

Introduction: What is Surrogacy for (East-European) Feminism?

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Surrogate motherhood, also known as gestational surrogacy (GS), has been used for more than thirty years now, and in the last ten years it has grown and has become a global practice. It consists in bearing a child conceived by a person or a couple in vitro or through artificial insemination, and in separating from that child at birth in favour of the parents who had ordered him/her (also called *intended parents*). This practice is known as Assisted Reproductive Technology (ART), in the terms of The World Health Organization.

If exact and worldwide figures cannot be accessed today¹ due to the diversity of national legislations and to the lack of systematic data collection tools, everybody agrees surrogacy has developed and has become a global phenomenon, insofar as nowadays the people who access it usually do it through transnational services and benefits. It is thus important to explain first what this instrument consists of and why we are interested in it, especially what are its ethical, political and juridical concerns. Secondly, I will dwell upon the question marks and the positioning of feminists on the topic, in order to demonstrate how this thematic dossier aims to contribute to its understanding.

Surrogate motherhood is possible thanks to two ART's: in vitro fertilization and artificial insemination. If at the beginning these techniques were used in case of male infertility, by using sperm donors, they have developed and are used nowadays in what is called procreation with a third donor, who can donate sperm, oocytes (eggs) or pregnancy itself. Infertile people (men or women), as well as same sex couples (whose infertility is named social infertility), and individuals who do it for their own comfort have so far accessed these ART's. A number of American stars as well as business men

¹ There is no data even for the United-States, where surrogacy has been practiced for many decades: "There is no federal regulation or monitoring of surrogacy in the United States. Three government agencies do monitor and collect data on the medical procedures, laboratory testing, drugs, and devices used in assisted reproductive technologies (...). However, none of these agencies regulates or monitors surrogacy per se." (Jacobson, 2016, p. 16-17)

and women say they do not have the time to dedicate to pregnancy¹, or want to avoid a relationship with a woman who would be recognized as the child's mother².

In order to make this practice possible, both male and female genetic material is needed. Sperm donation results from a sexual act (masturbation), while egg donation implies a medical act which can have serious consequences on the donor woman's health, as egg sampling involves strong hormonal stimulation and ovarian puncture anesthesia-sedation; as well as for the surrogate mother's health, as pregnancies resulting from egg donation increase the risk of hypertension for the pregnant woman³.

For the people who encounter fertility problems, the child is conceived with their own cells. Thus the child will have a genetic link with at least one of the parents, if not both. This link is essential for many of the people who access surrogacy and who claim this is the main reason why that do it.

The issue of genetic material donation is generally accompanied by a discussion about its nature, more precisely to see if the donation is free of charge or not; while free of charge donations continue to exist, paid donations are increasingly more numerous, due to the development of a whole industry around Assisted Reproductive Technology, as well as of the increasingly more clear requests of the buyers⁴, be it formally, accompanied by professionals, or informally, through the numerous possibilities offered by online communication.

We are preoccupied with this issue when we discuss surrogate motherhood. Many women who offer their reproductive services claim they are motivated by the desire to help other people to become parents (this is one of the first aspects mentioned on American surrogacy sites, which put forward numerous profiles of surrogacy candidates; but also announcements on Romanian sites claim women have the same motivation). As such, the action of these women is a pure donation. Then there is the question of taking over the cost of pregnancy (clothes, food, medicine, treatments), on which there is a large consensus (they should be covered by the intended parents).

¹ American actress Lucy Liu recently explained "It just seemed like the right option for me because I was working and I didn't know when I was going to be able to stop" March 2016 [here](#)

² It might be the case for single men (Blincoe, 2013), or for gay men who have a parental project together (Gratton, 2013).

³ This was demonstrated at the Congress of the European Society for Human Reproduction and Embryology (ESHRE), held in July 2014 in Munich.

⁴ An agency who recruits egg donors mentions IQ, eye and hair color, as well as the university level of the donor [as in this offer](#).

Alongside this offer presented as motivated by the pleasure to give life, there is also the offer of surrogacy with the aim of immediate remuneration. The distinction was therefore made between on the one hand ethical surrogacy, considered as such because of the gratuity of the service, and on the other hand of commercial surrogacy, in which the surrogate mother receives pay. In fact, we notice that even in the situations when surrogate mothers claim generosity, their desire to help others to have children, their pleasure of being pregnant as their first motivation, there is always a form of financial recognition for their action, which has very clear contractual details (for example, the exact sum they receive for each supplementary child or the sum received in order to accept embryo reductions to keep only the number of embryos in the contract).

Otherwise, if the notion of ethics is linked to the absence of remuneration for the surrogate, the necessity to pay for surrogacy agents, doctors and lawyers is not mentioned in all situations. In other words, all these professionals are paid for their services as the result of the action of a woman who is also the only one to engage – free of charge – the entirety of her being through her body, and who faces health hazards for nearly a year (if we consider the pre-treatment and the postpartum period). We can thus see that using ethics does not exclude the financial transaction itself, but only the pay for the surrogate mother.

This practice is generally contractual, which means that, besides the beneficiaries and the donors, there are lawyers or notaries public, health professionals, specialized agents (who often recruit egg donors and surrogates, facilitate the contact between the parties, and even propose services for sampling and the medical supervision of mothers).

These new technologies of human reproduction first took place in the United States, the United Kingdom and in France. The improvement of techniques, setting up clinics at the cutting edge of science in countries such as India, Ukraine, Mexico, the different living standards (and thus the costs of comparable technical services) contributed to the appearance of a market of living world which makes such services as egg donation and surrogacy globally available.

Meanwhile, the individuals who become parents of a child born by a surrogate mother from another country, or from theirs, but where this practice is outlawed (as in the case of France), ask themselves the question of the administrative situation of the child. There are thousands of newly born infants, who are taken across borders and then have their descendance recognized by parents who need to notify authorities of their

existence. This gave birth to huge difficulties for some families, due to differences in the legislation of countries and to the lack of a shared vision on this practice at an international scale, which would allow a common approach.

Surrogacy is legal, or is not illegal, in several countries, such as the United States of America, the United Kingdom, Belgium (which is now in the course of passing a law on the issue), Portugal¹, Ukraine, etc. It is forbidden in other states (such as France, Italy, or Switzerland)². At the same time, countries where it was legal and open to people of all origins are about to review their legislation in order to limit access, especially to foreigners, in order to avoid what is known as reproductive tourism (it is the case of India, Cambodia, Nepal, Thailand).

The main ethical questions of surrogacy arise from the presence of money in the relation between intended parents and the surrogate mother. The options are nevertheless controversial, and anthropologists³ explain that it is not for the fact that the money comes in that we have to see this as a sale of children, and even less as an exploitation of women. It is the second ethical aspect which appears, if we consider money to motivate certain women to be surrogate mothers, situation which could amount to the exploitation of poverty. Moreover, this practice allows the selection of genetic material used in fertilization, then of embryos and of course of the surrogate mother, which is similar to eugenics practices. Given the price of all these operations, it is obvious that it is ultimately privileged individuals who can pay for them and therefore who can access them. In other words, only those who are capable of paying to manufacture customized children can access surrogacy. Depending on the country, depending on the acceptance of inequalities and of expectations of different social groups of political action, this aspect does not appear necessarily as a problem or as a debatable issue⁴.

¹ On 13 March 2016, the Portuguese Parliament adopted a law which recognizes "exceptional" surrogacy, meaning that the surrogate mother receives no compensation.

² The European Parliament in 2013 is still a reference for the topic, but the situation is changing.

³ "Obviously there are important sums of money in the surrogacy business. More often than not, it isn't only for the surrogate mother to receive money, but also for the go-betweens, there are legal fees, medical fees, agencies, etc. The sums seem a little crazy and in our society where money serves one purpose only, and that is buying, well, that raises some issues. We immediately get the impression that we are facing a new market where there are children, as well as women's wombs, for sale. It is perhaps true, but at the same time, as an anthropologist, I can't say that because there is cash flow, there is commodification". (my translation) (Corduriès, 2014)

⁴ The Greek doctor Dimitri Papanikolaou states that for poor women this represents a chance for change: "*Surrogacy is a very nice medical act which puts together the needs of a woman who has fertility problems with the needs of a woman who has money problems*" (my translation) (Legrand, 2014)

On the contrary, the question which generates real difficulties on an international scale, related to transnational practices, is the administrative situation of children born by a surrogate mother in another country of origin from that of the intended parents and the one where they want to raise the child. In order to regulate these difficulties, in the respect of human rights and especially of the rights of the child, several international institutions took a stand and have made either recommendations (as is the case of the UN Committee for the Rights of the Child) or court decisions (the European Court of Human Rights), or reports meant to conduct to political positioning (the European Parliament, the Hague Convention, the Council of Europe).

The European Parliament is the only one which formulates a clear condemnation of surrogacy¹, by linking it with the dignity of the women who are submitted to it in its report on human rights in 2014. The other organizations neglected it or treated aspects related to surrogate mothers in a marginal and speedy manner, to show their main preoccupation for the children, by reversing the order of things: as children born by surrogate mothers exist only because there are surrogate mothers who give birth to them. With the notable exception of the European Parliament, the other international organizations choose to ignore or to minimize the numerous questions raised by choosing to be a surrogate mother.

The vision put forward by the Conference of Hague within the preliminary work for the elaboration of a convention on the topic is symptomatic for the lack of interest for women! The attorneys of this international organization ensure that surrogacy goes back to the Bible, by asserting that “Surrogacy is not a new concept: indeed, traditional surrogacy arrangements can be traced back to biblical times“. Then they explain this reference “E.g., Genesis (Chapter 30), in which Rachel, who is infertile, gives her servant to Jacob as a concubine to serve as a surrogate in order to procreate a child who will be socially viewed as the offspring of Rachel and Jacob. See the annexed Glossary for the definition of a “traditional surrogacy arrangement” “² If for an international organization of private law, the defence of women’s dignity is not a priority, if it so openly exhibits its patriarchal references, it cannot be the case with feminist

¹ Came out in December 2015. The Parliament “condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity, considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments“ (§114)

² Preliminary report on the issues arising from international surrogacy arrangements, 2012

organizations that have to show their interest in the women who desire to be surrogate mothers.

A feminist perspective on this practice has to encompass all aspects known today regarding the maternity of surrogate mothers and the economic systems of the commodification of living world, in which they take part.

Since the appearance of the new technologies for human reproduction, feminists have taken position with the aim of, on the one hand, showing the benefit that women could derive from them, insofar as these technologies would allow not going through the experience of pregnancy, perceived by many women and feminists as an obligation or a burden. On the other hand, to raise awareness on the risks of exploitation for some women, which could prolong or even reinforce their subordination to their family and to men¹.

The questions under debate regard free control of their bodies, voluntary choice of surrogacy or the choice of surrogacy as expression of a more or less perceived constraint. Nowadays the situation of women who make this choice in difficult life conditions (both for them and for their families) are sometimes analyzed as empowerment². Their consent is also analyzed by feminists, especially as we know that it is always linked to real conditions – material, social, symbolic -, which define the division of power in the community or in society. It is important to remember that “(...) there can be no freedom, no liberation, when the available choices are only constructed on the basis of gross inequity. More ‘choice’, or even a greater ability to choose, does not necessarily mean greater freedom.”³ The meaning and the social significance of maternity as women’s specific experiences are equally questioned by this practice; for certain individuals who appeal to it, it is also a possibility of erasing the mother (Gratton, 2013); for certain women surrogates, it undermines their relationship with the children⁴ that they have borne at the order of the buying parents. To escape the

¹ As Diane Roman reminds it (2013).

² The American sociologist Sharmila Rudrappa (2014) shows that "Many women, despite their mourning for the loss of the babies they had been carrying, see surrogacy as a process of *empowerment*. How can it be that massive hormone injections, long periods of isolation and systematic C-sections to allow for baby deliveries before due term be considered acts of self-assertion? The conversion of alienation and of pain associated with the commodification of pregnancy in acts of autonomy can only be understood in the context of labour trajectories and the social environment of surrogate mothers" (my translation) (p. 83).

³ KIRALY, M., TYLER, M., 2015, *Freedom Fallacy. The Limits of Liberal Feminism*, Connor Court Publishing, Ballart, p. xii

⁴ The documentary *Breeders* presents the situation of a surrogate mother who relates the questions her surrogate-baby girl is asking her, after she was given the possibility of recognizing the child and keeping contact with her.

dilemmas raised by such motherhood, certain feminist discourses join the proposals that philosophers put forward to consider surrogacy as paid work: reproductive labour¹.

Finally, the feminist analysis of surrogacy has to put in evidence the intrinsic reports between the general living conditions of women within a society and the ways of entering this practice by making individual choices. It needs to shed light, beyond the comprehension of individual situations, on global contexts and society evolutions and especially on the political and economic odds women dispose of to empower themselves and become autonomous vis-à-vis their families and their communities. It is on this condition only that we will be able to measure the impact of this practice on the situation of women in general and of surrogate mothers in particular, as well as the situation of their families.

The articles which compose this dossier aim at exploring different aspects of this practice. The first two articles bring a philosophical look upon surrogacy. Sylviane Agacinski addresses the issue of intellectual and civilizational mutations which favoured the transformation of maternity into a paid activity or service on the market. Anca Gheaus analyses pregnancy from a phenomenological point of view and shows its normative importance in how the recognition of a moral right to raise a child puts surrogacy at test. In a third article, Ana-Luana Stoicea-Deram questions the absence of a preoccupation for this practice in the research and feminist activism in Eastern Europe, and more specifically in Romania. The article by Arina Antonia Iacob and Stefania Alexandra Stoian formulates hypotheses regarding the conditions in which Romanian women who decide to become surrogates make this choice; the authors place these hypotheses on the evolution of the Romanian legal system regarding medically assisted human reproduction. Sheela Saravanan analyses the “humanitarian” limits of feminisms, in the context of different types of arrangements of surrogacy which can be made in India; she shows how the development of ART’s in the past thirty years, especially in transnational economies, such as India’s, raise concerns on the risks of exploitation and commodification of women and children. The article by Roxana Marinescu also focuses on India as it reflects on this issue, starting from Meera Syal’s latest novel, whose action

¹ Issue 56 (2014/1) of *Cahiers du Genre* is entitled “Biotechnologies and reproductive work”. Otherwise “two philosophy professors with the University of Waikato (New Zealand) suggest the professionalization of the job of surrogacy. The numerous potential complications of a moral, legal and emotional order, linked to surrogacy require a change in the current mechanism. Thus, Ruth Walker and Liezl van Zyl propose that surrogate mothers should be recognized as professionals, on the same basis as nurses. They would be integrated in the health system and would work in collaboration with state services.” (Walker & van Zyl, 2015))

partly takes place in this country. This half open door allows for the exploration of a great diversity of questions raised by the totality of the actors involved in this practice, women, as well as men, without necessarily leading to answers, but indicating the complexity of experiences and the irreducible uniqueness of personal situations.

This thematic issue was possible thanks to the ongoing support of Laura Grunberg, who facilitated the discussions between several generations of Romanian feminists on the surrogacy topic, within the framework of AnA Society for Feminist Analyses (Spring 2015 and 2016), and also within a Workshop of the Coalition for Gender Equality (April 2015). (translated from French into English by Roxana Marinescu)

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New Series. Issue No. 6 (20)/ 2016