

## Chapter 8

# Abolitionist and Regulatory Arguments into Perspectives



### The Growing Relevance of Surrogacy in Feminist Mobilization

Over the last few years, while I was doing the WoMoGeS<sup>1</sup> study, I witnessed the growing interest of feminism in surrogacy and the structuring of national and international initiatives, alliances, and networks. In the United States, with the debate on legalization in New York, the issue has gained a visibility within the public debate that it did not have in previous years and has prompted feminism to take a stand. In Mexico, following the conclusion of my field-work, a national abolitionist front was founded which also worked regionally with other feminist groups to launch the Latin American Manifesto (see Chap. 6). In Italy, the mobilization started in 2015 has never stopped and abolitionist feminists do not miss an opportunity to insert their requests and demands in the public discourse. If in the first year of the WoMoGeS project I would have concluded that the fight against surrogacy is a battle limited to Western European feminism and that elsewhere it is carried out by different souls of the civil society united in the international campaign Stop Surrogacy Now, today my conclusions are different: feminism, after a period of hesitation, is embracing the issue and transforming it into one of its “causes”.

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

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<sup>1</sup>[www.womoges.wordpress.com](http://www.womoges.wordpress.com)

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

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

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

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

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

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

## **Abolitionists, Reformists, and the Undecided**

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

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

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

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

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

## Recurring Frames and Global Discourses

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

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

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

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

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

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

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

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

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

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

## **A Critique of Abolitionist Arguments**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **A Critique of Regulatory Arguments**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

## The Limits of a Woman-Centred Debate

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

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

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

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

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

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

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

## The Missing Frame of Child Violence

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

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

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

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

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

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

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

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

On the other hand, other actions have not known this type of reconceptualization, continuing to escape the radar of violence and the public discourse that is built on the category of violence<sup>4</sup>: the overcoming of the limit of the will, integrity, or well-being that occurs in the practices without the label of violence continues to remain invisible and the practices themselves to be authorized. Actions which, while causing damage, are also perpetrated with the consent of the recipient of the action (who otherwise would be called victim) tend to remain in this sphere, according to the principle of a neoliberal and contractualist culture. For example, prostitution is increasingly defined as *sex-work* precisely to underline its voluntary nature and professionalism.

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

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

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

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



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

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

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

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



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