

## What We Talk About When We Talk About Surrogacy. The Symbolic Representations of Surrogate Motherhood among Gays

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# *What We Talk About When We Talk About Surrogacy. The Symbolic Representations of Surrogate Motherhood among Gays*

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## **Abstract**

The purpose of this essay is to analyse how surrogate motherhood is represented both in academic and scientific debate and in the everyday lives of homosexual people. The work is structured as follows. The main dilemmas facing surrogate motherhood are discussed – is it self-determination or the exploitation of women? Does the money involved *denote* the purchase and sale of a human being or a gift of one's own capacity? How is *motherhood* defined within the surrogacy of motherhood? – and the various *answers* produced by the many theories and research on the subject described. Subsequently, the symbolic and cultural representations of surrogacy by the gay people interviewed are presented.

Keywords: surrogate motherhood, women, pragmatism, feminism.

## **1. Introduction: *believe or not believe, that's the problem!***

'I would like to *believe* that a person can put their own femininity at the disposal of people who are unable to have their own child. I fear, however, that the majority of cases are for economic reasons'. This is the doubt expressed by Bartolomeo (one of the interviewees involved in the research presented in this article) in relation to the goodness of the practice of surrogate motherhood. Bartolomeo is a gay university student and, despite his young age – twenty-four – when he thinks of himself as a future father, for him adoption and not surrogate motherhood is the *route* he would take in order to have a child. The choice of adoption is dictated not by any doubts over the practice of surrogacy

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but rather 'because there are already so many of us!' In fact, in Bartolomeo's *mind*, the link between surrogate motherhood and adoption is particularly strong as

surrogate motherhood is a term that I have always linked to the world of adoption, couples who want a child but can't, the man who adopts his partner's child or the woman who gives her uterus to allow a couple to have a child. Now that I'm talking about it with you, I realise that it's not the same thing as adoption. But, in fact, surrogacy is practically a kind of pre-adoption. Ultimately, that child will be yours, but not necessarily biologically, or it may be, but not necessarily.

For Bartolomeo, the boundary between surrogate motherhood and adoption is quite hazy, and above all 'easily crossed'.

If you want to see it like that, like buying a baby or a uterus, you will see it like that. But, in fact, it is far more simple: there's a family who wants a child and a woman who wants to have one for them, and the fact remains that, in the end, if it is done for money or only as a gift, the child will go to a couple who will raise him well and love him.

This is how Gregorio, a twenty-year old gay university student, resolves the dilemma of whether surrogate motherhood is selling a child or not. Like Bartolomeo, Gregorio also considers 'adoption as the first route for having a child', and not due to any condemnation of surrogacy but rather because 'adoption is ethically better, because there are already lots of children who don't have a family.' Indeed, Gregorio does not think of surrogate motherhood as an inhumane practice that exploits women or that *commercial* surrogacy should be forbidden, even though 'perhaps it's easier to image a poor woman who does it for money and the better-off woman who does it exclusively for the good of the couple or the individual.' Whether surrogate motherhood is *good or bad*,

depends on your morals and your ethics, there is no right moral or ethics *a priori*. It depends on how you want to look at it. If you want to see the woman as a victim or the child as a victim, that's fine, but I don't see her or him as a victim, an object. They are not objects. It's far more simple than how you want to see it.

This is Gregorio's approach to surrogate motherhood. In fact – as we will see below – Gregorio sets a fundamental condition to show that his approach is valid and which we will return to in the conclusions.

Finally, a last exchange between Claudio and Antonello, a couple for the last three years.

*Antonello:* for me, surrogate motherhood is a bit contradictory. On one hand, it's right that a mother in a couple with a man or a couple like us two, two men, have the possibility to have a child in this way. On the other, the commodification of the woman's body – fundamentally – doesn't seem right to me. So, I'm fifty-fifty!

*Claudio:* I don't agree about the commodification of the woman's body. On the contrary, I think it's quite the opposite, it's a matter of the woman's self-determination. You can do what you want with your own body, including this. This is one of the choices in which the law, in forbidding you from doing it, no longer assures the right to self-determination. And as concerns the possibility of exploitation, I think this is essentially a matter of rules. A matter of rules and control. If you allow the possibility, then you apply rules to try to prevent this from happening.

*Antonello:* for me, the closest thing to the right thing is that it is altruist. If you do it for money, it becomes something in which there is a person who on one hand needs money and, therefore, they do it for that too, and on the other hand, the person who pays, and always the person who has the possibility to pay.

Even though Bartolomeo, Gregorio, Antonello and Claudio, just like all the other interviewees who will be introduced later on, consider themselves totally unprepared about surrogacy – what it is, if it is really the woman's self-determination or exploitation, on how it should be regulated – in fact, their opinions, ideas and worries mirror the complex questions that have always animated the debate on surrogate motherhood right from the start, and which have still not found any unambiguous, definitive answers. The worries identified right from the first research works on gay paternity (Lewin, 2009) that claw on the consciences of future fathers – what to tell the child who, according to some opinions in society, was torn from a mother, was bought (or sold), is the result of a trade, a deal, an inhuman practice like that of the womb for rent – are echoed in the words of the interviewees. In gay paternity, the presence of the external donor<sup>1</sup> thus forces future fathers to question the *ethics* and *legality* of their *desire* (Stacey, 2005; Dempsey, 2013) or, in other words, the goodness or otherwise of surrogate motherhood – if other forms such as co-parenting or adoption (the latter, for example, in our legal system is not open to same-sex couples) are excluded. Very often, gay paternity is the result of a choice in which

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<sup>1</sup> In this way, sharing the epistemology proposed by Irène Théry (2010) to see the various medically-assisted reproduction techniques as the *donneur d'engendrement*, a gift which may be gametes, embryos or the ability to carry.

the support of associations and family networks is a decisive factor (Tarnowski, 2011): becoming aware of the fact that gay paternity is possible and that there are other gay fathers reinforces the desire and decision to pursue it. In the same way, the *procreative identity* of gays (their awareness of their ability to reproduce human life and become fathers) is heavily conditioned by the surrounding socio-cultural context: the more the social environment is *favourable in terms of the recognition of homosexuality and family forms other than the 'heteronormative'*, the more 'gay men develop and negotiate their procreative consciousness' (Berkowitz, 2007: 187) and their fatherhood. The desire of two gay fathers needs a woman who wants, *freely, to have a child for them*. As Gratton stated (2008), this *mutual consent between the fathers and the woman* is the form through which their desire *takes shape*.

In these pages, the aim is to analyse how surrogate motherhood is represented both in academic and scientific debate and in the everyday lives of homosexuals. The work is structured as follows. The following paragraphs tackle the main dilemmas posed by surrogate motherhood – is it self-determination or exploitation of women? Does the money involved *denote* the purchase or sale of a human being or a gift of one's own ability? How is *motherhood* configured in surrogate motherhood? Subsequently, the symbolic and cultural representations of surrogacy by the gay people interviewed are presented.

## **2. First problem: inevitable alienation or possible self-determination of women?**

The 'first' *public* case of *surrogacy* in the United States, *Baby M*<sup>2</sup>, in 1987, led to a lively debate which remained unsolved, or rather, as time has passed, has amplified its own complexity. Right from the start, surrogacy 'presents an enormous challenge for feminists', (Andrews, 1988: 72), as we have to ask if for women it is a victory or a defeat. The scholar states that there is a paradox in the criticism which a part of feminism makes towards the technique of surrogacy: seeing this as an instrument that places women under male power and reduces them to mere reproductive containers, there is a risk of reducing women to their sole function of reproduction, depriving them of their freedom<sup>3</sup>. In other words, that claim for freedom, aware self-determination and

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<sup>2</sup> From the name of the case, 'In re Baby M, 537 A.2d 1227, 109 N.J. 396' debated before the Supreme Court in New Jersey.

<sup>3</sup> Daniela Bandelli and Consuelo Corradi describe how the feminist thought on surrogacy – both for and against – is woman-centric in its vision of freedom and the power to act. On the other hand, the two researchers underline the need to adopt the

the management of their own body cannot also be extended to *surrogacy* where this is *seen by the surrogate mother* as ‘the opportunity to carry a child that would not exist were it not for the couple’s desire to create a child as a part of their relationship’ (Andrews, 1988: 74). On the other hand, one of the strong voices of feminism, Carole Pateman, states that ‘the political implication of the surrogacy contract can only be appreciated when surrogacy is seen as another provision in the sexual contract, as a new form of access to and use of women’s bodies by men’ (Pateman, 1988: 209-210).

The problem that is therefore underlined by the first comments on the *dilemma* of the goodness or otherwise of surrogacy concerns the fact that this practice may be *culturally conceived* as yet another transformation of the modern patriarch or as an act of emancipation; as a decision which, in fact, hides a *false consciousness* (Oliver, 1989) or, on the contrary, a conscious and free decision (Bellioti, 1988). Ultimately, the problem concerns how motherhood for others can be an opportunity for enhancement or, on the contrary, the exploitation of *women*.

A few years after the *Baby M* case, Heléna Ragoné published what is usually described as the progenitor of socio-anthropological studies on the practice of surrogacy, *Surrogate Motherhood. Conception in the Heart* (1994). In relation to this important work, here I would like to offer a conclusion the author reached. The surrogate mothers Ragoné refers to are US women who are described as women who use their own work as a bridge or bond between the domestic sphere and the public sphere: by transforming the work of reproduction as a paid occupation within the public space, this activity allows women ‘to alter the balance of power in a surrogate’s personal life, giving her entree to a more public role and creating new and exciting demands upon her time’ (Ragoné, 1994: 65). The surrogate mother – Ragoné explains – is able to acquire that recognition as

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point of view of the freedom of the ‘surrogate child’: ‘it is the freedom of the children who come into the world by the unshakable will of their intended parents, who accept every economic sacrifice, every legitimate or illegitimate practice and every available medical intervention in order to bring these lives into the world. The parents’ will of power in bringing the child into the world contributes in weakening the ethical basis of the future freedom of the child herself’ (Bandelli, Corradi, 2018: 22). In the concept of the ‘freedom’ of the child we can identify many elements – their right to origins (to know the woman who carried them), their right to citizenship (which citizenship do they acquire, that of the woman who gave birth to them and the country they were born in or that of the parents who wanted them?), etc. I refer to the essays by Baratta (2016) and Gerber and O’Byrne (2016) which show how the urgency of appropriately regulating surrogate motherhood, above all in relation to the protection of the child and the ‘status filii’, is partially resolved by the charters of fundamental rights, particularly the Convention on the Rights of the Child.

a *woman* thanks to the role of *mother* which, within her own family, on the contrary, she would not be permitted: 'the recognition these women receive for their surrogate role thus confirms and reinforces their belief that motherhood is of profound importance and that giving birth is a talent or a skill' (Ragoné, 1994: 72). From the United States, let us look at where still today the regularisation of surrogacy continues to have some 'grey areas', i.e. India (Witzleb, Chawla, 2016). More recent studies show how the practice of surrogate motherhood is a means, for Indian woman, of *redemption* (Pande, 2014) or the *reinforcement of already won emancipation* (Rozée, 2018). Indeed, it is curious to see how different research conducted on the Indian reality outline two quite different profiles of the 'woman' who offers herself for a *surrogacy* project. Through surrogate motherhood, women have the possibility to redeem themselves from the highly masculine and patriarchal order of Indian society as the 'money' paid for the *work* done in the nine months of pregnancy is the means of redemption and as such cannot be blamed. Surrogate mothers – as Pande in particular explains (2014) – fight the symbolic construction that sees them as 'disposable mothers and dirty workers'. On the contrary, they *conceive themselves as moral mothers*, affirming 'their dignity and sense of self-worth' (Pande, 2014: 168). Or, and this is the second profile emerging from the research on the field, a *surrogacy* project can involve women who, already having a job and a decent income, consider surrogate motherhood as a good opportunity for further financial income.

These different *reasons* why a woman offers to become a surrogate mother demonstrate a very simple issue: they represent the 'moment' before which even those who criticise or openly raise *theoretical and speculative* doubts over the worth of surrogacy stop (Radin, 1995). I.e. the reasons which, theoretically, can be raised to justify the banning of surrogacy, must then, it is stated, be proven or otherwise in the *practice* of surrogacy, in that which, concretely, is *experienced* by the surrogate mother, the intended parents, the child. In other words, we need to *de/re-construct* surrogate motherhood starting from the *practice contextualised within inter-subjectivity*. I will return to this intention shortly.

With intellectual honesty, Pande admits an underlying paradox: although overturning the dichotomies linked to gender and the predominantly masculine order, commercial *surrogacy simultaneously* re-consecrates them. In her opinion,

when reproductive bodies of women become the only source, requirement and product of a labour market, and fertility becomes the only asset women can use to earn wages, women essentially get reduced to their reproductive capacities, ultimately reifying their historically constructed role in the gender division of labour (Pande, 2016: 255).

In 2016, with its *Surrogacy Regulation Bill* India banned *commercial surrogacy* and restricted free surrogacy only to married, heterosexual Indian couples. To consider that with such a ban the ‘paradox’ noted by Pande is resolved would be a gross and dangerous ‘superficiality’. Surrogate motherhood free of charge, done with the spirit of a gift cannot be used as a banner by those who ‘want *surrogacy* at all costs’ supporting that, if it is free, then *it is always and everywhere the result of a woman’s free choice*. It is not enough to apply to category of a gift to surrogate motherhood to *turn it into something ‘good’*: like an automatism, the device of the gift does not make *surrogacy* immune to the exploitation of the woman’s body and the re-consecration of her reproductive abilities (Ruparelia, 2007). Intra-family surrogate motherhood, when the surrogate mother is a member of the family, could be seen as a purely and authentically free act, the result of a decision taken in complete freedom. In fact, *not all that glitters is gold* – if you allow me to use the expression. In addition to the risk of situations of incest, the intra-family donation of gametes and the ability to carry can also be the result of decisions that were not taken freely, heavily conditioned by virtue of the existing bond<sup>4</sup>.

Can we therefore *not* believe that free surrogate motherhood is, *necessarily*, always a positive thing? Can we therefore *not* believe that commercial surrogate motherhood is, *necessarily*, always dehumanising?

But before moving on to the question of money in surrogate motherhood, I would like to examine a – deliberately or otherwise – hidden ‘paradox’ within Feminism.

### **3. Feminism, lesbianism and same-sex parenting: alliances and/or contrasts**

Briefly, I think it is important to highlight a tangle which, in my opinion, *keeps us* bound to the pole of ideologies. Is the lesbian movement part of Feminism? Should the lesbian movement support the gay movement in the fight for gay paternity *regardless* of how it is obtained (by adoption or by recourse to surrogate motherhood)? Not only have ‘lesbians and gays defined their own

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<sup>4</sup> I refer to the study by the American Society for Reproductive Medicine Ethics Committee (2012), which sets as a condition, to ensure that the gift of gametes or the ability to carry among *relatives* is truly ethical, that the participants are fully informed and also supported by technical and medical staff. While in 1989, in the United States the first daughter of a commercial surrogate motherhood was born, in 1988, Alice, in Australia, was the first to be born from a free, intra-family surrogate motherhood – Alice was carried by Aunt Linda, the sister of the mother, Maggie Kirkman. The story is well told in Kirkman (2002).

subjectivity and produced their own history independently from each other (on the contrary, often with mutual indifference)' (Valentini, 2018: 21), but, in relation to surrogate motherhood, there has also been strong contrast – if not indeed a bitter fight – between the lesbian and gay movements. We may think only of the harsh, clear condemnation of both free and commercial surrogate motherhood by ArciLesbica<sup>5</sup>. Here I do not wish to pose questions that could lead us down a slippery road to pure and simple journalistic and heavily rhetoric recital. The modest intention is to offer some thoughts starting from the significant contribution of Cheshire Calhoun, *Feminism, the Family, and the Politics of the Closet*. Calhoun starts with a very simple observation: the theory of Feminism is not the theory of lesbianism. The claims of lesbianism cannot coincide (or be made to coincide) with those of Feminism. Going back over the thought of Feminism and, above all, that of the *radicalesbians* (Monique Wittig, Charlotte Bunch, Adrienne Rich and Marilyn Frye), the author states that

lesbian-feminism of the 1980s wrongly placed resistance to patriarchy at the heart of what it means to be lesbian. The reduction of 'lesbian' to 'patriarchal resister' was a direct result of underestimating just how differently the category 'woman' oppresses heterosexual women versus lesbian. It was also a result of seriously underestimating just how differently institutionalized heterosexuality oppresses heterosexual women versus lesbian. The consequence of this failure to acknowledge lesbian difference was, I argued, a mistaken identification of lesbian politics with feminist politics (Calhoun, 2000: 49).

The scholar states that we must go beyond Marxist-based Feminism – that which traces everything back to the fight against the patriarchy, the domination of man over woman – because the lesbian movement must demolish not so much the masculine order but rather the hetero-sexist order, according to which there are two and only two sexes/genders, man and woman, male and female, and only one possible, natural and legitimate relationship, that between man and woman – the *heterosexual* relationship. *Heterosexism* is not therefore the patriarchy; Feminism fights the patriarchy but not heterosexism. In turn, lesbianism 'cannot afford to interpret the political significance of institutionalized heterosexuality solely in terms of the role it plays

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<sup>5</sup> This was banned in 2017 even though, in 2015, ArciLesbica had asked that altruist surrogate motherhood be recognised and regulated in Italy. Then, as we can read in the document *A mali estremi, lesbiche estreme* (December 2017) 'we discovered that this (free surrogate motherhood, *mine*) does not actually exist [...]. Surrogate motherhood is not a practice and neither is it a medical technique (even though it uses medical techniques), but is a new and highly patriarchal legal institution that exercises control over women'.

in supporting male dominance' (Calhoun, 2000: 45). The condition of homosexuality is that of being 'dominated' not by the patriarchy but by heterosexism, by the exclusivity of the *heterosexual* relationship as the only permitted form of relationship between the sexes. The main and most serious effect of the *heterosexist* order is that which Calhoun defines as the *displacement* of homosexuals from civil society:

lesbians and gay men are not recognized as fully social beings because they are deemed unfit to enter the most basic and fundamental social unit – male-female couple and the family built on that couple. Thus, recognizing lesbians and gay men as social beings, and thus as individuals with socio-legal standing equal to that of heterosexuals, depends on the female-female and the male-male couple being recognized as a primary social unit (Calhoun, 2000: 47).

And here lies the paradox outlined by Calhoun: while for Feminism, the family is an instrument of the patriarchy by which man subjugates woman, for lesbianism the creation of *a family by two gays or two lesbians* marks the liberation of homosexuals from the domination of heterosexism. The main limit of Feminism – Calhoun states – is that of *having eliminated lesbians in women and making them disappear*: 'feminists have been able to assume uncritically that lesbians and heterosexual women are equally *women*, differing only in their sexual object choice' (Calhoun, 2000: 19). This incorrect coincidence affects the symbolic construction by Feminism of the patriarchal-family. As the author writes:

it is a picture of *heterosexual* women's relation to the family. It is a picture whose outlines are determined by an eye ever vigilant for the ways that marriage, family, and mothering subordinate heterosexual women to men in the private household, in the public economy, and in the welfare state. It thus fails to grasp lesbians' relation to the family (Calhoun, 2000: 133).

Calhoun's argument is undoubtedly in its simplicity very strong, and for *many women*, seems a heresy<sup>6</sup>. Her insistence – here wholly agreed – that 'lesbians and gays will not be fully equal until the law recognizes same-sex marriages and equally protects lesbian and gay family life' (Calhoun, 2000: 160), could be found guilty of strengthening *heteronormativity* (Warner, 1993), or *obligatory heterosexuality* (Rich, 1980); or of not really fighting for the *queer* cause but, on

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<sup>6</sup> I refer to the in-depth debate hosted on *Hypatia* (13, 1, 1998) in which several feminine voices discuss Calhoun's argument (already described in previous books and published in the volume referred to here) along with the author herself.

the contrary, consolidating the *homonormativity* (Duggan, 2002) of our liberal societies. Here there is no time to investigate this important aspect.

Although Calhoun does not deal with the issue of surrogate motherhood, her contribution to our discussion can, in my opinion, be very useful. *Feminisms*, lesbian motherhood and gay fatherhood – who can we define these three claims, how can we untangle these three threads and weave them neatly?<sup>7</sup> As long as we remain within the *exasperation of the patriarchy*, it will be impossible to *believe that there can be forms of 'motherhood for others' which are not the result of male domination*. As we will see, in fact, among the gays interviewed, there is a widespread need to overcome a certain kind of *ideological feminism* to embrace a more *pragmatic* form – definition given by some feminists.

#### 4. Second problem, money: a value or a disvalue?

Surrogacy questions an *implicit* principle of society, that of the intrinsic value of persons which the market *cannot convert into cash* (Capron, Radin, 1988). The dilemma is raised by money, and how it *enters* and is *conceived or marked within the practice of surrogate motherhood*. In the two works analysed above, *Surrogate Motherhood* and *Wombs in Labor*, both the Canadian and Indian surrogate mothers receive a sum of money: the former, gratuitously and as a reimbursement, the latter as a form of remuneration. It is precisely the *earmarking of money and not the actual use of money that is the discriminating factor*<sup>8</sup>. For example, the effort Pande found among Indian women, brought to light also in other similar research works, is that of defining the economic dimension so that it is consistent with

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<sup>7</sup> For example, and without placing herself within Calhoun's idea, Daniela Danna notes, extremely shrewdly, how in the political debate on civil unions among persons from the same sex, in our country, 'the difference between procreation by (lesbian) women and (gay) men has been underplayed and downright obscured by the LGBT movement, politicians and other participants' (Danna, 2018: 302). Lesbians – Danna continues – and above all lesbian mothers, have been completely ignored and 'finally mothers themselves disappeared with the legal fiction of the 'subrogation of motherhood', (generally) extolled by the LGBT movement' (Danna, 2018: 302). The 'blame', Danna concludes, lies in 'the rhetoric of gender equality with gender-neutral expressions in the area of parenthood' which cause the disappearance of *feminine* (Danna, 2018: 303) – rhetoric promoted by *neoliberal policies*. It would be interesting to integrate Danna's work with Calhoun's point of view, according to which 'eliminating male domination is not, or at least not necessarily, a sufficient condition for eliminating lesbian and gay oppression' (Calhoun, 1998: 227).

<sup>8</sup> Returning to Viviana Zelizer's theory (2012) of *earmarked money*. I refer to Guizzardi (2017) and the proposed application of Zelizer's theory to the case of surrogate motherhood.

the meaning of the relationship. From the 1980s onwards, the technique of surrogacy has made huge progress not only in the scientific field but also as a *cultural form*: the fact that we have gone from talking about gestational surrogacy instead of surrogate mothers, is particularly ‘a very important factor in dismantling the commodification frame and in changing the way many people, including lawmakers and lobbyists, view these arrangements’ (Scott, 2009: 139). It is no longer the mother but rather a function that is the object for which money is given as either reimbursement or remuneration. Surrogacy puts not so much the health of the women or the foetus in danger but rather the *belief* in the *sacredness of things, like life and ‘giving life’ which cannot have monetary equivalents*. Or, as for a part of Feminism which, in the 1980s, had harshly condemned *surrogacy*, openly defending Mary Beth Whitehead, the natural ‘mother’ of *Baby M*, *sacred* is motherhood, and *sacred* is the natural and biological bond between the mother and the child she has carried (Peterson, 2016).

One of the largest and detailed scientific overviews of the studies conducted on surrogate mothers (Busby, Vun, 2010) reports how the *feminists’* worries over the fact that surrogacy is exploitation of women, commodification of the female body and that of the child are in fact a *false consciousness* with no grounding in reality. In only very few money is the main reason why women agree to surrogacy while ‘for most, the decision to participate comes out of a desire to help a childless couple, to do something unusual or to make a unique contribution’ (Busby, Vun, 2010: 80). The female universe of surrogate mothers as outlined in research as a whole, consists of women who choose surrogacy as a personal initiative, who have a clear and aware consciousness of what they are doing and giving, who develop profound, positive relations with the intended parents throughout the process. And these are the relations that mark the meaning of the money given. Recently surrogacy has started to be viewed as *relational work*. In fact, increasingly often the researchers of this practice (Berend, 2016; Toledano, Zeiler, 2017) are led to use the term *relational work* to define the whole effort – work – in creating the *social* ‘whereby people make creative efforts to establish, maintain, negotiate, and transform interpersonal ties of intimacy within a contractual agreement’ (Berend, 2016: 5). It is, in other words, the effort to create *unity* between three poles, the contract, the money and the gift. (Guizzardi, 2018). Relational work is *creative cultural actions* (Berend, 2016: 231). This process provides ‘answers about the moral rightness of surrogacy’ (Berend, 2016: 235), leading to understand if what is done constitutes the sale and purchase of bodies, or not, and therefore defining the money circulating between the parties:

compensation for their labours and reimbursement for expenses are financial means to guarantee that surrogates and their families do not suffer undue hardships for

helping others and their giving is reciprocated. *Money, rather than undermining moral values, enables surrogates to uphold the ideals of equality and reciprocity* (Berend, 2016: 235 *my italics*).

Is the money given to buy the child? Is the child therefore sold? Or is money a form of *compromise* between a woman who *does not want to give her own child away* and a woman (or father) who strongly desires that child? Often, those who seek to ban surrogacy consider it as *theft*: a defenceless, weak woman who is forced to give her own child away. On the contrary, many research works demonstrate that for the surrogate mother, allowing another person to become a parent is like making and giving a gift – not the child him – or herself but rather the gift of the possibility *for those for whom reproduction is impossible to be able to generate life*. The money given is not the *price* of the child, it does not *quantify* the *exchange*. Surrogate mothers do not represent themselves as vendors of something or somebody, but feel bound to the intended parents by a common substance and by the gift that is given. In other words, there is a strong image of women who give not a child but rather their ability to generate. We must not however forget a danger that was clearly outlined by Sharmila Rudrappa and Caitlyn Collins (2015). Starting from the *assumption that surrogate motherhood is a form of exploitation*, the two researchers aimed to investigate what, therefore, makes the multi-million dollar transnational – and particularly the Indian – commercial *surrogacy* industry possible. Interviewing both intended parents and surrogate mothers and analysing blogs and various stories told, they conclude that the categories of altruism and compassion used as much by clients as by agencies to explain what is done in fact contribute systemically and deliberately to creating a falsity, *a mythical narration*. Beyond these *strategic moral frames*, defined as such by the two authors, racism, classism and sexism continue to weigh down on Indian women.

Must we therefore then believe that Pande *unconsciously* wants to *reproduce* precisely that false mechanism identified by Rudrappa and Collins? Who is telling the truth? *Where does the truth lie?*

##### **5. Third problem, surrogate motherhood: human or inhuman?**

Those deciding to resort to surrogacy – whether as an intended parent or a donor (of the ability to carry, of oocytes) – well knows that this is a completely different form of motherhood and which involves many profound *ethical* questions, the weight of which is further aggravated by the strong condemning by part of society<sup>9</sup>. *Who is the real mother? She who gave birth to the child or she who*

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<sup>9</sup> Problems concerning not only those discussed and developed here but also the health of the persons involved – the woman who acts as a surrogate, the child born. Is

wanted to be a mother?<sup>10</sup> Surrogacy does not only call on jurisprudence to question the purpose or the re-elaboration of the principle of ‘mater semper certa’<sup>11</sup>. Where it is possible to donate impersonally (gametes, ovules, semen), Ragoné (2003) considers that the anonymity of the gesture contributes to the further fragmentation of the reproduction of the body that is typical of the model of commodification. Although only a part of the donor is involved, the donor must be involved in and by the bond in his or *her entirety*. It is a kind of gratitude of what is given that requires a precise identification of the person, in the dual meaning of human being with the power to choose, act and have feelings and the *legal* person who has rights and duties and whose actions are socially relevant (Théry, 2010). In the specific case of surrogate motherhood, this means: a woman who, freely wishing to donate her own *procreational* abilities so that another woman, a man, a man and a woman, or two men, can *generate*, must have her rights guaranteed: not only those that mean she is not simply a *uterus* but also those of her responsibilities (respecting the terms of the contract, not putting the health of the foetus at risk, etc.). What emerges from research on surrogacy is that ‘the empirical evidence clearly establishes that formal and informal pre-conception relationships building between the potential surrogate mothers and commissioning parents are key to the success of the arrangements’

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surrogate motherhood harmful to the woman’s physical and mental health? Does being born from surrogacy compromise the child’s growth and development? And do the children born from this technique, desired by two gay fathers, show problems as they grow up? Not being able to offer true and unambiguous answers, I refer for example to the important work by Söderström-Anttila *et al.* (2016) from which it can be seen, with all due precautions, that surrogacy is harmful neither to the surrogate mother nor the foetus; or to the study by Golombok *et al.* (2011) on the serene and normal growth of the children and their ties with their parents.

<sup>10</sup> Indeed, only in the case of the practice of surrogacy, discussed here, there are nine combinations of roles and gifts for ‘having a child’ (Türk, Terzioglu, 2014).

<sup>11</sup> For example, I refer to the court 1993 ruling in California, ‘Johnson v. Calvert’, which recognises the legal institution of surrogate motherhood. This was a much-debated case in the United States, concerning a surrogate mother’s request to be recognised as the mother of the unborn child even though she had no genetic ties with the child she was carrying. The question therefore concerned a practice of gestational surrogacy, which is very different from the case of *Baby M* in which the woman, who claimed her own status as mother, had also donated her ovules and not only her ability to carry the child – and therefore had a genetic link to the ‘child’ of the *commissioning parents*. Does the ‘status’ of mother therefore derive from a genetic link or from gestation alone? Of the two ‘mothers’, *who is more mother?* Both *felt/represented themselves as mothers*. I refer to Pande (2009) and her study on the *construction of (categories of) mothers* in a practice of commercial gestational surrogacy.

(Busby, Vun, 2010: 87)<sup>12</sup>. As also stated elsewhere (Guizzardi, 2018), the fundamental point and ultimate aim of the surrogacy contract is parenthood. It is latent in the thoughts of surrogate mothers who feel able to give a gift of becoming parents to those who would otherwise not be able to; it is latent in the path towards the decision of the couple; it is latent in the partner of the surrogate mother; it is also latent in those actors and fields which do not directly appear in the contract as parties but who are equally involved, the relatives and the courts they appeal to when claiming recognition of the bond of filiation (Lorenzetti, 2015). Research carried out on Canadian surrogate mothers analysed the link between their experience and their own religious sphere. The study not only confirmed the figure of the surrogate mother as the person who performs a free act, a donation, but also confirmed the decisive importance of the relational unit so that the spirit of the gift emerges and is shared by all: ‘all gestational surrogates focus on the meaning of the relationships with the intended parents, surrogate baby and family members as significant in their overall experience with gestational surrogacy’ (Fisher, 2013: 243). And it is thanks to the *symbolism of the gift* that surrogates find the coherence with their own Christian religious beliefs, rather than feeling sin or repentance for what they have done. Therefore, that which is sought both by the surrogate mothers and the intended parents is the project of motherhood (and more generally parenthood) is authentically human and not alienating. Even though surrogate motherhood may seem the most radical denial of the Kantian principle that ‘no person shall be treated as a means but only as an end themselves’<sup>13</sup>; even though surrogate motherhood may seem the most radical denial of the principle of inalienability of the human body; even though surrogate motherhood may seem the most radical denial of the collective image of the *mother* – no mother would give her own child away for money and no mother would accept the child of another – *there are however fragments of the world in which, happily, this is done*.

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<sup>12</sup> I also refer to the more recent works by Côté and Sallafranque St-Louis (2018) and Guerzoni (2018).

<sup>13</sup> On the contrary, I refer to the essay by Kate Galloway (2015: 28) in which, starting precisely from Kant’s moral perspective, the author offers a strong proposal for which it is only the establishment of a contract that can truly protect the woman’s dignity and the *best interests* of the child: ‘this requires not freedom of contract in an absolute sense, but a well-regulated approach that considers the genuine desires of the birth mother and upholds her bodily integrity. Apart from the best interests of the child, it is the autonomy and self-determination of the birth mother that must be paramount. This combination of desires and self-determination are implicit in the concept of dignity and justify it as a measure of a just arrangement’.

## 6. Symbolic representations of gay surrogacy

### 6.1 The research sample

The previous pages have aimed to describe the debate on surrogacy – a complex debate with many voices, some of which are irreconcilable, and with many problems and different aspects, the complexity of which, over time, has progressively increased rather than decreasing or finding answers. Continuing, our attention will now focus on the sociological construction gays process in relation to surrogate motherhood. Some analyses are presented on the first interviews with gays participating in a research project in progress, the aim of which is to investigate gays' *social and symbolic construction of surrogacy*. The non-representative sample to which we refer here is made up of twelve men aged between 19 and 49, all resident in a metropolitan city in Northern Italy. Only one is bisexual, all the others are gay; none of the interviewees have children. The interviews were carried out in September, October and November 2018. The main characteristics of the persons involved in the research are given in table 1.

TABLE 1. *The characteristics of the gays interviewed.*

| Interviewee | Age | Level of education | Occupation                | Sexual orientation | Personal relationship |
|-------------|-----|--------------------|---------------------------|--------------------|-----------------------|
| Gregorio    | 19  | higher diploma     | none (university student) | gay                | single                |
| Bartolomeo  | 24  | higher diploma     | none (university student) | bisexual           | single                |
| Geremia     | 49  | degree             | office worker             | gay                | married in U.S.A.     |
| Piero       | 31  | higher diploma     | structure manager         | gay                | married in U.S.A.     |
| Claudio     | 33  | degree             | office worker             | gay                | with Antonello        |
| Antonello   | 33  | master degree      | freelance worker          | gay                | with Claudio          |
| Matteo      | 47  | master             | office worker             | gay                | single                |
| Lucio       | 34  | master degree      | office worker             | gay                | with Stefano          |
| Stefano     | 44  | higher diploma     | freelance worker          | gay                | with Lucio            |
| Massimo     | 38  | post-degree        | project worker            | gay                | with Antonio          |
| Antonio     | 32  | degree             | office worker             | gay                | with Massimo          |
| Danilo      | 33  | post-degree        | office worker             | gay                | in a relationship     |

The semi-structured interviews lasted an average of 150 minutes and were carried out at the interviewee's home, or that of the interviewer, and audio-recorded with the informed consent of the interviewee. The sample was formed

in two ways: initially, through the researchers' networks (thanks above all to the use of social media) to recruit the 'first' people, and then the sample was extended *avalanche-style* (Corbetta, 1999) thanks to the contacts indicated progressively by the persons interviewed.

The analyses of the interview texts, as we will see below, helped to outline precise and detailed representations of surrogate motherhood by the gays interviewed. The analysis refers to the three 'big' problems outlined above following the excursus of the scientific literature on surrogacy. First of all, we will see if the gays interviewed *construct* surrogacy as a form of exploitation or the woman's self-determination; then how they *denote* the money circulating in relation to surrogacy. Finally, how they *criticize* feminism and how they *rethink* the movement.

### ***6.2 'Sometimes choices are made without knowing exactly why or from necessity'***

A woman may offer to be a surrogate mother for many different reasons. Perhaps, if we think of the poorest situations, a woman may do so even simply to live. Or a woman may do it because she feels the maternal need to give life. But I think that sometimes choices are made without knowing exactly why or from necessity.

For Bartolomeo, these are the reasons why a woman may offer her own ability to carry to others – either for work or for free. While accepting surrogacy when it is the result of the choice made by the woman in a free and aware manner, Bartolomeo doubts that the woman *may not always act in a fully conscious and autonomous manner (self-determination)*. Matteo also has the same strong doubt, but at the same time thinks that we must not judge:

I see surrogacy in the same way as abortion, i.e. it is the woman who decides. Unless she is forced to be a surrogate – this is also one of the possible cases – generally, the decision of the woman who agrees to be a surrogate may come from a range of 0 to 100 reasons. It's like with abortion: a woman can decide to abort because the time isn't right, because a child would ruin her career...it may be egoistic, but it's her business. She has her reasons. In the case of surrogacy, here too it depends on the spirit it is done with. A woman may do it for two gay friends, or a sister for her brother...this is a very intimate sphere and obviously you have to know very exactly – though that's impossible – because if you start to judge 'not that because...' or 'that yes because...', things become very delicate.

Both feel that the best solution is adoption or surrogacy provided it is free. Their worry, shared also by the other interviewees, is not that surrogacy is the

commodification of the child but rather that the act of being a surrogate that the woman *thinks she is doing out of self-determination*, in fact is not that at all. This is why ‘the solution closest to the right thing is that it is altruistic: if you do it for money, there is always someone who needs money and someone else who has the possibility to pay’, Antonello states. Antonello’s partner Claudio, on the other hand, has fewer doubts, as for him surrogacy can be an act of self-determination but it is ‘a question of rules, a matter of controls applied to prevent negative things from happening’. The choice of being a surrogate mother may be dictated by ‘a political will. In the sense that a woman may do it out of political and social involvement’, Geremia states. Geremia’s position, shared by his partner Piero, is the opposite of what Bartolomeo said:

I’m not buying the child; the child is what is created after that moment in the relationship between the couple and the child. And I’m not buying the uterus, the uterus belongs to the woman’s body and she is the one who manages it. I am sure that the woman has made a free choice if it is regulated, if her will is undersigned in a contract. For me this is the expression of her will. If then behind that choice the woman has a personal history, a condition of hardship, I cannot know that. We have a will that we exercise, we decide, according to our own history, to go in one direction or another.

Three different voices which, although understanding the lawfulness of surrogate motherhood, tackle the issue of the freedom of the surrogate mother with different *approaches*. Each of these approaches implicitly links the woman’s individual freedom (self-determination) not with the idea of the inalienability of certain assets (her own body, life, the child) but with the *trust – or belief* – that society can truly place the woman in the condition to take the decision in a totally aware manner. To be authentic and therefore not harm her dignity, the *freedom of the woman to be a surrogate mother* is guaranteed – according to Bartolomeo and Matteo – only by a legal regulation based on the logic of the gift and gratuity<sup>14</sup> and governed by a contract<sup>15</sup>. As Geremia states, ‘the private solution

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<sup>14</sup> This means not only *thinking* of surrogate motherhood in a logic of the gift, but also establishing it as an exchange of altruism and solidarity. I refer to Del Savio, Cavaliere (2016), Ruggeri, Salazar (2017) and Agosta (2018) as examples of rigorous readings and legal proposals of altruistic surrogacy.

<sup>15</sup> I refer to Guizzardi (2018) which develops the idea of reading the practice of surrogacy as a relational contract. Indeed, we should wonder, as Strasser does (2015: 113): ‘Should traditional surrogacy agreements be enforceable as a matter of public policy?’. To answer this question, it is fundamental to remember that ‘predictability is important for all parties in surrogacy arrangements, and courts must consider some of the foreseeable difficulties that will arise when holding that the surrogate’s parental

with a neighbour or best friend...but which then has all the unknown issues and consequences'. Basing the practice of surrogacy on a contract (as also seen in the second paragraph) is the guarantee – for the men interviewed – that the surrogate is protected and put in a condition to take the decision in a fully conscious manner (Satz, 2010). A 'pre-everything contractual form' is needed – because only then is it possible to *believe* that the surrogate has made a completely conscious choice. *Rational*, or in other words, 'not left to chance or to emotions' (Geremia). It is then interesting to note how, when asked to think about how they would draft a contract between the intended parents and the surrogate mother, the interviewees come up with the same issues we saw emerge in the academic debate: the contract should promote humanity in relations, the freedom of surrogacy to be able to keep the child carried if wished, the woman's health, the role of the state, the need for global and *globalised* (transnational) regulations.

### **6.3 'It's not the purchase and sale of a uterus or a child. I'm buying a service'**

For our interviewees, surrogacy contracts are useful for guaranteeing above all the *rationality and reasonableness* (in the sense of freedom and full awareness) of the choice, not the (goodness or otherwise of the) *reason why the woman chooses to be a surrogate* – whether for money, as a gift or any other reason. And that is why, across the whole research sample, nobody 'banned' the idea of commercial surrogacy. The representations of surrogacy produced by the interviewees are, as we will see, consistent with the *denoting* of money that they propose, going beyond that reductive and banal idea of money as a 'price'. Here, I would like to draw the reader's attention to three symbolic constructions outlined by three gays interviewed. For Bartolomeo, surrogate motherhood is an authentic (reproductive) work, and as such, 'should be paid appropriately'. The surrogate mother – Bartolomeo explains –

uses her body for nine months and does it for the benefit of another person, the woman who does this must be protected and paid and autonomous, she must receive the contribution needed to complete her work. I don't see the child as an object for sale. The child is the final consequence. You don't sell the child: you give the child. It's different. Surrogacy concerns the woman's body, not the child.

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rights cannot be terminated, while at the same time expressly or impliedly denying that the surrogate has many of the rights normally associated with parenthood' (Strasse, 2015: 113).

The social recognition of the woman's service or reproductive work as a surrogate mother denotes the money not as a value of the exchange of goods (the child) but rather as the payment for her work. Geremia's thinking falls within this sphere. For him, la surrogacy

is not the purchase and sale of a uterus or a child. I purchase a service between consenting people in which there is no coercion. The child doesn't belong to that body (the surrogate's body, *mine*) but to the relationship that we as a couple have in relation to what emerges from that service. I'm not buying the child, the child is what is created after that moment (the surrogate motherhood, *mine*) in the relationship between the couple and the child.

In Geremia's well-defined representation, surrogacy is constructed as a service (Larkey, 2003) with a strong relational connotation: the child is neither sold nor bought, and is the ultimate purpose of the parental couple's project thanks to the *service rendered by the surrogate mother*.

The third and last denoting of money is that proposed by Massimo:

it is not the purchase and sale of a child, but it is a person whole makes their body available to another person. It's not so different from any other job, there's always a body working there. The relationship is one of exchange, not of the purchase and sale of a child. I'm asking another person for their time, and that they put their body at my disposal, in a certain sense. It is an exchange, not a sale.

Again, money is not conceived by virtue of its purchasing power, or value, but rather as *reciprocity*. This *idea of reciprocity* (the mutual recognition discussed in the fifth paragraph) is hidden in the rules which, according to Massimo and the vast majority of the other interviewees, must be laid down in a surrogacy relationship between the surrogate mother and the intended parents: whether as a gift or for gain, *'there is a family who wants a child and a woman who wants to have one for them'*.

#### **6.4 'Brothers in the same fight'**

The gays taking part in the research were asked if they consider themselves feminists, what is feminism and if there is a link between the feminist and homosexual movements. They are all *feminists* because feminism is

*Bartolomeo*: I believe in sexual equality.

*Piero*: The fight for the rights of those which society considers different. Women have always fought for their rights. I feel like they do over rights, due to the fact that we are defined as 'different' from normal society.

*Gregorio*: Defending women from the masculine and macho culture and also defending men who don't want to be masculine and macho.

*Antonio*: I think I am a feminist because I am against chauvinism.

*Massimo*: Fighting for a society in which you are not discriminated for being born a man or a woman.

Geremia, however, specifies that

If I have to suffer the historical and political implications of feminism, then no, I don't think I am a feminist at all. I feel I am a feminist in a less ideological meaning, which contemplates the attention towards the issue of equality of rights and of access. Some extremist and ideological spheres of feminism, for which I don't consider that kind of feminism to be an absolute value. As ever, we must always pay attention to feminine issues.

While Geremia immediately makes this distinction between feminisms in order to define which Feminism he feels he belongs to, the other interviewees are able to separate *ideological* feminism from *pragmatic*<sup>16</sup> feminism when they think about the link between Feminism, lesbianism and same-sex parenting. Even though they relate these three movements to the more general fight for freedom and equality among sexes and genders, for them, lesbianism is closer to the claims of same-sex parenting than that of Feminism – gays and lesbians have the right to their own family just like anyone else, and above all gays have the right, like lesbians, to seek a donor if 'there is a woman who freely chooses to be a surrogate' (*Lucio*).

The principle of women's freedom the gays interviewed refer to is constructed starting from women's true autonomy, and the context in which it is placed. For them, the unavailability of the woman's body is not a dogmatic value but can be defended, protected and promoted by the women themselves exercising true self-determination.

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<sup>16</sup> Or, as Amrita Banerjee defines, *feminist pragmatism consciousness*. The scholar develops her approach to the *ontology of relations* because only in this way is it 'able to capture the complexities in our experience of power in everyday life' (Banerjee, 2010: 113). Blending Feminism and Pragmatism means going beyond the dogma by which surrogate motherhood is always and in any case the exploitation of the patriarchate: 'an ethical paradigm on the transnational surrogacy debate that is inspired by a feminist pragmatist orientation has a great potential to open up a space for an ethics of care and responsibility toward the other' (Banerjee, 2010: 121) promoting 'the creation of a more just and safer space for the transnational surrogate' (Banerjee, 2010: 121). On the same idea, see also Crozier *et al.* (2014).

## 7. To conclude: an endless debate and relative truths

Going back to Gregorio's words: 'You don't sell anything, it depends on your morals and your ethics, there is no right moral or ethics *a priori*.' Gregorio could be accused of relativism, or even ethical and moral nihilism, primitive chauvinism, and the accusations can also be extended to the other gays involved in the research. In this short excursus of the debate I have sought to describe here, some ideas receive the same criticism despite the fact that the same *ideas* expressed by the gays interviewed are more systematically and scientifically formulated. Some state that 'surrogate motherhood can be globally banned in the name of fundamental rights; in the name of fundamental rights, surrogate motherhood cannot be globally banned' (Guizzardi, 2018: 98). In my opinion, more than a paradoxical statement, this is a statement on the *relativity of the truth of surrogate motherhood*. Without falling into the trap of subjectivism, pure and simple relativism, I believe that the debate on the goodness or otherwise of surrogate motherhood can never reach a single solution – even with a global banning – as the truth on what is surrogate motherhood is relative, as it is *relational*. Let me explain – and end – with a short reference to the ruling of the Court of Appeal of Trento, issued in February 2017, with which, for the first time in Italy, the law recognised and established parental ties between two children born from *surrogacy* – in the United States – and their non-biological father, authorising the registration of the foreign birth with the indication of two fathers as the two parents.

I ask to myself, what *truth* did the judges 'appeal' to in making their decision? The – legal – *truth* of the illegality of surrogacy in Italy? The – legal – *truth* of the legality of surrogacy in California? Or the *truth* created by two fathers and the surrogate mother, relating to the *goodness* of the project, the intentions and the 'exchanges'? The truth that intended parents seek to build with the surrogate mother is that of the *relations established* – complex, many and even triadic (for example, that between the two parents and the child, in relation to the surrogate mother), which do not have a form determined *a priori* but rather are morpho-genetic over time – through which they seek to realise an *authentic* (in the meaning given here) parental project. And it is in those relations that the truth established by the courts are founded. Which truth must we appeal to? To the *absolute* truth that 'nobody can ever be a means but only an end'? To the *absolute* truth of the inalienability of the human body and of life? Or these *relative truths, built, experienced and 'professed' in the relations of those who manage to pursue a surrogacy project* which is *truly* respectful of the Kantian principle and that of the inalienability of the human being?

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