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Feminism and Gestational Surrogacy. Theoretical Reconsiderations in the Name of the Child and the Woman¹

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Abstract

This article discusses the limits of the feminist theory of commodification of women's body in contrasting the diffusion of gestational surrogacy as a new reproductive practice and women's labour. Feminist scholars and activists argue that surrogacy needs to be banned to protect the unitarity of motherhood and the dignity of women. In assuming that surrogates are victims of unbalanced power relations this theoretical perspective obscures women's decision-making process to engage in free actions, which can be nevertheless detrimental to the female subject's and other people's wellbeing. In fact, full autonomy of women in deciding how to use their bodies and reproductive capacity is the theoretical underpinning of so-called liberal feminists who are in favour of legalization and regulation of the practice. In this article I suggest acknowledging surrogates' agency, posit them as subjects of social actions, and reclaim the need to protect the child as the only subject with 'no choice'.

Keywords: gestational surrogacy, feminism, agency.

1. Introduction: the popularity of feminist theory in the interpretation of surrogacy

Feminism, understood as both a social-political movement and a theoretical perspective, is pivotal in defining the social facts concerning women

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– *per se* as well as in relation to other subjects – in the eyes of the public opinion and political decision-makers (Touraine, 2009). Many social phenomena involving women (as protagonists or not) are considered in the public discourse as strictly *women's issues* and are shaped in the ensuing debate through the cultural models and theoretical concepts used by women's movements and feminist intellectuals to explain social reality (Young, 1999; Bawer, 2012; Sommers, 1995). This phenomenon, which is sometimes referred to with the rather unalluring term 'feministization', includes domestic violence, sexuality, procreation, and sexual identity (Bates *et al.*, 2014; Baden, Goetz, 1997; Franke, 2001).

Gestational surrogacy is among the issues involved in this process. In Europe, as in the Anglo-American world, the debate on this practice has transformed since the 90s from an issue of the unavailability of human life into a wider cause concerning women, their bodies, and their autonomy on procreative choices (Roman, 2012).

While the adoption of feminist categories in public debate has the merit of highlighting the experience, role, and perspectives of women in society, we should bear in mind that theoretical perspectives stemming from the need for emancipation and for conquering the male-dominated public spaces have proven limited and inadequate in reading human relations and social structures. Among these, the passivization, victimization and denial of the will of women, the overshadowing of the relational dimension of social action in favour of individualistic action, and the permanence of a dichotomous thought on conflict (Donati, 1999; Franke, 2001; Felson, 1991; Badinter, 2004). Similarly, the feminist debate on surrogacy is also showing its failings, first and foremost being stranded in an irreconcilable opposition of two paradigms: on the one hand, the commodification of women, and, on the other, free choice.

The need to reconsider the conceptual categories of the debate on surrogacy is also apparent in Ulrich Beck's work on the metamorphosis of the world: it is not merely a social *change* but a *metamorphosis* as it changes pre-existing assumptions and certainties. Beck (2017) points out that surrogacy brings about a discontinuity in the history of the changes of motherhood, subverting, for the first time, the law whereby the biological union mother/child marks the beginning of the new life. This cannot be considered evolution, as it does not follow a law of development, nor a pre-existing basic principle; rather, it reconfigures the anthropological basis of the birth of life. Moreover, this metamorphosis entails a wave of side effects. Among these, the inability of laws and policies to address the issue due to the lack of precedents, and a language that preserves anachronistic certainties (Beck, 2017: 37).

The present paper aims at contributing to this theoretical renewal. We will start with a brief description of the current discourse of that part of Italian and

French feminism that for the past few years has carried on a cultural and institutional campaign pressing for the universal abolition of surrogacy. We will then emphasize how the theory of commodification is ineffective in supporting the condemnation of the practice since its advocates contrast the paradigm of autonomy with that of freedom of choice. Then, through Max Weber's theory of action, we will suggest considering the surrogates as subjects of social action, who make choices in the context of personal and family projects. Finally, having returned the full agency to the surrogate, we will propose to reconsider the abolitionist view by redefining the subject to be protected, from the perspective of social responsibility: not the woman but the child, where the latter is considered as a subject who does not choose to be born. This new theoretical perspective entails a rethinking of women's freedom to use their body for economic purposes. The individual-individualist freedom of the woman, who in a neo-liberal paradigm is conceived as unlimited and omnipotent, even when it causes damage to another woman, a consenting adult subject, is limited when she takes responsibility for protecting a subject with less power than her, *i.e.* the child, and in broader terms, chooses not to be instrumental in damaging the health of future generations.

2. The feminist abolitionist movement in France and Italy

French feminists are forerunners of other hotbeds of opposition emerging in various countries around the world and coalescing into a transnational abolitionist movement against surrogacy, under the umbrella of the network *Stop Surrogacy Now* created by Jennifer Lahl and based in California (Yanagihara, 2019; Davies, 2017). *Stop Surrogacy Now* is not an exclusively feminist network, as it also includes bioethicists, pro-life advocates, intellectuals, and professionals. The mobilization in France was followed by the Italian one, as Italy's main feminist trend has throughout history been inspired by (and intertwined with) the French thinkers on difference, especially about reflections on female identity and motherhood (Restaino, Cavarero, 1999). Both countries have laws explicitly prohibiting surrogacy within their boundaries, but those who resort to it abroad (for example in the United States, Canada, and Ukraine) are not prosecuted once they return to their country with the child. Although more heterosexual couples than homosexual ones turn to surrogacy (since in absolute numbers same-sex couples are still a minority), the recent mobilization against the practice in both countries has stemmed from the debate around the laws on civil unions or same-sex marriages (2013 in France, 2016 in Italy). It should be noted that, although less apparent for public opinion, surrogacy had

already emerged as an issue during the debate on the law on bioethics in France in the 90s and on the law on assisted reproduction in Italy in the early 2000s.

The anti-surrogacy mobilization in France is led by CORP (*Collectif pour le respect de la personne*), a group born in 2013 with the very purpose of reaffirming the dignity of women and children denied by gestational surrogacy, whose president is Sylviane Agacinski. CORP's main allies are CADAC (*Coordination pour le Droit à l'Avortement et à la Contraception*) and CLF (*Coordination Lesbienne en France*). Their mission is pursued through a twofold strategy: lobbying on French institutions (e.g. the Parliament and the Bioethics Commission) and international ones (e.g. the Council of Europe and the Hague Conference on International Adoption), and organizing conferences to inform and mobilize public opinion. The key event of the French mobilization was the first international conference of February 2, 2016, that, with the support of some MPs, launched the Charter of Paris. This document calls on the countries of the European Union to take a stand against surrogacy as a commodification of women and children and to promote the creation of an international convention for the abolition of gestational surrogacy in any form (commercial or 'altruistic', as it is called).

The Paris event was attended by some Italian feminists who in the previous year had launched a public petition for a blanket ban on surrogacy and who on March 23, 2017, proposed a similar event in Rome, in a room in the Parliament building. The leader of the Italian front is *SNOQ-libere*, part of a women's group born in 2011 for a 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'. In 2013, this group branched out forming *SNOQ-libere*, that embraced surrogacy as its main theme of mobilization in a wider framework of reflection on women's freedom and motherhood.

At the Conference in Rome, the group approved an appeal to the United Nations institutions responsible for compliance with the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on Human Rights and the conventions on the rights of the child. In addition, the Rome document mentions the following international conventions in conflict with surrogacy: Additional Protocol to the United Nations Convention against Organised Crime, Convention on the International Adoption of The Hague, the Council of Europe Conventions on Adoption, Combating Trafficking in Human Beings and Biomedicine, and finally the Charter of Fundamental Rights of the European Union.

Both the Charter of Paris and the Rome document describe surrogacy as a practice that commodifies women and their procreative abilities, not to mention children. The latter, however, remain on the background of the argument: the

international reproductive market assigns a monetary value to these reproductive abilities and controls them, thus expropriating women of their freedom during pregnancy, of human integrity and dignity. Women, and children with them, become means of production available to the market. This process, according to the Rome document, hinders the implementation of the principle of equality and full enjoyment by women of human rights, as laid down in the CEDAW.

The request for a blanket ban rests also on the defence of the Roman law principle *mater semper certa est* (the mother is always certain, because of the unity of the mother figure, coinciding with the woman physically giving birth). According to abolitionists, defending this principle would prevent the reproductive process from being reduced to a mere mechanism and reproductive capacities and children from being transformed into goods. Motherhood is considered a key event in women's lives, coinciding with gestation and indivisible from it. However, if surrogacy actualizes this division, then the feminist abolitionist discourse prioritises the bond between the unborn child and the pregnant woman – established during pregnancy through the biological, psychic and emotional exchange – over the genetic one.

Moreover, especially in the discourse proposed by *SNOQ-libere*, surrogacy retrogresses the process of women's emancipation, that has included motherhood in the various fields in which women's freedom is expressed (Izzo, 2017). Gestational surrogacy, according to *SNOQ-libere*, relocates motherhood, from 'an eminently human act, the highest expression of the human dignity of women', in the sphere of domination.

Finally, the abolitionist front supports the request for a blanket ban on surrogacy also by mentioning the risks for health and life of both the pregnant woman and the child.

The two documents (Charters of Paris and Rome) describe surrogacy as a social practice and a market in which women are victims of social injustice, exploitation and commodification, and with them, the children, who however remain in the shadow of an argument focused on the woman. Protecting women from this commodification practice, from the abstract entity of an unscrupulous market, would, therefore, according to this discourse, protect the children. The woman's decision to bind herself in a contract that is harmful to her health, alienating from her own person, traumatic and risky for the foetus, is rejected *a priori* on the assumption that these decisions are not actually taken in conditions of full freedom but are influenced by relationships of inequality and domination (family or gender-based, economic, and geopolitical). The example often proposed is that of women in poor countries, particularly in India, the main hub of the procreative market in the South of the World.

3. The limitations of feminist thinking on assisted reproduction and gestational surrogacy

The discourse opposing gestational surrogacy described so far was not born with the onset of the abolitionist movement in France and Italy. It takes its cue from an abundant theoretical elaboration on reproductive technologies and previous mobilizations against the use of these technologies on women's bodies that started in the 1980s in the United States in reaction to the opening of the first clinics offering the possibility of having a child via surrogacy (Corea, 1985; Firestone, 1979; Katz Rothman, 1982; Pateman, 1988).

However, it should be pointed out that over the decades the practice has undergone profound transformations. First of all, in the 1980s surrogacy was technically possible but had not yet taken the path of normalisation and cultural acceptance that today makes it a procreative practice and an opportunity for women struggling with their life choices to earn money (Spar, 2006). Moreover, at that time the pregnant woman and the genetic mother tended to coincide. Subsequently, due to the diffusion and improvement of *in vitro* fertilization techniques (IVF) and intracytoplasmic sperm injection (ICSI) gestational surrogacy became established as the predominant form of surrogacy, in which the eggs do not belong to the woman carrying out the pregnancy but to the one commissioning the surrogacy or to a third party 'donor'. This led to the birth of a multi-million-dollar transnational market for medical services, intermediation and legal assistance, with its centre in the United States (Jacobson, 2016).

In feminist literature reproductive technologies have been discussed primarily as: tools of freedom and female self-determination; tools of the patriarchy to reduce women to reproduction machines; devices that consolidate the normative model of femininity coinciding with motherhood (the woman obtains social recognition by becoming a mother) and a representation of infertility as deviance; techniques that allow us to break down motherhood into several phases and figures; a reproductive labour market where women go through a process of empowerment and at the same time where inequalities of race and sex are consolidated; and finally as technologies toxic to women's health (Farquhar, 1996; Kroløkke, 2014; Rushing, Onorato, 2003).

On gestational surrogacy, feminist positions are radicalised. One front calls on national governments, the European Union and the United Nations to completely ban the practice as harmful to the dignity of women, the other adopts a pragmatic approach and calls for the regulation of an existing practice and market, to reduce the risk of abuse between the contracting parties (Maniere, 2017; Saravanan, 2018; Stoicea Deram, 2016; Pande, 2014; Telman, 2010).

This rift applies not only to feminist theory, but it is also reproduced in the public sphere. The French intellectual Diane Roman (2012), analysing the positions of both supporters and detractors of the practice, identifies the following feminist arguments. According to the opposition front, surrogacy is a degrading practice to which poor women lend themselves for economic reasons, a practice that exploits and consolidates inequality between women. Moreover, this front celebrates the uniqueness of pregnancy as a phase of a woman's life, a unique moment of psychological, organic and emotional exchange with the foetus, inescapably broken in case of gestational surrogacy (biologist and essentialist vision). Contrarily, the front in favour of surrogacy claims the right of women to use their own bodies (which, as Roman recalls, is a concept conveyed also in the discourse on organ donation, transsexualism and biomedical experiments). Moreover, surrogacy is defended because it allows for the manifestation of sisterhood, solidarity and altruism among women, with the establishment of relationships of mutual help and mutual benefit.

The arguments put forward by both sides revolve around women – perhaps a trivial observation when it comes to the feminist debate. On the one hand, they are considered as victims whose actions result from a situation of domination, social disadvantage and lack of freedom; on the other hand, as contractual subjects capable of self-determining a path of empowerment. These two representations of women, like those in the unresolved debate on prostitution, are shaped by different applications of the concepts of choice and agency. Those who support abolitionist positions see surrogacy as a patriarchal aspect of exploitation, violence and submission of women, while liberal feminists promote the freedom of women to do what they believe best with their bodies (Ferguson, 1984; Munro, 2001; Lewis, 2016).

The first representation can be seen, for example, in the clear-cut positions of feminist sociologist Renate Klein, a professor at the University of Maine and founder in 1984 of the *Feminist International Network of Resistance to Reproductive and Genetic Engineering* (FINNRAGE) which is among the promoters of *Stop Surrogacy Now*. In her latest book 'Surrogacy: A human rights violation', Klein argues that any attempt to regulate the practice fails in protecting women. No law can make surrogacy ethical or 'fair' because the practice involves a forced and programmed removal of the child from the mother (who in Klein's opinion is the one who carries her). Gestational surrogacy also implies a form of reproductive slavery, the result of the interweaving of the patriarchal and neoliberal mentality that reduces women to vehicles and extends the concept of work to any human activity. Drawing the parallel between subrogation and prostitution, Klein (2017) argues that these are never a choice: is not as opting for a 'piece of chocolate cake or lemon tart'. 'To "choose" to stay in prostitution when you have become heavily addicted to cocaine, desperately need money,

are homeless and have not a soul to turn to for support, is not a “choice”: it is a most difficult (and unfortunate) decision. Likewise, to “choose” to exploit a woman as a “surrogate” when your family including your husband blames you for being infertile and treats you like an outcast, is not a “choice”: it is a most difficult (and unfortunate) decision.’ (Klein, 2017: 16).

On the other hand, the woman as a subject of agency emerges in the positions of, among others, Amrita Pande, a sociologist at the University of Cape Town, who conducted ethnographic studies with Indian surrogates in the clinics of Bangalore, and who supports the need to regulate this activity rather than outlaw it. Pande (2014) claims the need for women to be duly informed and aware of risks, rights, and duties, before entering into the contract. Additionally, she hopes that the surrogates will establish themselves as a collective subject to make their ‘work’ visible, see their rights as a group formalized and respected, and improve the social recognition of their contribution – emotional aspects included – in the process ending with the birth (production process).

By affirming the principle that women should be free to use their reproductive capacities as they wish, including the possibility of making them available to third parties and on the market, reformist feminists discuss the following aspects of surrogacy: the possibility of allowing surrogacy only in a free form or with a mere reimbursement of expenses as in the English model; the possibility for surrogates to reconsider and refuse to give up the child (which, however, is not genetically theirs); the co-participation of the surrogate and intended parents in the decision to terminate the pregnancy (if the numbers of implanted embryos developing is greater than the number of children that the couple is willing to raise; and in case of malformation of the foetus) (Guzman, 2016; Twine, 2015; Markens, 2007; Wade, 2017).

Vanessa Munro, professor of law at the University of Warwick, argues that the feminist debate on surrogacy is inconclusive because both fronts (in favour or against) focus on the self-determination of women with different and opposing paths to achieve it, forgetting the wider social implications of the female subject itself: ‘the reason for the deadlock in the feminist debate, lies in the failure of the arguments espoused by either side to consider the issue of surrogacy in a broader framework [...] However, feminism has always sought to teach its advocates to search in the broader social spectrum for implications of personal practice. Perhaps it is time that feminism took a dose of its own methodological critique and applied it to the internally divisive topic of surrogacy’ (Munro, 2001: 24).

We have seen that the dominant framework used by the emerging abolitionist movement in Europe is that of the commodification of women. The reviewed literature shows that this concept has failed to find common

ground with the feminist fronts proposing the paradigm of autonomy and free individual choice – to do what one wants with one’s body, even at the expense of one’s health or personal dignity (Munro, 2001; Augustin, 2004). Furthermore, arguments based on the condemnation of the commodification of women’s bodies are easily circumvented by proposing to legalize only the so-called ‘altruistic’ surrogacy, i.e. when the surrogate does not receive a fee but only a reimbursement of expenses (Danna, 2015). If anything, instead of *commodification*, it would be more appropriate to speak of the *objectification* of women (i.e. the reduction of the person from an end in itself to a means, a transformation not necessarily taking place in the market). However, it is likely to think that even this concept would be easily opposed by instances of personal freedom in objectifying oneself (Nussbaum, 1995). Moreover, although feminists fighting for surrogacy to be banned pair the concept of commodification with that of equality and human integrity, their criticism remains focused on the mother-woman and the relationship between mother/pregnant woman and foetus. Any opposition with feminocentric arguments is easily weakened by approaching the discourse of the parental desire of women who cannot carry on a pregnancy and the parental desire of homosexual couples (Inhorn, 2002; Goldberg 2012).

This roundup of feminist perspectives points to the need to rethink the conceptual categories with which to elaborate a thought opposing the affirmation of this social practice. Such a thought should be suitable for a neoliberal society, where the autonomy of action of the individual and the realization of his desires has gained a privileged position in the hierarchical scale of values, while at the same time rationalizing any human relationship (Bauman, 2001). Clearly, in such a society the limitation of the freedom to form a family and to improve one’s economic conditions with the instruments available on the market has little chance of being heard.

Our proposal for an attempt to renew the arguments against surrogacy is to recognise the unique nature of procreative practices as generating a third party, and at the same time to recognise women as agency subjects in a neoliberal society. Hence the need to understand the reasons for the actions of individuals and, at the same time, to limit their freedom of choice, including that of self-commodification. The aim is to protect the children as subjects of the future society, weaker than adults.

The juxtaposition of these two arguments allows, in our opinion, to affirm the need to ban the practice, as the abolitionists would like, without negating women’s agency and therefore victimizing them.

4. Surrogates are social agents

Even in societies where women and men have equal rights, where the former enjoy full access to the public sphere and the market, the use of the female body to obtain an economic advantage persists. Indeed, it is normalized by the culture of utilitarianism in a neoliberal system in which every aspect of life, of women and men both, is given monetary value (Hochschild, 2012). In some cases, women are forced by others against their will, deceived, and threatened and have no real alternative to escape the self-commodifying action. However, this is not always the case and the existing literature, especially the one documenting surrogacy in the United States, shows that the decision to enter this market is made without coercion. It is, therefore, necessary to ask what the factors behind these actions are.

Weber's (1922) theory of social action teaches us that actions can be the result of rational evaluations with respect to their purpose or objective, to the shared values of the society in which we live (including variously established or outdated patriarchal logics), or 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) posits actions as the result of individual decisions influenced by the social context (including economic status, poverty, access to the job market, division of roles), culture (e.g. Indian women develop a sense of identity embedded in their kinship), ideologies (the commodification itself and the expectations related to the identity of women in a given social context), persuasion narratives (to carry out a good deed that, besides compensation, provides a child to those who cannot have it) and pressure from others, such as family members (Saravanan, 2018; Dasgupta, Das Dasgupta, 2014; Ragoné, 2003). In other words, the context cannot replace the subject's decision; rather – it may seem obvious – the subject's action takes place in a context.

In addition, the subjects make their choice with varying degrees of awareness of the individual and social effects of their actions: in fact, the preference shown does not always correspond to the one that would have been chosen by a subject with all the necessary information and according to logical reasoning (Harsanyi in Verza, 2006). It should also be borne in mind that actions harmful to one's health and integrity can be carried out even in the absence of constraint and with an awareness of the risks and certain damages.

Recognising that in the global market of surrogacy there is always an economic and social inequality between surrogates and clients is not enough to strip the former of the ownership and responsibility of their actions (agency) nor is it enough to deny that the surrogate can make choices in taking part in

the process of self-exercise, more or less aware and informed, more or less conditioned by culture and significant others (Shalev, 1989).

Moreover, while it must be acknowledged that the surrogacy market is structured on the difference in economic and social status between surrogates and clients (the former belonging to the poorer two-thirds of the world and the latter to the richer one-third) it must also be taken into account that surrogates in different countries belong to very different social and economic statuses (Saravanan, 2018; Harrison, 2016). In examining this social practice, we cannot ignore that the surrogates in the world are not all equally poor, subjugated to the family, marginalized, uninformed, or without alternatives. Depending on the contexts and individual situations, we must consider various degrees of autonomy, awareness, and information and freedom from economic needs, related to their life projects, social models, and lifestyles.

Sharmila Rudrappa, for example, a sociologist at the University of Texas, points out that many of the surrogates interviewed in Bangalore, India, have chosen this path against working in textile factories, where they are subject to harassment, invasive surveillance and heavy rhythms. They prefer to be surrogates rather than workers and they are aware that with surrogacy they can earn more than with any other work. The compensation they receive from surrogacy is used to educate their children, to buy a house in a district more suitable for growing children, to pay off debts and start small businesses (Rudrappa, 2015). They are not wealthy women, but neither are they the poorest in Indian society, who have the least chance of being accepted in the procreative market where prejudices against the lowest castes persist.

Women interviewed by sociologist Heather Jacobson in Texas and California claim to choose to become surrogates in complete autonomy, after learning of this possibility through third parties and TV programs, having reflected on the suffering of infertile couples and decided that they have reached the maximum number of kids for themselves and their families. Some persuade their initially sceptical husbands; others include among their motivations the physical and emotional pleasure they get from being pregnant, the pleasure of doing something useful to others. Although the profit is not the main motivation in their narratives, it is a welcome reward, an extra that allows them to shorten the family's financial plans, take a vacation, or put some money aside for their children's education. It must also be said that, in Texas and California, half of the surrogates are soldiers' wives. They choose this path to feel useful while their husbands are away and to contribute to the family income, making the most of their health insurance and making up for the difficulty of keeping a permanent position due to their partners' frequent relocations (Kessler, 2009; Harrison, 2016). Among the reasons for becoming a surrogate, there is also the

feeling of guilt for events in their personal life, such as previous abortions or having given up their children (Ragoné in Tieu, 2009).

In the light of these data, it is clear that becoming a surrogate takes on the characteristics of an action aimed at a project of social mobility and personal emancipation, developed according to specific situations with different degrees of personal initiative, autonomy, sharing with family members or harassment, and with practical but also psychological reasons related to their history (Tieu, 2009).

Can we admit the legitimacy of the self-commodification of women according to the hierarchy of their needs and objectives? For example, if the economic income from being a surrogate pays for the education of a child, repays a mortgage for a larger house in a more residential area, or supports a given lifestyle? We believe that such an assessment could lead to unpleasant class-related moral judgments, which would be an unsuitable basis for defining social policies aimed at equality.

In conclusion, we believe that the framework of commodification distracts from the personal reasons leading to the choice of being a surrogate thus impoverishing our understanding of the phenomenon. We cannot erase these motivations with the usual rhetoric of the victimisation of women as weak subjects at the mercy of the market, patriarchal culture or gender, race or economic inequality. Abolitionist arguments based on a representation that denies the agency of the woman and departs from the complexity of individual action in a given social reality brings about, as a reaction, opposing claims for autonomy which tend towards limitless freedom with no protection for oneself and others.

5. Conclusion: limiting women's freedom to protect the child

Once the role of the action's subject has been reassigned to the surrogates, it is difficult to find arguments to prohibit the practice, especially since it allows the satisfaction of a need or desire of other subjects: the intended parents. As mentioned before, defining the limits of individual action is extremely problematic because freedom to self-determination and the satisfaction of individual desires are at the top of the hierarchy of values in contemporary society, which protects the so-called private spheres from the interference of the law (Bauman, 2001). One possibility to overcome the impasse is to shift the focus of the abolitionist request from the subjects of social action to the only subject who without a shadow of a doubt has no choice and whose very existence is the result of the will of third parties: the child.

The child is not absent from the arguments of the abolitionist feminists, but as we have seen it comes after the woman-mother-victim, indirectly protected from commodification by condemning the division of the mother into two distinct subjects (birth vs. genetic) and of the pre-planned separation of the child from her birth mother.

To shift the focus on the child, surrogacy must be redefined from being considered a contractual practice between free subjects to being understood as a procreative practice, i.e. the generator of a third subject, who without such practice would not exist. This repositioning implies a clear separation between the opposition to surrogacy and the abolitionist arguments used for other forms of commodification of the female body that lack procreative intent (such as prostitution). In our opinion, the request for abolition is more likely to be shared in a broader reflection on the culture of 'parents at any cost' and therefore on the cultural normalization of the objectification of the child (even before her commodification) as a tool for the satisfaction of the adults' desire for parenthood, self-fulfilment, and self-determination (Maestri, 2012). In the procreation market, these desires meet those of the surrogates and the suppliers of gametes. As we have seen, these are linked to projects of economic empowerment or to the personal-emotional sphere (including the feeling of being useful for someone). At what costs are these 'life projects' implemented?

The literature shows that gestational surrogacy is a higher-risk pregnancy compared to a natural one, with serious repercussions on the health of both the child and the woman (Nicolau *et al.* 2015; Corradi, 2017; Allen, 2018). This is because it involves IVF, the implantation in the surrogate of an embryo formed by an egg foreign to her body, pharmacological treatments both in the egg supplier and in the pregnant woman whose body must be artificially prepared for the reception of the embryo. In most cases, it also involves caesarean section, and in all cases a detachment of the newborn child from the person in whom she grew up for 9 months. To mention just some of the health implications: gestational diabetes, foetal growth restriction, preeclampsia, premature birth, intracranial pressure, increased risk of malformations and delays in bone growth, hypertension and cardiovascular problems, infertility problems and cancer (also in the child).

Moreover, the psychological, cognitive, and emotional development of the child, her ability to relate to other people and space, begins in the womb through a two-way exchange with the mother – biological, physiological and sensory – and continues seamlessly outside the latter's body after the birth (for a detailed explanation of the relationship between the physiology of the mother-foetus bond and child development see Tieu, 2009: 172, and Nicolais, 2018). The sudden removal of all the points of reference that the child had acquired while in the womb (e.g. external voices, heartbeat and breathing) creates a fracture in

this process of attachment and learning. As the Swedish philosopher Marcus Agnafors points out, this fracture cannot then be erased, not even if the child, thanks to her adaptive abilities and her family's love, will then undergo a healthy development. In other words, the happy ending does not erase the intentionally created fracture, and this fracture in itself harms the child. 'But 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: 360).

In our opinion, we should include in the costs/risks evaluation the fact that the child born via surrogacy or through IVF, unlike in natural conception, is not generated in a space protected from the intrusions of the will of others, but through the actions, decisions, and technical selections of third parties (parents and medical staff) who will then be responsible for her 'configuration' (Habermas, 2002). When naturally conceived, the child cannot pinpoint those responsible for her personal and physical characteristics, for being as she is, because these are given by a series of micro-events and spontaneous combinations that science can know and reproduce only in part. According to the German philosopher Jurgen Habermas, this different awareness interferes with the development of identity as a unique and free subject, the sole owner of his own identity and actions (for a more extensive discussion see Bandelli, Corradi, 2019).

Does the adult society want to take the risks listed so far in the name of the freedom of women and men to fulfil their desires? Adeline Allen (2018), of the Harvard School of Law, after listing the negative effects on both women and children, argues that the ban on gestational surrogacy, through the restriction of individual freedom of choice, is desirable. This is because gestational surrogacy, apart from satisfying the clients' desire to be parents, does not lead to any benefit in social terms, but rather to a decrease in humanity and kindness. She argues that the surrogate hinders human flourishing, that individual and social well-being (common good) depicted by Aristotle as a result of personal choices inspired, at the same time, by one's own inclinations and by considerations of social justice and prudence (rational part of the soul).

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