn from studying the country cases that the abolitionist front includes the following feminist currents: radical, feminism of difference (currently very widespread in Italy and France), ecofeminism, and lesbian feminism. Whereas, on the reformist front, there are the groups that identify themselves as (neo)liberal and autonomy feminism, along with those that refer to the constructivist theory of identity, or to gender feminism, and close to the demands for equality for transgender people. Furthermore, we know that the split between abolitionists and reformists goes back to the one between those who see prostitution as a form of sexual exploitation and those who see it as a form of work and claim the rights of the category. Surrogacy is therefore treated as a form of reproductive exploitation by the former and a form of work to be better protected by the latter. I believe that the positions of these two fronts refer to two different visions of social justice: the radicals are inspired by a critique of structural gender inequality, while the reformists look at the individual dimension and emphasize the free choice of women.

We can also observe some differences in the composition and strategies of the two fronts: abolitionists tend to be grass-roots groups with informal networks, voluntary activists, even prominent thinkers who take individual positions and associations with their own organizational structure but a limited operational capacity. The reformists, on the other hand, have more solid structures and can count on offices, personnel, as well as expert knowledge. Both fronts act nationally and supranationally. The former tries to achieve their prohibitionist goal above all by launching petitions and calls to raise awareness among the public and decision-makers; the latter publish studies and sit on international policy making forums, where, as we have seen in Chap. 3, a reformist approach prevails. The strategy and methods of action of the abolitionist front could change in the short future as it becomes formally structured and organized, as the more solid organizations with more organizational resources increase their commitment to the issue and as the international coalition increases its visibility as a political and expert interlocutor.

It is worth remembering that this two-pronged categorization does not only apply within feminism but rather describes well the debate in the civil society in which multiple social movements participate. In the non-feminist abolitionist front, the pro-life and pro-family groups must be counted first in certain countries, but also bioethicists, doctors, and intellectuals, not necessarily with a sensitivity and background close to the conservative world. We have also seen that some gay activists participate in this front: they depart from the claims of the right to biological parenthood supported by the dominant current of the LGBTQ movement which

indeed is one of the principal endorsers of surrogacy legalization. In the non-feminist reformist front, there are activists for homosexual parenting, for the rights of infertile people, for a secular bioethics, and personalities who embrace the so-called progressive ideals in terms of the family.

Finally, there is another fundamental fact of these case studies worth remembering: in addition to the two fronts, there is also a central category made up of organizations, institutions, and people who, while working on relevant issues, have not taken a position on surrogacy for the moment. It is a group, which just like for electoral campaigns, we can call the undecided and which will be of extreme importance in determining the normalizing of this way of having children or its progressive circumscription in exceptional cases.

Recurring Frames and Global Discourses

The third important fact that emerged from the case studies is that in the three countries the frames in which the proposals from each of the two fronts are elaborated are the same, and coincide with those already highlighted by the international literature: it emerges that the debate is polarized on a reading of surrogacy as a form of commodification of women and children, of the procreative exploitation of women, and on the other hand, as an expression of reproductive freedom, full female autonomy over her own body, and the possibility of empowerment. These are the macro-frames proposed by feminism to argue the need to abolish or regulate principles or ideals that mark the course of the organizations involved in the issue and that create gaps in the formation of consensus within the undecided group. These frames circulate in the networks of transnational feminism (Gupta, 2006; Mohanty, 2003), in international organizations as well as on the working tables in which policy makers and the civil society meet. They are consolidated by forming a discourse on surrogacy that I would define as a global discourse, as occurred for other phenomena such as terrorism (Ditrych, 2014), climate change (Mathiesen, 2000), human trafficking (Sanghera, 2005), violence against women (Corradi & Bandelli, 2019), and, first of all, the defence of human rights (Khor, 2013).

There are certainly differences between the proposals and arguments raised in the three case studies: for example, in the United States, surrogacy is presented as a fact, a widespread practice, whose specific procedures (medical and contractual) must be better regulated; in Mexico, the theme of crime and the scarce applicability of prohibitions stands out; in Italy, the focus is on the registration of children who are born abroad through surrogacy and feminist abolitionists propose a discourse on the freedom of motherhood that I have not found in other countries. However, I would look at these differences rather as nuances on a common narrative canvas, made up of the key concepts of commodification, exploitation, reproductive freedom, women's autonomy and empowerment.

Criticism of the frames proposed by social movements, as well as by the mainstream press, is an important activity since, as Susan Markens (2007) also

remembers in her study on surrogacy politics (see Chap. 4), policies are then formulated on these frames. “A frame is a central organizing idea or storyline that provides meaning to an unfolding strip of events, weaving a connection among them. The frame suggests what the controversy is about, the essence of the issue” (Gamson & Modigliani, 1987, p. 143). Therefore, the legislative measures will be significantly different if guided by a conception of surrogacy as a participatory procreative practice or as a method of overcoming the infertility “disease”, or as a trade in women, such as the sale of children, or further still as the manufacturing of humans. If the term womb for rent appears in the text of a Bill, we can expect a prohibitionist or at least restrictive approach; other expectations if we are faced with the term third-party reproduction.

Furthermore, analysing the frames proposed by social movements also means asking what social visions underlie their demands on a particular theme and therefore how they are proposed or legitimized. For example: the opposition to the surrogacy made in terms of outrage towards the exploitation of poor women and victims of a patriarchal system helps to consolidate the image of the passive and non-emancipated woman compared to the modern one who lives in Western countries (Dasgupta & Das Dasgupta, 2014). On the other hand, if the frame is that of empowerment, the neoliberal model is normalized in which everyone is an entrepreneur of themselves, and it is up to him/her to seize the countless opportunities to improve their economic status (Lange, 2014): it is therefore admitted that a part of the population is willing to do things that another part of the population, more affluent, does not even need to ask itself if it is willing to do.

When frames are not confined to a social movement, specific protest, or national public discourse, but as we have seen they propagate through the networking of activists and policy makers globally, the need for this analysis becomes even more urgent. Another element that makes this analysis necessary is the observation that these frames act as “hypnotic formulas”, expression that I borrow from Herbert Marcuse (1964): combinations of words that endlessly repeated fix a given meaning and image in the recipient’s mind, without any reflection on the possible word’s explanations and scope. These hypnotic formulas discourage the formation of opinions (not only among policy makers but also among public opinion) starting from scientific facts and evidence, while they contribute to a polarization in the name of claims with a strong ideal and emotional charge such as the demand for full female autonomy or the demand for her liberation from exploitation.

These are very powerful conceptual categories as constitutive mantras of a social movement’s identity but very poorly suited to the formulation of social policies, which rather need factual information, empirical data, and balance. Furthermore, both categories are probably destined to obsolescence in the face of the artificial uterus perspective: when to create a human being there will no longer be a need for a woman’s body and dedication, but rather an artificial uterus will suffice (Kendal, 2015). On the one hand, commodification will no longer be effective to oppose these developments in biomedical technology, while on the other, women will have been deprived of an opportunity for empowerment, making them “unemployed”. These mantras are not even adequate to foster a dialogue between different streams of feminism and different social movements, which is needed in order to: reconcile

recipes of women's emancipation based on structural social change (radical feminism) and individual choice (neoliberal or autonomy feminism); start consultations between the civil society and institutions; diffuse knowledge and expertise; encourage a public debate that would not be polarized along positions inherited by other feminist causes such as prostitution and abortion. The leverage of knowledge on surrogacy practices, procedures, and implications is needed to prepare the actors who will sooner or later face the urgency to take a position and contribute to policy making and who are likely to face the inconsistencies of arguments based on theoretical principles.

With the hope of contributing to a more complex understanding of the phenomenon, and therefore to a necessary distance from these frames, in the following paragraphs, I will discuss some critical points of the arguments recurring in both factions. Regarding the abolitionist discourse, I think that the defence of personal integrity from commodification has little appeal in a society that focuses on individual freedom, including that of self-objectification. Secondly, I would like to emphasize that in surrogacy, women participate not only as surrogates but also as clients, doctors, and entrepreneurs, which makes it difficult to argue that in surrogacy the woman is a victim of patriarchy. The third observation I propose is that surrogacy represents an attractive earning opportunity for women in the working class, even when it is not the only chance. Fourth, I propose interpreting the decision to become surrogates as a result of individual evaluations, or shared with family members, moved by a goal of social mobility.

Regarding the reformist discourse, I want to make the following observations. The first is that the woman's autonomy ends with the drawing up of the contract: during the pregnancy for others, her autonomy will be limited, and she will have to negotiate with the will of third parties the decisions concerning her body and her everyday life. The second reasoning that I propose concerns the meaning of empowerment: in addition to individual economic empowerment, what other improvement in the female condition does surrogacy contribute to? Furthermore, to what extent should the use of surrogacy to obtain a child at all costs be interpreted as a real expression of reproductive autonomy independent of cultural imperatives of self-determination? Finally, the last observation I propose regards the adult-centricity of the discourse and the limitation in time of the presumed conquest of freedom of the human being: following Jürgen Habermas' reasoning on genetic engineering, I will argue that surrogacy undermines the freedom of the generation that arises from acting, as this freedom requires the awareness of not being as one is through the will of others.

A Critique of Abolitionist Arguments

We know from the debate on prostitution that defending the integrity of women from commodification and exploitation was an ineffective argument in finding a common ground for elaboration with those who propose the paradigm of autonomy and

individual free choice to do what one wants, with one's own body, even at the expense of one's health or personal dignity (Munro, 2001; Augustin, 2004). I think this failure is partly due to the fact that the paradigm of autonomy proposed by (neo)liberal feminism, as already mentioned in the chapter on Mexico, is not a discourse of criticism of the dominant values of contemporary society, but rather it aligns with them.

I would like to list some social traits that in my opinion are reaffirmed by the discourse in support of surrogacy, and which at the same time have contributed to the diffusion and legitimation of this procreative practice: the domination of man over nature through technology in a context that hails limits as proof of modernity and progress (Harari, 2015; Magatti, 2018; Marcuse, 1964); the invasion of the market and the application of the logic of capitalism to intimate life (commercialization of care, romantic encounters, sex, procreation) (Hochschild, 1983); the Cartesian conception of the body-machine, which the subject possesses and can modify in the name of the efficiency of human processes (Le Breton, 1999), and dominant understanding of infertility as a malfunction of the reproductive organs, which the owner has the right to repair (Greil, 2002); the imperative of choice (Bauman, 2001; Beck, 2012) or having to continuously self-determine one's own identity and biography (such as having a child at any cost) oriented, not by the structuring function of traditional social institutions such as family and religion (Taylor, 1991), but from the normative objective of self-fulfilment (Giddens, 1992), from the models of success conveyed by the media and entrusting the identification of one's desires and their realization to the specialist knowledge of third parties (Illich, 2013; Lasch, 1979, 1991); the prevalence from the 1960s onwards of a conception of freedom (and female emancipation) in an individualistic rather than a relational key which has produced a progressive proliferation of alleged "rights" (Magatti, 2009); the polymorphism and the precariousness of the family institution (Stacey, 1996).

In this context, prohibitive or punitive proposals which, in the name of protecting the integrity of women (from commodification), want to limit the freedom of individuals to form a family or to improve their economic conditions through the opportunities offered by the market and technology have little chance of finding a broad consensus. The "right" to self-commodification of one's own body is also a widespread principle in debates other than assisted procreation: for example, in the debate on organ donation, transsexualism, and biomedical experiments (Roman, 2012). Furthermore, arguments based on the condemnation of the commodification of the woman's body are easily circumvented by proposing to legalize only the so-called "altruistic" surrogacy (which nevertheless does not cancel the commercial nature of the transaction), imbuing the argument with the same rhetoric of altruism that we have seen at work in the commercial communication of clinics and the testimonies of the surrogates (see Chap. 4). If anything, rather than commodification, it could be more effective to speak of the "objectification" of women, or rather of the reduction of the person from an end in itself to a means, without necessarily having this transformation take place in the space of the market (Nussbaum, 1995). However, it is likely to think that even this concept would be easily opposed by instances of personal freedom in objectification.

I noticed during the field-work that commodification is often used both as an economic exploitation and an objectification and that exploitation can mean both the disproportionately low remuneration that the surrogate receives compared to the enormous profit of the clinics and agencies, as well as to describe the situation in which the surrogate is deceived by not very honest procedures for the benefit of the clients or the business. This semantic twine might lead to easy objections such as: if we increase the pay for the surrogate, would commodification be acceptable? If surrogacy is undertaken outside the market, would it still be a form of commodification? Making recruitment subject to verification that the woman is not in a condition of need would not mean excluding the most disadvantaged women from an unparalleled earning opportunity (among the types of jobs accessible to them) which would instead be available to middle-class women with at least a little better income?

The second comment I would like to make on the feminist abolitionist discourse is to condemn surrogacy as the product of an inherently masculine technology used in a patriarchal logic to usurp a woman of her reproductive abilities (Sugamele, 2019; Denny, 1994). In this representation, an important fact is obliterated: women and men, heterosexuals and homosexuals participate in technologies for assisted reproduction, both as doctors and technicians as well as entrepreneurs, customers, and suppliers (Corradi, 2021). It should not be forgotten that surrogacy is mainly used by heterosexual couples (Jacobson, 2018): this means that there are women who (together with their partners, but also single women) use (thanks to their own economic availability or the family unit) the service of other less well-off women, to satisfy their desire for motherhood. In Chap. 4, it was described how the decision to resort to surrogacy is made in agreement between the two partners/aspiring parents (MacCallum et al., 2003; Papaligoura et al., 2015). Furthermore, a recent study with 61 Polish couples revealed that having your own child is more important for women than for men, men were more ready to accept childlessness, women accepted the assisted reproductive technologies to a greater extent than men (Nagórska et al., 2019). Considering that the desire for motherhood is based on the female sexual identity and is at the same time influenced by social norms and expectations (Pinker, 2008), it is quite risky to argue that female customers, as well as surrogates, are victims of a patriarchal and sexist system. Finally, I would like to add to this reasoning that many surrogacy brokers are women and former surrogates who *choose* to make money from the availability of other women.

My third comment relates to the assumption that giving women more income opportunities would reduce their willingness to act as surrogates. A willingness that according to abolitionist feminists depends precisely on the state of poverty of these women, combined with their lack of emancipation. This argument in Italy and in the United States is often accompanied by the image of Indian women in dormitories, while in Mexico, it is proposed by the feminists of the modern capital thinking of the poorest and least educated compatriots of the rural areas or indigenous communities. However, it is worth recalling how from the review of the literature discussed in Chap. 4, the preponderant identikit of the surrogate, neither in India nor in the United States nor in Mexico or in Ukraine is that of the poorest woman at the most extreme

margins of society but rather the woman of the working class who from one moment to the next may find herself in a state of economic need, to which precarious work cannot sufficiently remedy, and which through the remuneration of pregnancy seeks to improve the living conditions of her family and her future ability to generate income on a stable basis (Rozée et al., 2019; Olavarría, 2019; Lance & Merchant, 2016; Ziff, 2017). It was also seen how the remuneration of the surrogacy is a means of starting a business, paying off a mortgage faster, giving their children a better education, paying an unexpected expense, or participating in the family budget with the husband's income.

In light of this last consideration, I think that the recipe suggested by Femmva in Mexico to create more work opportunities for indigenous women and community-based entrepreneurship, although it has the merit of reaffirming demands for social justice for women, would not ensure a minor "bioavailability" (Cohen, 2007): the income offered by surrogacy would still represent an appealing option which potentially can coexist with another work activity (e.g. producing handicrafts while pregnant for others). Rather, in my view, the availability of revenue opportunities would discourage women to engage in surrogacy only if accompanied by initiatives aimed at increasing awareness on the health risks of this appealing practice, to stimulate reflections on ethical implications, and to develop self-respect and responsibility towards children that are brought into the world in this way.

Finally, the last comment I want to propose on the abolitionist feminist discourse is linked to the previous one and concerns the poor recognition of the agency of the surrogate woman. I start from the observation that even in societies where women are subjects of equal rights with men, where they have access to the public sphere and the market, the use of the female body to obtain an economic advantage persists and is normalized by the utilitarianism and monetarization of the value of every aspect of life (of men and women) (Hochschild, 1983). Women can be forced by others against their will, trafficked to surrogacy, deceived and threatened and have no concrete alternative to escape the self-commodifying action (Saravanan, 2018). However, this is not the reality highlighted by most of the studies reviewed in Chap. 4, which on the contrary demonstrate that the decision to enter this market is made in the absence of coercion, but not for this in the absence of cultural conditioning or situations of need. This extract from Dasgupta and Das Dasgupta seems to be effective to introduce my reasoning: "The assumption that poor women in the global South are not 'free' to make choices due to the compulsion of their poverty denies their agency outright and consequently, reduces them to uncomplicated 'victims' who deserve our pity and protection. Contrastingly, the same latitude is not necessarily offered to surrogates of the global North, who are assumed to exert their 'free will' and thereby 'choose' to earn easy money by surrogacy, and thus, perhaps less deserving social protection" (Dasgupta & Das Dasgupta, 2014, p. 71).

The theory of social action formulated by Max Weber (1922) teaches that actions can be the result of rational evaluations with respect to the purpose or objective, with respect to the shared values of the society in which one lives (including the more or less rooted patriarchal logics or defeats), as they can be dictated by emotions and habits. Such an explanation of social action, which by definition is individual action

in a space of coexistence with other subjects, admits that actions are the result of decisions internal to the individual and influenced by: the social context (including economic status, poverty, access to the world of work, the subdivision of roles); culture (for example, in Indian culture, the female identity is incorporated in kinship and helping others is conceived as a moral obligation, a duty of the gift giver (Dasgupta & Das Dasgupta, 2014)); ideologies (for example, the expectations related to a woman's identity in a given social context); persuasive narratives and pressure from significant others such as family members (Saravanan, 2018; Dasgupta & Das Dasgupta, 2014; Ragoné, 1994). In other words, the context cannot cancel the decision of the subject but the latter, it may seem obvious to repeat it, takes place in a context.

Furthermore, the choice is made with different degrees of awareness on the individual and social repercussions of one's actions: the manifest preference does not always correspond to the preference that would have been made having all the necessary information and an infallible logical reasoning available (Harsanyi, 1985). It should also be taken into account that actions that are harmful to one's health and integrity can be carried out even in the absence of coercion and despite the awareness of the certain risks and damage to which one goes up against. As suggested by the studies reviewed in the second level of the literature review (Chap. 4), it is worth noting how in the global market of surrogacy, there is always an economic and social status inequality between surrogate and client, which is not enough to strip the former of the ownership and responsibility of their actions (agency) nor is it sufficient to deny that the surrogates can make choices in taking part in the process of self-commodification, more or less aware and informed, more or less conditioned by culture and by significant others.

If, on the one hand, it must be recognized that the surrogacy market is structured on the difference in the economic and social status between the surrogates and clients, the former belonging to two thirds of the poor world and the latter to the third of the rich world (Saravanan, 2018), we cannot ignore in the reading of this practice that the surrogates in the world are not all equally poor, submissive to the family, marginalized, uninformed, or without alternatives, as the abolitionist feminist discourse tends to describe them: the woman makes the choice to have a paid pregnancy, with different levels of autonomy, independence, awareness, or subjection to the will of others, as appropriate, and operates this choice in a social, economic, and cultural context. In this context, I invite you to take into due consideration the habit of market forms for the supply of care services and affective-relational needs, and the presence of economic needs to maintain certain lifestyles or projects to improve living conditions, made unstable by a job insecurity that involves more and more young women and men even in Western countries. Just as there is a migratory phenomenon defined as economic or labour migration, driven by employment projects and improvement of the ability to create more satisfactory living conditions for the future and for the family of origin, in my opinion, the phenomenon of reproductive work availability (bioavailability) should be also framed partly as a strategy of social mobility. Just as the phenomenon of labour migration does not supplant but coexists with migration dictated by persecution,

hunger, wars, thus the recognition of the availability to procreative work as a strategy of social mobility does not exclude that in the surrogacy market there are also forced, deceived women or women for whom surrogacy represents the only possible way not to descend into poverty.

In conclusion of this analysis, I want to clarify that recognizing the agency of the subjects involved in the phenomenon does not necessarily mean endorsing the demands of the front which makes individual freedom its beacon, and which I will comment on in the following paragraphs. Similarly, noting the scarce appeal of arguments that defend values that are little felt today, does not make those arguments null and void.

A Critique of Regulatory Arguments

The claims of the regulatory front build on the framework of reproductive rights in a double meaning: the right of women to freely dispose of their reproductive capacities, even putting them on the market, to start a path of empowerment; the right of all, including infertile and homosexual couples, to have access to reproductive technologies to form a family. From the case studies, particularly the one on Mexico, it emerges that both of these claims are presented as instances of progress and modernity. It was also noted how in addition to this framework, there is the rhetoric of altruism and female solidarity, which, combined with the frame of autonomy, portrays surrogacy as an activity that women choose freely and from which they derive, not just an incentive economic, but also a personal satisfaction given by making happy a couple who cannot have children.

There is another important fact for this front: the regulatory requests are not always placed in value frames, but rather they are motivated by pragmatism. While sharing many concerns with the abolitionist front, the reformist one believes that the most realistic way to pursue to limit the damage to women and children is to set clear rules. Another recurring motivation among pragmatists is that a ban with national laws does not stop the phenomenon as the market moves easily from one country to another and could favour the black market and international trafficking, thus further increasing the danger for women and children (Rudrappa, 2021). This division warns against the easy mistake of interpreting the prevalence of reformist positions as evidence of an allegedly widespread enthusiasm for surrogacy. Nevertheless, my comments on the reformist discourse will focus not on the pragmatic approach, but rather on the arguments that defend surrogacy as an expression of procreative freedom, woman's autonomy and empowerment.

It has been described how the recruitment of surrogates, as well as the narration of themselves, make use of an image of the surrogates as strong, altruistic, courageous women, heroines with the superpower of helping others to form a family, angels and facilitators of a divine project (Lance, 2017; Pande, 2014). It is a narrative that simultaneously activates a feminist imaginary of independence and feminine power, with a matriarchal imaginary that exalts the power of motherhood. In addition, there

is an imaginary of neoliberal capitalism in which the modern woman is a skilled entrepreneur of herself who “like all autonomous individuals, seeks to overcome obstacles and gain some form of benefit—these being the unwavering principle and objective driving all human action” in neoliberal society (Lange, 2014, p. 2). But how much does the affirmation that with surrogacy the woman expresses her autonomy and her feminine power reflect reality?

In the previous chapters, it was seen that during the pregnancy the surrogate gives up part of her personal freedom, for example, by following a certain diet and doing certain physical activities as decided by the commissioning couple, or she might not be allowed to leave a certain territory, she might be required to abstain from sexual relations with her partner, and to stay in a clinic away from her family. Furthermore, the controversial issue of the selective reduction of embryos and abortion of foetuses should not be forgotten: these “belong” to the clients but are in the body of the surrogate, with the clients generally deciding their fate. Taking these realities into account, it must be admitted that a woman’s autonomy is expressed when taking the decision to enter into a contractual and commercial relationship with others, but during this relationship her autonomy, that is, her ability to decide about her body, her time, of her relationships, is actually reduced, not expanded, compared to a woman who does not enter into that relationship (Rudrappa, 2021). The 1960s feminist slogan “the womb is mine and I manage it”, applied today in pro-surrogacy discourse, turns out to be more of an auto-suggestion than a reality, if taking into account the intended parents’ habit of posting “belly shots” where the woman’s head is often left out and to use the adjective “our” instead of “her” as if the womb belonged to them (Dasgupta & Das Dasgupta, 2014).

These claims of autonomy build on the concept of body as property which has been already challenged from both within and outside feminism: Rosalind P. Petchesky explains that “controversy over the language of property in feminist theory starts from a narrow premise that interprets property and ownership in terms of the Lockean paradigm through which ‘property in one’s person’ signifies radical individualism, instrumentalism, and a dualism between the body as a commodity and the ‘person’ as transactor” (Petchesky, 1995, p. 388). She proposes to look at property as a relationship, nor as a thing: private property is then the “right to keep others out” (Petchesky, 1995, p. 389). She acknowledges Farida Akhter, women’s health activist and researcher in Bangladesh, who reads “the individual right of woman over her own body” as an “unconscious mirroring of the capitalist-patriarchal ideology” which enables to transform bodies in reproductive tools and denies that the reproductive capacity is naturally inherent in the self (Petchesky, 1995, p. 394).

This latter concept of unitary between the body and the self is central in Carol Pateman’s *The Sexual Contract*: “Masculinity and femininity are sexual identities”, “identity is inseparable from the sexual construction of the self” (Pateman, 1988, p. 207). She qualifies the concepts of “individual as owner” and “freedom as the capacity to do what you will with your own” as “masculine” concepts, which once extended to women means “to sweep away any intrinsic relation between the female owner, her body and reproductive capacities” (Pateman, 1988, p. 216). In Pateman’s

view, sex and reproduction cannot be alienated from the self, in fact prostitutes as surrogates alienate themselves from their own womanhood. She points out that a feminist language reclaiming women's right to own their bodies reinforces the masculine contractarian view and validates the right to sell them.

A more recent contribution to this discussion comes from Donna Dickenson who suggests moving beyond this concept of body as property and to look at the right that women possess "in the labour of their bodies, although not in their bodies themselves. This right is unique to women's labour in childbirth and pregnancy, not found in any other instances in medical ethics, and not capable of providing a similar foundation for men" (Dickenson, 2006, p. 189). She maintains that what in surrogacy the woman sells is not her body but the child (Dickenson, 2017). At this point, we should wonder whether the woman has full rights on that product of her labour, once the "product" comes into the world, and whether she has the right to engage in a labour for the sake of giving away the product of that labour.

The second consideration I propose is on the meaning of empowerment, a concept developed starting from the liberation pedagogy of Paolo Freire (1971) and widely applied in development policies in poor countries as well as in gender equality policies. There is no doubt that through surrogacy the woman earns, and therefore increases her economic *power*. Nevertheless, the concept of empowerment is far more holistic than its economic aspect alone: it is a multidimensional social process through which people acquire self-awareness and a greater capacity to act, for the good of their lives and for their community, on issues that they themselves define as important (Page & Czuba, 1999). The earnings from surrogacy do not trigger an improvement process in the society in which the woman lives but is nothing more than an improvement in her individual economic capacity, with it often only being temporary. Sharmila Rudrappa is of this opinion when writing about surrogates in India: they "may have enjoyed some liquid cash flow, but these funds quickly dried up under the onslaught of relentless neoliberal policies that has over the years made food, schooling, safe housing, and access to health care more restricted and more expensive, and everyday life barely tenable" (Rudrappa, 2021, p. 291).

Considering the Texan context, female "freedom" to act as surrogates, established by law in 2003, coexists with a gender gap in access to healthcare, including poor access to contraception and reproductive health services, maternal health care, and abortion (Baeva & Archer, 2018). In Mexico, the same woman who has made a living from surrogacy will still be vulnerable to violence and femicide, will still have poor access to health care, and still needs to travel to Mexico City to try to access safe legal abortion in case needing it. In Italy, if surrogacy becomes legal, it could be a lifesaver for the many new poor and unemployed people created by the serious economic crisis resulting from the restrictive measures to contain COVID-19: it is becoming more difficult to imagine how this possibility of staying afloat can translate into a social achievement of equal opportunities. Chap. 4 discussed the concept of stratified reproduction (Colen, 1995) with reproductive technologies and surrogacy reinforcing inequalities between women, so that some are encouraged to procreate, others to procreate not for themselves but for others, refiguring a near future for women, as career women and breeders.

Furthermore, Jungian psychology (Neumann, 1978) teaches that motherhood is the second moment of transformation of the female personality (through the activation of archetypes), after the first which is menstruation and before the third which is breastfeeding: the relationship with the baby before and after birth (with nourishment and protection) is the premise of her transformation. With surrogacy, this process of female transformation is abruptly interrupted, precluding the woman from having new experiences of herself.³

The possibility of earning through one's gestational capacity does not even seem to allow for a social conquest for women, but rather, following Margaret J. Radin's (1995) reasoning, it represents a threat to the social recognition of their personhood: "Part of what makes something a person is that it has attributes as part of its self-constitution. [...] One can think of these attributes as being permanently inside the self; that is, non-detachable. In other words, if I tried to sell my personality, there would be no "me" left to do the selling. [...] We have things that are ours, but they are objects, or at least we can detach them from ourselves without destroying the notion of personhood, and when we do that we can trade them in markets to get things we value more highly, and we have contract laws to make that possible. [...] So one way to look at this debate is whether reproductive capacity or sexuality are attributes that should be considered permanently inside the person, so as to be not detachable and made into an object of trade". (Radin, 1995, p. 143) Not even by answering this question negatively, or even by deciding that sexuality and procreation should be considered as elements *external* to the person, would the social recognition of women have a benefit (nor even the very concept of human being).

When discussing the defence of access to reproductive technologies and surrogates (see Chap. 6), this humanity subtraction is presented as a positive attempt to advance human conditions towards the complete modernization and domination of man over nature through biomedical technology: the natural processes are presented as manageable by the individual will through rationalized and technical processes as well as through strategies of self-discipline (for example, strategies of self-control of attachment to the foetus or strategies of self-attribution of meaning to parenting based on genetic link or intention). On this theme, French philosopher Laura Lange (2014) warns that by supposing that "pregnancy can be the object of a rational project" (p. 10) (in which the surrogate-entrepreneur "invents her own notion of her body" and measures "the standard level of affection that she should feel for the child" (p. 5)), and thus by forgetting that pregnancy is "the place and time in which the unique and primary experience of a relationship" (p. 10), the risk is that "the only definition of maternity recognized in practice may be that of a maternity without a body" (p. 11).

In the pro-surrogacy discourse, infertility, which is commonly understood as a disability, an illness, and a failure (Sandelowski, 1990), must not constitute an

³Sengupta (2018) argues that in surrogacy breastfeeding is denied precisely to prevent the establishment of a maternal feeling towards the newborn, and that this denial is a mechanism of discipline and control of the reproductive worker.

obstacle to the desires and plans of the self-determination of individuals, which according to a radical vision of equality (Bawer, 2012) must all be able to achieve everything regardless of their “nature” (sex, gender, race, sexual orientation, conditions of disability). Before adhering to the interpretation of surrogacy as an act of (procreative) self-determination, it should at least be asked how much the search for parenthood at all costs (economic costs, psychological stress and worries about knowing one’s distant foetus, and the costs in terms of negotiation of one’s own ethical principles) is the result of a process of awareness of one’s real needs and desires, a process that we have seen to be the basis of empowerment.

How much the choice to undertake such a complex and demanding path as surrogacy is to be interpreted as a syntonetic expression of the experience of oneself, or, to say it with Erich Fromm (2018, p. 51-52), as a result of a profound awareness “of something that was it unconsciously present in the feeling and in the soul and that one has the impression of having always known”, “an internal active process, different from the passive process of hearing, consenting or dissenting”. On the other hand, to what extent does the pursuit of parenthood at all costs respond to that same imperative to choose and self-determination that I maintain is the basis of female participation in surrogacy?

It is known that surrogacy is mainly a last resort choice: couples who are unable to have children rely on infertility clinics and end up gradually raising the bar of invasiveness that they are willing to live by gradually undergoing techniques that are proposed to them to realize their initial desire/objective (Silva & Machado, 2011). Regarding the issue of parenthood by gay couples, it must be considered that it is a rather recent identity claim and in contrast with the initial emancipatory message of the homosexual movement, for which the stability of the family was a source of constraint, not of freedom (Segalen, 2021). To what extent do the lighthouses of autonomy and empowerment provide a shortcut in the difficult decisioning process in which individuals are often bewildered or unprepared to identify their own aspirations and ponder moral consequences and interest?

A final comment, but not the least important and central to the development of my proposal to reposition the debate on surrogacy from the woman’s body and the parental desire to violence against the child, concerns the adult-centricity of the regulatory discourse, or a discourse centred on absoluteness of the freedom of adults to self-determine, and therefore to become parents at any cost: the rules to be introduced aim to minimize the impact that the exercise of this freedom has on the child who comes into the world but this freedom is presented as unquestionable. In other words, that reasoning starts from the *fait accompli*: there are more and more children who are born from surrogacy and therefore it is necessary to protect them, especially from obstacles and delays in the bureaucratic recognition of parenthood in the State where the child is “imported”, and therefore the recognition of the child’s citizenship and related rights (Majumdar, 2015). The answer generally given to this problem is the need to act in the best interest of the child, which has already been born, therefore work on a regulatory adaptation and a standardization of the response of the individual States in the recognition of surrogacy contracts and birth certificates produced abroad. In the regulatory discourse, the problem is the inadequacy of the

regulatory frameworks of the States, not the use of surrogacy by people who want a child at all costs.

Another protection that is often debated in the regulatory discourse of the *fait accompli* is the right of the child to know his origins, but it seems that in the perspective of legalization and regulation (which we have seen to be the predominant approach), this right is in any case subordinated to the freedom of the adult to resort to surrogacy: a solution is found (for example, to recommend that the child can access the name of the surrogate) to a problem, which arises in resorting to this practice, a freedom that is not formally questioned.

Concerns about the child are broadly exhausted by these two issues in the regulatory discourse: not to question the practice itself, but to try to regulate it better, it means not to question the unavoidable characteristics of every surrogacy, even the best regulated, or the detachment of the newborn from the woman who carried and gave birth. The bond, discussed in Chap. 3 is on the basis of the identity and development of every human being, is considered expendable, superfluous, its interruption (planned and intentional) a negligible moment, a kind of inevitable collateral damage compared to the insurmountable will of the intended parents to give love to that child. I propose to read this hierarchy of values in the light of the traits of that individualistic society mentioned above.

According to Zygmunt Bauman (1999) and Ulrich Beck (2012), the individual is called to fulfil the task of searching for the meaning of existence through the definition and redefinition of his identity, which was once understood as something given, while today it is a task to be performed and managed; in this process, called “individualization” (Beck & Beck-Gernsheim, 2001) the subject assumes the responsibilities of failure and represents himself as an autonomous subject, that is independent from the needs of others, only to find himself chained by the constant exercise of demonstration of value and success to rule his destiny of freedom and happiness. Affirming the individual will to go beyond the limits given by nature or by the social structure is a task considered a priori right and desirable within a discourse of Progress which today is carried out mostly in an individualistic key, denying its original vocation for social change (Lasch, 1991). This imperative to programming and self-determination according to Beck (2012) causes those institutions that were once fixed and above the individual to be reinvented, and motherhood is one of them.

Technology plays the role of means to follow this trajectory of self-determination and therefore satisfy the so-called will to power of the human being. This is a Nietzschean concept that Italian sociologist Mauro Magatti explains as the inclination of the human being to affirm his existence and to achieve “what it can be made to be” (Magatti, 2018, p. 28): through technology that allows to “produce effects that nature alone could not have caused” (Magatti, 2009, p. 105), the Superman asserts himself by pretending to transform reality according to his own projects. Today, this claim also regards birth and death, so much so that the will to power wants to be “meta-physical” by applying itself with the sole mediation of technology (Magatti, 2009, p. 125).

The question to be asked at this point is the following: if surrogacy is an expression of human freedom and self-determination, and if through it, new

human beings are generated, the latter, by the fact of being born in this way, will they be at least as free as their parents? In other words, I am wondering if the freedom conquered by adults through surrogacy is an achievement that persists in the next generation (Bandelli & Corradi, 2019). Following the reasoning of Jurgen Habermas (2003) on genetic engineering applied to procreation, the answer is negative: the will of the parents to give birth through the interference of technology in conception undermines the ethical foundations of future freedom of the child. Therefore, the freedom gained in having a child through the use of assisted reproductive technologies is purely individual, not a social good.

Habermas reminds us that the human person develops his identity through a coexistence of the cultural and natural spheres: socialization with others (cultural sphere) is grafted onto the individual awareness of being coincident with our body-organism (natural sphere); we know that it is created in the space of nature that is unavailable to human action, through self-regulatory processes not modified by human will. The German philosopher, on the basis of Hannah Arendt's theory of action (Arendt, 1958) for which birth is a "beginning" (in the sense that with birth, a life is generated that will have the power to give rise to something new), the unavailability of being-organism and the recognition of the coexistence of nature and culture in the human being maintain the relationship between children and parents in a certain way symmetrical, in the sense that both are free to be. Whereas, by applying genetic engineering to procreation, the body-organism is relocated in the space of culture or a space in which the object is available to be shaped by the will of other human beings, and thus acquires the identity of a body produced by other people's decisions. In this process, the conception of oneself as masters of oneself, authors of one's actions, is compromised.

In surrogacy, as well as in other modes of artificial procreation, the child is the result of a "fabrication", in which the space of nature (self-regulatory processes) is invaded by human will, or by the unshakable will to give birth that is all other than casual and unavailable: the parents through actions, decisions, and technical selections of third parties (parents and medical staff) will therefore be responsible for the "configuration" of the child, and thereby limit his/her freedom, which according to the theoretical perspective presented is based on the perception of oneself as having become (and not manufactured), knowing oneself what one is regardless of the will of others. The society of adults wants to assume this responsibility in front of the children, in addition to the responsibility of the health risks already mentioned, in the name of the freedom of women and men to fulfil their wishes? To conclude, I refer to Radin's aforementioned reasoning on the concept of person. Radin (1995) asks if we remain people even when some things that we used to think are the foundations of our identity (procreation) acquire a market value and can be treated as manipulable objects from the human being to achieve a purpose: once the child and the woman are commodified, does the human being remain a person? Radin, after analysing the feminist and surrogacy debate, concludes that if there must be a real reason why surrogacy must be considered wrong, it is the compromise of the concept of personhood for all mankind.

The Limits of a Woman-Centred Debate

Diane Roman (2012), analysing the French debate on surrogacy, observes that in France and also in Anglo-American countries, the debate has acquired feminist tones (I would say it “feministized”), since it is now carried out on the frame of the body of women and their uterus. This was not always the case: Roman observes that the frames within which the first bioethics law was debated in the early 1990s in France were the principle of availability and non-commercialization of the human body, of the privilege of the child’s interest over the desire for a child, which are the themes that I propose through the thought of Radin and Habermas.

The adult-centricity that I discussed with regard to the regulatory discourse is also present in the abolitionist feminist discourse, although this has the merit of calling attention to the importance of that neglected maternal–foetal bond in the defence of surrogacy. I am not stating that the child is completely absent from the debate: on the contrary, I affirm that the child is not the protagonist, that the debate is not developed from the point of view of the child, and above all that the protection of his right to be raised with his parents (both, not just his mother) is subordinated to the freedom of adults, women, and men to self-determine.

In likening surrogacy to prostitution (Pateman, 1988), therefore framing it as reproductive exploitation (parallel to sexual exploitation), the child loses visibility and recognition: proposing a binary scheme of the man–woman relationship where the first represents the dominant gender and the second the dominated and exploited one, the third subject is excluded from the scheme. This binary scheme is typical of much feminist thought, whether applied to violence, prostitution, or motherhood, the woman is thought of as a subject dominated, exploited, commodified, or so powerful as to dispose of herself and all that, in her being a woman, can be bought and sold. Feminist theory posits woman as the dominated sex and man as the one entitled to exercise power, as control and force, over the former. Domestic violence is theorized as male abuse to maintain his power advantage granted from patriarchy (Bandelli, 2017). Gender inequality is implied to be the common cause of violence, as well as sexual and reproductive exploitation structural phenomena due to the power imbalance between men and women (Felson, 2002). Sexuality and gestational capacity as markers of femininity, are seen as resources that male-dominated societies for centuries have attempted to use, control, and make a profit out of.

In prostitution and pornography feminist debate, the woman’s body is theorized as a site in which the relations of power and domination of society are reproduced at the micro level: the body is invaded, used, exploited for pleasure, power, or profit, and the reproductive functions are regulated by a social organization that favours male interest and male-dominated technology (Dworkin, 1987). With these premises, the body therefore becomes ground and a weapon in the battle for emancipation and freedom from male power: feminists have claimed self-management, availability, complete or partial according to the theoretical strands of reference, of their *own* body or at least more control than can be exercised by a man. We have seen how for some technology represents a male product that threatens the autonomy of

women in the reproductive field; a field where, according to radical pro-natalist feminism (see Farquhar's categorization in Chap. 4), and in particular in the thought of difference that we have seen to be predominant in the abolitionist discourse in Italy, the female body becomes a site upon which to build a symbolic order linked to motherhood and alternative to the male or chauvinist one. For others, technology is seen as a possible ally to modify, enhance, and exploit the body and to free it from the burden of motherhood. This freedom of women, understood both as self-determination and as matricentrism, has priority over the freedom of those who are born.

Consuelo Corradi (2021, p. 159) notes that in the mid-twentieth century feminism, motherhood has been theorized mainly as "a social practice whose demands conflicted with women's activities in the public sphere. The emancipation of women could therefore take place through opposition to or, at best, despite motherhood" (Corradi, 2021, p. 159). However, the Italian sociologist underlines, that conflicting passion inherent in mothering does not "originate in patriarchy, but, rather, in the convergence between the mother's deep-set desire and the child's existence" (Corradi, 2021, p. 169). Corradi maintains that feminism fails to grasp the empowering capacity of motherhood as passion: "this empowerment is not instrumental (higher salary, more rights, better education) but existential, in that it contributes to define how the mother views herself as a social and moral agent". It follows that surrogacy, where there is "a painful clash between the intending mother's desire for children and her inability to reproduce, on the one hand, versus the denial of any bond between the surrogate and the baby she carries, on the other", represents a "disempowering" practice (Corradi, 2021, p. 169).

To sum up, I think that the preponderance of feminist categories in the debate on surrogacy reduces the scope of the practice, from a procreative phenomenon and therefore of social reproduction to a woman's issue, and encourages an adult-centric look at a practice that instead has the child as its protagonist, in such as purpose of the practice itself. Adult-centric and gynocentric arguments can weaken the opposition to surrogacy, taking into account the broad legitimacy enjoyed by parental desire, even assimilated to a new "right" (Inhorn, 2002; Goldberg, 2012). Which of the two rights is worth more: that of the woman who wants a child but cannot give birth or that of the woman who wants to give a better life to her family without objectifying herself? More recently, the organization Luca Coscioni, which is one of the most active in Italy in calling for the legalization of surrogacy, has given visibility to the so-called Roki women who are affected by the Mayer-Rokitansky-Küster-Häuser syndrome, a congenital disorder that causes the malformation or absence of vagina and uterus: the discourse is that they are denied of fulfilling their maternal desire since surrogacy is prohibited by law.

The Missing Frame of Child Violence

Imagine for a moment that surrogacy is discussed, not so much as a way to have a child or as a phenomenon of exploitation and commodification of women, but mainly as a way in which new human beings come into the world. The debate would focus on the need to prohibit or allow children to be conceived in a manner written in a contract and born to women from whom they are removed immediately after childbirth. This moment of estrangement would become the symbolic image of surrogacy, which today instead evokes the image of surrogates in dormitories in India or those of couples happy to hold the newborn in their arms. Public opinion and decision makers would be called to question the social consequences caused by generations of children born to women who were not their genetic mothers, whose person they will never experience, and who give birth to them for other purposes, other than having a child (be these ends of an economic or altruistic nature): would a society made up of men and women born in this way be a better society in terms of social justice, interpersonal relationships, and health? The debate would be profoundly different from the current one, which has been based on whether to grant or forbid adults the freedom to take part in this procreative process.

My thesis is that if the focus of the debate were the unavoidable detachment of the newborn from the woman who gave him life, surrogacy would be redefinable as a form of violence against the child, a category that even in an individualistic society devoted to self-determination over nature through technological intervention, still exercises a sanctioning function, therefore effective in setting limits to action. On the other hand, the woman–newborn fracture intrinsic to surrogacy is not commonly thought of as a violent action: that precise action of distancing that occurs at the moment of birth, with which the newborn is physically prevented from addressing the only person/body he knows, of being nourished, warmed, and reassured by her, takes a back seat in public representation, and has therefore not yet received such exposure as to generate a reaction of alarm or indignation. It is how in the media representation of surrogacy in the United States, the relationship between the intended parents and surrogate woman occupies a prominent place compared to the almost non-existent one between the foetus and the surrogate (see Chap. 5). The invisible violence of that moment, however, continues throughout the child's life with the denial of knowledge of and relationship with that woman.

However, other phenomena in which the same estrangement occurs are subject to social condemnation, or in any case not promoted as desirable. For example, consider the cases in which the woman decides, independently or under conditioning, or is forced because she is deemed unable, to give the newborn up for adoption, or when the child is stolen immediately after birth to be sold, given up for adoption or into foster care, without the mother's consent; in baby-factories in Nigeria where women are made pregnant and forced to sell their children (Alabi, 2018); in the past in Australia, the children of an Aboriginal woman and a white father were removed and raised in missions; the United States has adopted a policy of separating irregular migrants from their children and the press reports that in some cases this is also the

case for newborns. These are some examples offered by history and the present: in all these cases, the pregnant woman is also the biological mother, the fracture is created without her consent, with the imposition of force or deception, except in the case of voluntary adoption, which is however distinguished from surrogacy in that the child given up for adoption was not conceived with the intention of separating him from the mother. All these practices belong to the field of deviance, some of violence and/or crime, socially sanctioned, or, in any case, not considered normal as is the case today for surrogacy. In the practices mentioned, the relationship between mother/pregnant woman and child, ideally indissoluble, constitutes the limit to action: it is exceeded in particular cases of necessity (adoption) and in other cases it causes dissent or condemnation. How is it that a practice is spreading that is based precisely on the interruption of this relationship, which in other phenomena has the function of limiting action?

Violence as a sociological concept presupposes that of limit: the other is violated when the relationship has a dimension of excess, which is in contrast with will, integrity, and well-being, elements that we can imagine as a protective shield, beyond which the interference from the action of others should not go; when it happens, it leads to abuse. In formulating this reasoning, I refer to the conception of relational freedom proposed among others by Georg Simmel (1983) and recalled in the sociology of the limit of the Italian academic Donatella Pacelli (2013). Mutual self-limitation shapes the field of action, thus constitutes the relationship, and to be capable of it, there is a need for “an education in the management of individual desires” that teaches to conceive “*alter*” not “only as an obstacle to one’s freedom and their interests” (Pacelli, 2013, p. 95). It is clear that such a vision of the other limits our action when this could involve a violation of their well-being; instead, it invites us to self-limitation in order to protect the other from our own ability to harm them.

Another dimension in which violence and limit intersect is the following: the theorization of an action as a form of violence has a prescriptive function of the limit since violence is at most justified as necessary for a common good, or inevitable, but it is never considered desirable. Violence, in other words, is not a social value and is also implicitly condemned by the theories that try to explain it. In modernity, violence has not died out as predicted by the optimistic perspectives on civilization and progress (Corradi, 2009), but there has been a repositioning of certain actions and practices from the space of tradition and the norm (therefore from the space of acceptance and authorization) to that of violence (to be condemned). Think of wars and slavery, of the indignation that violence against women (VAW) arouses today, the rethinking of male initiative in couple relationships as a form of stalking or forcing consent, the disapproval of educational methods based on physical punishment (so much so that a parent who slaps his child exposes himself to a social sanction), to the alarm aroused by episodes of aggression between adolescents that were once considered useful for the development of a strong identity and today are instead interpreted negatively as bullying. Even the mistreatment of animals, especially domestic and farm animals, is now generally considered unbecoming.

Actions aimed at women and children are among those most affected by the repositioning from practice to violence, and this process has allowed a growing protection of these two categories. Since the 1950s, the alleged right of man to impose himself on the freedom of women (wife or other females in the family) has been questioned, and in the last 20 years, male violence has become a powerful category of indignation in which a heterogeneous series of phenomena (from stalking to rape, from workplace harassment to murder, from psychological harassment to prostitution, from arranged marriage to beatings, etc.) has been introduced (Weldon, 2002). Childhood, which in Western societies since the 1950s has been valued as a phase of life in its own right, has been progressively invested by a culture of care and protection, for example, from child labour, sexual abuse, and physical mistreatment, from early or arranged marriages, and even from parental poverty (Marten, 2018): making sure that the child can live this particular phase of life with serenity and happiness, so that he develops the tools for an independent adult life, is a widely recognized need that guides family practices and policies.

Child protection is also based on the duty to preserve as much as possible the continuity of the mother–child relationship, which, for example, constitutes the guiding principle in post-separation custody and is even preserved in some cases when mothers are in prison. The medicalization of pregnancy and childbirth (Katz Rothman, 1982) is also aimed at the protection of women and children, so much so that the mother is expected to undergo health protocols and behave in order to minimize the dangers to the health of the child. The well-being of the unborn child is also the purpose of alternative practices to medicalization and based on the naturalness of childbirth, such as promoting skin-to-skin contact between mother and child, immediately when the newborn leaves the mother’s body, to improve adaptation in the transition to extra-uterine life. Furthermore, it is interesting to note that among the forms of violence against women that have recently acquired visibility, there is the so-called obstetric violence (Quattrocchi, 2019), i.e. the disrespect and mistreatment of women during childbirth by female and male medical staff.

On the other hand, other actions have not known this type of reconceptualization, continuing to escape the radar of violence and the public discourse that is built on the category of violence⁴: the overcoming of the limit of the will, integrity, or well-being that occurs in the practices without the label of violence continues to remain invisible and the practices themselves to be authorized. Actions which, while causing damage, are also perpetrated with the consent of the recipient of the action (who otherwise would be called victim) tend to remain in this sphere, according to the principle of a neoliberal and contractualist culture. For example, prostitution is increasingly defined as *sex-work* precisely to underline its voluntary nature and professionalism.

⁴Think of female aggression and manipulation towards a partner, parental alienation and the acceptance that children are prevented from regularly seeing a parent (usually the father), the deprivation of freedom of movement of carers, new forms of exploitation at work and new forms of harsh work without protection (call centres, bicycle messengers, etc.), the administration of drugs whose long-term damage is not known, the imposition through the food industry of a unnecessary consumption of sugars and harmful ingredients or ingredients of uncertain origin.

Before listing some arguments that could be brought to include surrogacy in the category of forms of violence against the child, I would like to point out that it is not a violence carried out through excessive force and at the same time that this is not a necessary characteristic to define a violent action (Bufacchi, 2005): to remove a newborn needs nothing more than to ignore the cries and push a trolley out of the delivery room, the parturient can be sedated and trained (by the terms of the contract and by counselling during the months of paid gestation) to contain the instinct of wanting to hold the newborn. Furthermore, I would like to emphasize that the separation of the newborn from the woman in labour is not created by necessity, nor by coercion or deception, nor by the impossibility or inability to raise a child (as is the case for adoption): the underlying cause of this violence is the desire for a biological child, although it is not the intention of the intended parents to harm the child. The desire for parenthood is met with the willingness of some women to work as surrogates, driven by economic needs, earning opportunities, social mobility (empowerment) projects, and encouraged by a feminist narrative about a woman's right to exercise full control over her own body and the possibility of using it on the market.

To place surrogacy in the category of violence against the child, the function of the maternal foetal bond must be understood. I briefly recall what has already been explained in Chap. 3. The dialogue between the pregnant woman and the foetus is made up of biological exchanges, hormonal reactions, and recognition through the senses: for example, the endometrial fluid regulates the transcription of the embryonic genome, the newborn recognizes the timbre of the voice and the smell of the mother's milk, and the foetus makes intentional movements starting from the fourteenth week (Nicolais, 2018). The relationship established during pregnancy is bidirectional and links the weaker subject to the stronger one, who will be identified by the first as a reference point for learning, nourishment, and protection; it is a functional dialogue for the development of the new human being and for the tuning of mother and child in post-natal care (trans-modal correspondence). This exchange is the foundation of the child's subjectivity as in it he learns how to relate to the other: this grammar will serve him first for sharing emotional states and gestures, then for words. Interrupting the relationship of the dyad means depriving the weaker subject of the relationship with the party responsible for the continuation of his already started psychophysical development. The maintenance of that constitutive relationship of the identity of the new human being is functional to his well-being, which passes through his protection: a task that has always belonged to the human species (and not only human), which is expressed in the maintenance of the bodily relationship of dyad and has extended with the evolution of civilization to the longer phase of childhood through less corporeal and more participatory forms than that necessary for the puppy/newborn. It is important to note that puppies are generally given to new owners only after weaning, thus protecting the maintenance of the relationship with the mother in the first months of life.

Separating the dyad means forcing the newborn to relearn, and to overcome the shock of entering the social world without the reassurance of finding on the outside that one body that he already knows from the inside. The child is endowed with

resilience and continues his development elsewhere, learning to relate to his intended parents, who have longed for him and give him love. However, as reiterated in several places in this book, this does not eliminate the fracture (Agnafors, 2014).⁵

Furthermore, to justify the positioning of surrogacy as a violent action against the child, it should be taken into account that in this practice the foetus is exposed to a series of risks (from which it cannot autonomously escape). The quality of the attachment with the social mother affects the development of good interpersonal and emotional skills in adult life, therefore the fracture from the pregnant woman increases the risk that these abilities present dysfunctions precisely because it forces the child to relearn the attachment to a new mother (Agnafors, 2014). Furthermore, the very quality of intercorporeal dialogue is compromised by the containment of the emotions of attachment towards the foetus put in place by the pregnant woman. Finally, it must also be taken into consideration that surrogacy is a pregnancy with a higher risk of complications and repercussions on the health of the child (as well as the surrogate) and therefore risky for his well-being and safety (refer to Chap. 3 for the list of health risks).

Once the function of the parturient–newborn dyad is understood, and therefore of the limit that its inviolability places on procreation, it is evident that surrogacy is an intrusion into the unavailable sphere of the other (of the child): for the purpose of acting (to procreate), under the impulse of an aspiration or desire, one even fails to protect the weakest and most defenceless subject par excellence.

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⁵Just as a slap is not eliminated after the bruises have reabsorbed; just as the abused woman re-learns to relate to the other sex when she overcomes the shock of a beating or sexual abuse; just as the child who witnesses parental violence over time elaborates the experience and learns non-violent ways; just as the abandonment of a dog on the highway is condemned even if the same dog finds new owners; just as the remediation of polluted land does not serve to minimize the seriousness of the illegal dumping of waste. The fact that the consequences of the action disappear does not prevent the same action from being classified as violent.

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Chapter 9

Conclusions



Proposals

In the previous chapter I highlighted the characteristics of mobilization and the criticalities of the debate on surrogacy proposed by social movements, with particular reference to feminism, followed by highlighting its adult-centricity and suggesting a change of perspective that focuses on the meaning that this practice has for the child, the protagonist of procreation, the social subject and representative of the future human society. In this concluding chapter, I would like to make a few more proposals to try to overcome the current polarization of the debate. Before moving on to the proactive part, I will briefly summarize the main considerations made so far.

- The debate on surrogacy is focused on two frames of feminism already applied to the battles over prostitution and abortion (Radin, 1995). These frames, through their ideal charge, generate an uncritical consensus rather than a consensus based on the elaboration of specific information on the complexity of the phenomenon and its implications for the subjects involved. The two frames in question are the claim of a woman's full autonomy over her body (applied in both debates) and the defence of women from forms of commodification (applied only in the prostitution debate)
- Feminism is united in the use of the autonomy/choice frame in the claims, still current in many countries, for the legalization of abortion, but is divided on the issues of prostitution and surrogacy (Corradi, 2021): a part of feminism places these two phenomena at the same level as abortion, as an opportunity that the woman must be free to seize, while another part, does not recognize the woman's agency (although confirmed by various ethnographies reviewed in Chap. 4) and emphasizes her role as victim of a (patriarchal) system of female exploitation (Rushing & Onorato, 2003).
- The opposition to forms of commodification of women is weak in a social context characterized by strong individualism, in which the race for personal fulfilment

and utilitarianism are guiding values (Lasch, 1979), both for men and women from a gender equality perspective (Pinker, 2008), and in which other forms of commodification of the body are already widely accepted (Hochschild, 1983). The defence of a third party, a potential victim of the action of adults who act with different levels of awareness, can constitute a limit to the more shareable action. Society is called upon to take responsibility of the future generation for exercising this type of procreative freedom.

- In the debate, along with the conformation of alliances and alignments in the civil society, there are the following divergences: there are those who work to obtain the abolition of surrogacy and those for its better regulation (Maniere, 2017); there are those who condemn it as the commodification of women and children and those who defend it as a means of guaranteeing reproductive self-determination to infertile, single, and homosexual people; there are those who think that motherhood is a female prerogative to be valued and those who consider it superficial from a gender constructivism perspective (Farquhar, 1996); there are those who defend the heterosexual family as the only institution responsible for raising children and those who instead claim for males and females (or only for the latter) the possibility of becoming a parent outside this traditional space (Pérez Navarro, 2020); there are those who think that life should be protected from conception and those who think that the woman should be free to decide whether to abort the foetus.
- The transversality of these different positions is hindered by the polarization of the debate, which poses problems to social movements and political actors that want to reaffirm their progressivist identity (de Aguirre, 2019) although they disagree with the expansion of individual liberty to procreate through surrogacy: it is a difficult operation, in a debate structured by the dogmatic defence of principles that define the identity of one or another social movement, to claim to be pro-choice for abortion but at the same time anti-choice on surrogacy, to respect homosexuals but oppose the idea that the desire for a child can be satisfied by depriving the child of a parent (genetic mother or father or birth-mother). These differences, however, have the possibility of coexisting in single-issue alliances (Whittier, 2014) and working tables in which the different souls share the same goal (Stop Surrogacy Now is an experiment of this type). With this book, I wanted to propose a reasoning that crosses the categories of the “package”, aware of the fact that the pro- and anti-choice polarization so marked in the United States risks influencing the entire international debate, even at the academic level, given the enormous capacity of the United States to influence the civil society research and networking.
- Contributing to the prevalence of the regulatory approach over the abolitionist approach is the pragmatism of those who, while not defending surrogacy as a desirable space of freedom and birth, nevertheless sit at the regulatory table to try to limit the expansion and damage of a growing phenomenon supported by huge economic interests. There are also forms of dialogue between groups that share the same abolitionist objective on surrogacy but have divergent ideas on other issues that are fundamental to their mission: pro-life activists (in countries such as

Italy where they firmly oppose surrogacy) and feminists have the opportunity to strengthen their mutual knowledge by working together on the abolitionist cause, putting aside their differences on the issue of abortion (or by furthering their understanding of each other's point of view on this issue, or even sharing it).

- The two abolitionist and regulatory fronts share the concern for the impact of surrogacy and some of its procedures on the health of surrogates, the eggs providers and the children, for the legal protection of the children's rights, even in States where surrogacy is illegal, for the vulnerability of women to abuse, exploitation, or conditions of choice and consent that are not fully free and fully aware. On both fronts, the need is felt for scientific research, the collection of quantitative data on the number of surrogacy births, follow-up studies on the well-being of women after surrogacy and children born in this way, and finally a participatory debate between the civil society and institutions.

Considering the short circuit of the two feminist frames (commodification versus autonomy) and their inadequacy to represent a practice whose purpose is the generation of a third subject, along with the presence of common concerns and moderate positions in a polarized debate, as well as the repercussions of surrogacy in terms of loss of the freedom of the human being of tomorrow on a social level and the scarce benefit in terms of social empowerment for women, I propose renewing the debate and mobilization considering the following possible measures:

1. To focus on the particularities of the phenomenon, first of all that of being a practice aimed at the generation of human beings, who are removed at birth and forever from the person with whom they had begun their development: entrusting them to the clients is not aimed at repairing the child's right to be raised by his parents, as is the case in adoption, since without the will of those same people to have a child, the child would never have been conceived (Scherman et al., 2016). The removal of the child from the woman with whom he began his psychophysical development constitutes an inevitable harm (Agnafors, 2014), regardless of the transaction of money or the gratuity of the service performed by the surrogate.
2. To understand the action of the intended parents and surrogates, if in the absence of coercion, as a choice matured under the influence of the social context, of which I invite not to neglect the imperative of self-determination and individual affirmation (Beck & Beck-Gernsheim, 2001; Lange, 2014), the utilitarianism and the habit of commercializing forms of intimate life, all elements of contemporary society also widespread in countries with large pockets of poverty that constitute basins of "bioavailability" (Cohen, 2007).
3. To distinguish the immediate personal benefit that surrogacy gives to adults (satisfaction of the desire for a child and financial gain), from the social impact on the future generation and confirm the priority of protecting the child over the adult's desire as a social value. Adeline Allen (2018), of the Harvard School of Law, after having listed the negative effects on both the woman and the child (see Chap. 3), argues that the ban on surrogacy by limiting individual freedom of choice is desirable because it is a practice that, in addition to satisfying the client's

desire for parenthood, does not lead to any benefit in social terms, but rather hinders human flourishing, understood as both individual well-being and the common good (society).

4. To strategically differentiate the long-term goal of eliminating surrogacy without missing the opportunity in the short term to protect the children and surrogates as much as possible from abuse, psychological and physical harm, fraud, abandonment, and deprivation of citizenship rights. This implies maintaining an attitude of condemnation of the practice, by virtue of the considerations contained in points 1 and 3, and therefore maintaining the objective that this phenomenon is ended; contributing so that surrogacy is not legalized in States where it is not yet widespread and so that the bans are applied where they exist (as proposed by Italian feminists through coordination between consulates abroad and judiciary authorities); meanwhile contributing to protecting the children and women where the practice already exists especially if in those countries it would be utopian to enforce a sudden ban (Rudrappa, 2021). This approach involves maintaining an ideal and perhaps utopian point of arrival and acting in the meantime with pragmatism evaluating case by case, as well as differentiating the regulatory approach based on the diffusion or otherwise of the market in the country and the legal context. I would like to present some of the proposals put forward by the feminist scholar Valerie Hudson for an improvement of Texan legislation. Her proposals could be a source of inspiration for policy makers internationally, who might want to introduce restrictive regulations aimed at discouraging surrogacy and achieving the progressive elimination of the practice. Hudson suggests: to make it mandatory to inform the surrogate about the surrogate about the health risks, and an obligation for the intended parents to provide financially for the child after birth; pre-agreement home study of the intended parent should be mandatory, intended parent should provide for medical care of surrogates up to 100 days after birth; children should be protected in their rights to know their identity and therefore on the birth certificate, the names of all the donors and surrogate's name should be reported; surrogacy agencies should mandatorily report on the health assessment of surrogates up to after 10 years from the birth.
5. To valorize policy making, research and communication initiatives on issues that we have seen to be shared across the board by the civil society groups, whether abolitionists or reformists: in particular, to emphasize the impact of surrogacy on the physical and psychological health of the women and children; produce and diffuse scientific and factual information, also by collecting testimonies from the protagonists of surrogacy (with the methodological expedient of avoiding interference by commercial actors in the recruitment of sources); monitor the health and well-being of families formed in this way and of the women who contributed; quantify the phenomenon through the systematic collection of the number of surrogate births in each country.
6. To provide vulnerable women who are targets of surrogacy recruitment with accurate information about procedures, medical and legal risks they would face by becoming surrogates, ethical implications and social consequences of surrogacy, their human rights and the rights of the child. Information and awareness initiatives are needed in order to enhance women's decision-making capabilities

and help them to reflect on significance and implications of the practice for their life, for the children, and for their community, as well as to help them to find alternative ways to achieve the goals of finding new sources of income without recourse to surrogacy (Bandelli et al., 2020).

7. To launch single-issue transversal initiatives aimed at abolishing the practice in the name of defending the child's right to grow up with his parents, and in the name of protecting the health of both the women and children. Groups with different social missions and visions, political and cultural locations, have the opportunity to participate on these platforms, as long as the claims are not ideological but based on scientific evidence. Protection of health could be a ground for a joint dialogue and single-issue mobilizations (such as breast cancer, HPV vaccination, female genital mutilation, no-smoking in public places, etc.) and policy making of surrogacy activists in the abolitionist and regulatory fronts. I think that the focus on child's health deserves more prominence because in contemporary society there is a certain level of acceptance of individual freedom to self-harm as well as of the fact that certain forms of paid labour imply health risks. In fact, what is not socially accepted or encouraged is putting the child's health at risk (e.g. debate on vaccinations, social condemnation of drinking pregnant women, medicalization of pregnancy and birth, etc.). Enhanced public awareness on surrogacy implications on health and well-being of children would render the practice less acceptable and unproblematic and would help to question the individual rights of adults to meet their desire of family through surrogacy.

Predictions

I am writing the conclusions of this book in Italy in January 2021, when the world is still shaken by the COVID-19 pandemic and by the measures to contain the contagion imposed by the governments: for a year, the world has not been as easy to navigate as we used to think so for the past 20 years. Tourism has taken a heavy blow, in some countries more than others; the enormous flows of people who moved, for pleasure or for work from one part of the globe to another, have drastically reduced; the few operating flights have prohibitive costs; webinars have replaced conferences and business meetings. We do not know if once the pandemic is over, we will return to roam the globe as before. The prediction that seems quite certain to me is that unemployment, insecurity, social and economic inequality will increase in both Europe and the United States. This second development could favour the increase of female bioavailability and perhaps a restructuring of the short-haul surrogate market, if not on a national basis. The dystopian scenario that Riggs and Due hypothesized in Australia could come true in many Western countries, including Italy: a scenario in which some groups of people within the same country "are seen as less valuable citizens and thus available for commodification" (Riggs & Due, 2013, p. 967). In the light of these future assumptions, national bans take on a greater importance than the current debate in which they tend to be considered in vain since

the ban in one country easily moves the market to another. Today, people cannot move so easily and this difficulty could persist.

In the meantime, experiments on the artificial uterus continue¹ and, in the near future, there may no longer be a need for the bioavailability of women to produce children: it could even reach the point where the human being is created not on commission from those who act, driven by a parental desire, but rather by subjects or institutions with other, less affective purposes. Therefore, the condemnation of surrogacy in the name of the protection of women from commodification could soon be obsolete, while that made in the name of the child would as of now have the function of protecting the human being from this further drift.

On the other hand, we are also witnessing a rapid spread of ecological sensitivity as well as a valorization of holistic methods of care and wellness. This could bode well for a parallel awareness of the importance for the human being to maintain some of his foundations such as sexual difference and birth from his/her mother and father. In the procreative field, there is the phenomenon of holistic or natural childbirth and parenting (Fedele, 2016) which encompasses methods of pregnancy, birth, and post-natal care, such as water birth, lotus birth, and prolonged breastfeeding, which are inspired to the so-called alternative medicine, eco-feminism, and Goddess. These practices underline the mother–foetus spiritual and corporal bond, as well as the ancestral feminine capacity of giving birth in an autonomous and empowering way. Natural childbirth methods are chosen with different motivations, such as: rejecting invasive medical practices and standardized protocols often applied in hospital births; making a responsible choice to revitalize the sacred dimension of birth, which is neglected in modern culture of medicalized bodies; reappropriating the feminine traditional knowledge of mothering which has been devalued by male-centred medical science; enhancing the child’s health and well-being and protecting his integrity as a holistic creature and his connections with the spiritual/natural dimensions. However, it would be foolish to predict that these phenomena could act as a brake on technical procreation in contrast with (human) nature. I would tend more to imagine that these remain niche practices and that they continue to occur in society in parallel with surrogacy in the typical postmodern mode (Camorrino, 2021): a patchwork of practices without a common substratum of values and worldviews where fragmented lifestyles coexist in the same societies, and even in the same biographies, such as the surrogate women interviewed by Lance (2017) who express a feeling of “back to nature” by eating their own placenta to promote post-partum recovery in the absence of the baby.

¹<https://www.theguardian.com/lifeandstyle/2017/sep/04/artificial-womb-women-ectogenesis-baby-fertility>

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