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WHAT IS SURROGACY FOR FEMINISM?



“Analyze – Journal of Gender and Feminist Studies” is an on-line, open access, peer-reviewed international journal that aims to bring into the public arena new ideas and findings in the field of gender and feminist studies and to contribute to the gendering of the social, economic, cultural and political discourses and practices about today’s local, national, regional and international realities.

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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.

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La maternité mise sur le marché¹

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Jean-Pierre Vernant qualifiait la culture grecque de masculine, mais selon Lévi-Strauss, toutes les cultures, jusqu'ici, l'ont été : dans un dialogue avec François Jacob², il dit que la femme est apparue partout comme « le sexe dangereux », en raison même de son pouvoir maternel. La maternité a été très rarement un sujet digne de la philosophie et l'on sait que Platon oppose fécondité spirituelle à la fécondité charnelle : dans *Le Banquet*, il place très haut la maïeutique socratique, l'art d'accoucher les âmes, et très bas l'art d'accoucher les corps, propre aux sages-femmes.

Dans un domaine pratique, la maternité est un objet central pour la médecine, depuis Soranos d'Ephèse au II^e siècle, (gynécologie, obstétrique). Elle intéresse d'autre part le politique, à travers le droit civil, qui définit les conditions de la filiation, mais aussi le statut social des femmes.

Le chef de l'Etat turc déclarait récemment, dans un discours en marge d'un sommet sur la justice et les femmes³ : « Notre religion a défini un statut pour les femmes : la maternité. » Dans cette perspective, les femmes sont enfermées dans leur fonction maternelle par un traditionalisme religieux et archaïque. Mais bien des sociétés soi-disant modernes font preuve d'une autre violence à l'égard des femmes, par exemple lorsque la maternité est réquisitionnée par l'industrie procréative et réduite à une valeur marchande. Il est légal de louer le ventre d'une femme pour obtenir un enfant à Los Angeles, à Kiev ou à Bombay. Le marché fixe les prix. Il suffit de se rendre sur le Net pour avoir accès directement à des banques de sperme et d'ovocytes, comme à des agences de « *surrogate mothers* », et pour constater que le marché de la procréation s'étend largement, par delà les frontières géopolitiques, assaillant les traditions, les cultures locales, les principes éthiques acquis au long de l'histoire et bouleversant les

¹ L'article reprend l'intervention de Sylviane Agacinski lors du colloque « La Maternité face au Marché », qui a eu lieu le 3 décembre 2014, à l'Institut de Sciences Politiques de Paris.

² « La logique du vivant : François Jacob rencontre Claude Lévi-Strauss », Entretien télévisé de 1972, mis en ligne par l'ina.

³ Le lundi 24 novembre 2014, à Istanbul

législations nationales. Le marché se développe, armé d'une idéologie archi-libérale, diffusée implacablement par le Net.

En consultant l'article sur la gestation pour autrui, publié par Wikipedia, on constate le triomphe de cette idéologie pour laquelle rien ne saurait échapper au à la production et au marché, pas même les femmes et les nouveau-nés. L'individu acquiert le statut d'une ressource biologique (donneur de tissu ou de cellules biologiques, loueuse d'utérus), ou de consommateur, et encore de produit (pour l'embryon et l'enfant).

La question de la maternité est donc éminemment politique, car il s'agit de savoir si nos sociétés veulent devenir intégralement des *sociétés de marché*, ou bien maintenir la distinction entre le domaine les liens humains et sociaux (hors marché) et le domaine des échanges marchands (économie de marché). Mais comment définir la maternité ?

Un pouvoir et des liens

Corrélatrice de la paternité (mais non symétrique), la maternité désigne à la fois une capacité féminine, une relation naturelle et une relation instituée.

Comme relation charnelle et généalogique, la maternité désigne *le lien naturel*, reconnu lors d'une naissance, entre une femme et l'enfant qu'elle a porté et mis au monde en accouchant¹.

Comme relation instituée, établie par la coutume et le droit, la maternité est le rattachement conventionnel de la mère à son enfant : on parle de *filiation maternelle*.

Or, comme l'écrit l'anthropologue Rupert Hasterok, la filiation constitue un lien inaliénable : « Des liens inaliénables, irréversibles et exclusifs existent entre chaque être humain et au moins deux autres, un homme et une femme : les positions généalogiques du géniteur et de la génitrice sont distinguées dans toutes les terminologies de la parenté ».² Notre droit civil utilise le même terme et considère comme *inaliénable* l'état civil des personnes (c'est à dire l'« état des personnes »)³.

¹ Je propose une explicitation de ce lien à travers la grossesse dans *Corps en miettes*, où je montre que « D'un point de vue philosophique, on peut se demander si la grossesse est de l'ordre de l'*avoir*, de celui du *faire* ou de celui de l'*être*. Nous disons qu'une femme *est* enceinte, qu'elle *porte* ou qu'elle *attend* un enfant. Nous ne disons pas qu'elle *fabrique* un bébé, sinon métaphoriquement. *Porter* un enfant n'est ni une possession ni une propriété, ni une activité de fabrication. Ce n'est pas une activité du tout : une femme enceinte n'a rien à *faire*, aucun acte n'est lié à sa grossesse elle-même », p. 82.

² Article « Filiation » du *Dictionnaire de l'ethnologie et de l'anthropologie*, dir. P. Bonte et M. Izard, PUF, 2010.

³ Le principe d'ordre public est connu comme le principe d'indisponibilité, que la juriste Muriel Fabre-Magnan explique ainsi : « Très brièvement, l'indisponibilité renvoie, en droit, à l'impossibilité de disposer à sa guise d'une chose ou d'un droit. On ne peut ainsi pas, en principe, vendre ou louer des éléments de son corps (indisponibilité du corps humain),

Les liens de parenté, au sens restreint ou large, sont des liens personnels, sources d'obligations, de devoirs et de droits (soins, nourriture, protection, éducation, autorité etc.). Ces liens ont certaines conséquences économiques, puisqu'ils impliquent des dépenses, mais ils restent indépendants des échanges marchands, et donc du marché.

En effet, la marchandise est ce qui s'échange sur le marché, espace où se rencontrent l'offre et la demande de quelque chose. Là peut se fixer le prix de la chose, c'est à dire l'équivalent monétaire de sa valeur d'échange.

Ce prix dépend de plusieurs facteurs mais le plus important est la demande et donc la valeur d'usage - quelle qu'elle soit - puisqu'il faut que la chose ait une valeur d'usage pour que quelqu'un veuille l'acquérir.

Une des conditions de l'échange est le *droit de propriété* (la possession légale), qui donne la liberté (associée à la propriété), de céder la chose et d'en user, droit qui peut faire lui-même l'objet d'un échange marchand spécifique (avec la location par exemple).

Par exemple: vous pouvez louer votre leur véhicule à d'autres personnes, pour le week-end, parce que ce véhicule vous appartient. Ceci veut dire que toute marchandise doit être une propriété, détachable, séparable de son propriétaire, pour pouvoir être transférée et circuler sur le marché. Le don lui-même, comme transfert de propriété à titre gratuit, ou gracieux, est une façon de se séparer d'un bien, et donc une aliénation de ce bien.

Ainsi, pour être donnée ou vendue, la maternité devrait être aliénable, détachable.

Comment est-ce possible, alors qu'elle est une relation interpersonnelle, à la fois charnelle et sociale? Ni la mère, ni l'enfant, en tant que personnes ne sont des « choses », et pas davantage leur relation : personne n'en est propriétaire. Une mère n'est pas la « propriétaire » de son enfant, ni celui-ci de sa mère, mais un lien les unit aux yeux de la société, lien qui ne peut être aliénée à titre gratuit ou contre un paiement. Dans certaines conditions, l'adoption permet de créer une filiation, mais ces conditions n'ont rien à voir avec un transfert de propriété.

Mais alors, de quelle façon la maternité a-t-elle pu entrer sur le marché?

La réponse à cette question ne vient pas du marché lui-même, mais du fait que l'être humain lui même, après l'animal, est en train de devenir un produit fabriqué.

ni modifier en fonction de sa seule volonté les éléments de son identité tels que l'âge, le sexe, ou encore la filiation (indisponibilité de l'état des personnes) », dans, La gestation pour autrui. Fictions et réalités, Fayard, 2013, p. 9.

L'être humain à l'époque de sa reproductibilité technique

Dans le Prologue à son ouvrage *Condition de l'homme moderne*, de 1958, Hannah Arendt observe que l'homme tente d'échapper à sa condition terrestre et naturelle en cherchant à fabriquer en éprouvette des êtres « humains supérieurs », et qu'il veut pour ainsi dire « échanger sa vie », reçue de nulle part (de la nature), « contre un ouvrage de ses propres mains ».

Nous en sommes précisément là, et nous devons réfléchir sur l'être humain à l'époque de sa reproductibilité technique, comme Walter Benjamin interrogeait *L'œuvre d'art à l'époque de sa reproductibilité technique*.

La possibilité biotechnologique de fabriquer des êtres humains a bouleversé la façon d'établir des liens institutionnels entre les générations, autrement dit les liens de parenté. Les événements qui ont radicalement changé la donne en ce domaine sont de deux ordres : d'une part le développement des biotechnologies appliquées à la procréation humaine et, d'autre part, les pratiques sociales d'aliénation des personnes et de leurs relations.

Avec la pilule contraceptive et l'IVG, les femmes ont acquis la maîtrise de leur fécondité, et donc celle de leur pouvoir d'enfanter - ou plus exactement de *ne pas* enfanter¹. Ensuite seulement s'est posée la question de l'assistance médicale à la procréation, et donc du possible remplacement des processus naturels (relations sexuelles fécondantes) par des moyens techniques. Une partie des processus impliqués dans la procréation a été externalisée. Les étapes de cette externalisation ont effectué une déconstruction technologique du lien personnel mère/ enfant dans la procréation et dans la filiation.

Cette déconstruction s'est faite en plusieurs étapes :

- l'insémination artificielle, utilisée depuis longtemps par les éleveurs, en médecine vétérinaire, a été appliquée aux femmes pour pallier l'infertilité de leur conjoint (insémination artificielle par le sperme du conjoint, ou bien l'IAD, insémination à l'aide d'un tiers donneur).

- l'insémination d'une femme par un homme, en dehors de toute relation sexuelle personnelle, a ouvert aux Etats Unis dès les années 70, l'usage social de femmes comme mères de substitution (*surrogate mother*), avant même la première FIV nord américaine (en 1981) et la possibilité de transférer un embryon. L'usage de femmes comme mères

¹ "L'avortement est la possibilité de *ne pas entrer dans la maternité (...)*", *Corps en miettes*, p. 84.

de substitution rémunérées rencontra une forte opposition de la part des féministes radicales, comme Gena Corea¹, qui y reconnurent aussitôt une façon de disposer de la maternité en l'achetant et une tentative masculine pour contrôler les femmes. Corea fit le rapprochement entre la commercialisation du corps féminin à des fins sexuelles, dans la prostitution, et la commercialisation d'autres parties du corps féminin (ventre, ovocytes) à des fins de reproduction.

La pratique dite des « mères porteuses » commença à se développer modestement en France dans les années 1980, mais fut stoppée en 1991 par un Arrêt de la Cour de Cassation.

Mais, les cellules germinales, mâles et femelles, devinrent des produits biologiques utilisables, permettant de concevoir des enfants. Fait extraordinaire, En France, le transfert du sperme fut conçu sur le modèle du don du sang² (c'est à dire comme un don gratuit et anonyme). Ainsi, l'enfant ne peut pas connaître les personnes qui lui ont donné la vie en donnant leurs cellules. L'autre étape décisive, opération absolument inédite, fut l'extraction des gamètes féminins (les ovocytes), afin de les transférer dans une éprouvette pour être fécondés in vitro, puis le transfert d'un embryon dans un utérus, sans lequel il ne pourrait se transformer en fœtus et devenir un enfant.

Dès lors, les cellules et organes sexuels ont été considérés comme un stock de substances disponibles pour fabriquer des embryons en laboratoire et « faire » des enfants en dehors même de toute pathologie.

Le schéma technologique de la fabrication envahit l'imaginaire collectif. Ainsi, la sociologue Geneviève Delaisi de Parseval³, enthousiasmée par ce qu'elle appelle la « cuisine procréative », décrit-elle la façon dont un couple, M. et Mme Jourdain, « fait » habituellement un enfant... comme s'il s'agissait d'une fabrication artisanale :

M. Jourdain « fournit » les spermatozoïdes, tandis que Mme Jourdain « fournit » l'ovocyte et l'utérus gestationnel ! La notion de parent ou simplement de géniteur s'est transformée en celle de *fournisseur* de matière première !

En devenant extériorisables et transférables, les cellules et les embryons sont dépersonnalisés, détachés, objectivés, disponibles pour être donnés ou vendus.

¹ Gena Corea, *The Mother Machine : Reproductive technologies from artificial insemination to artificial wombs*, Harper & Row, 1985.

² Avec la création des CECOS - Centres d'Etudes et de Conservation des Oeufs et du Sperme.

³ Voir notamment *La famille à tout prix*, Seuil, 2008.

Une pratique sociale

Cependant, pour que la logique fabricatrice aille jusqu'à son terme, et surtout pour que le marché procréatif puisse fonctionner, il ne suffit pas de fabriquer des *embryons*, il faut encore produire des *nouveau-nés*. Un corps maternel doit assumer la gestation de l'embryon. La division technologique des substances, des processus et des fonctions organiques (ovarienne et gestationnelle) ne suffit pas à installer la maternité de substitution, qui n'est pas une technique mais une *pratique sociale*. C'est cette pratique qui réalise concrètement l'aliénation de la maternité, c'est à dire la convention selon laquelle une femme transfère son pouvoir propre, sa vie organique, sa vie personnelle, biologique et biographique, pour devenir un moyen de production d'enfant au service d'un tiers. Et il faut que le droit autorise cette pratique pour que le corps féminin devienne disponible pour l'usage d'autrui et réponde à ce qu'il est convenu d'appeler la « demande d'enfant ».

Pour légitimer la pratique, là où elle est autorisée, et pour trouver des candidates volontaires, on utilise la rhétorique du don : mais la notion de don est abusive ici, car une grossesse n'est pas détachable de la personne qui la vit. En fait, l'objet du don, c'est l'enfant, qui est *transféré* d'une femme qui l'a porté, à une autre qui deviendra la mère légale (ou à un couple d'hommes). De plus, ni l'anonymat ni la gratuité du don ne sont possibles, car aucune femme n'accepte de porter un enfant pour d'autres sans une substantielle contrepartie financière, appelée pudiquement « dédommagement » ou « compensation ». Les rares cas de maternité de substitution gratuite ont lieu au sein d'une même famille, ce qui pose d'autres problèmes. En effet, une femme qui porte l'enfant de sa sœur porte aussi celui de son beau-frère, et ainsi s'installe une relation indirectement incestueuse au sein de la famille.

Avec cette pratique, c'est toujours en fait un triple marché qui s'installe : d'une part, c'est le marché de femmes comme corps dont on peut *faire un usage* temporaire ; d'autre part, c'est le marché de l'enfant en tant que *produit par cet usage* : enfin c'est le marché de la filiation elle-même, c'est à dire des liens entre mère et enfant et de leur valeur intrinsèque.

Dans les sociétés humaines, ces liens charnels ont toujours été considérés comme fondateurs de *liens personnels* inaliénables et associés au principe éthique de responsabilité : celle de la femme à l'égard de l'enfant qu'elle met au monde, comme celle de l'homme qui a contribué à cette naissance. D'un point de vue éthique, Hans

Jonas¹ voit dans la responsabilité des parents à l'égard des enfants qu'ils ont engendrés, une obligation élémentaire et inconditionnelle². Et pourtant, avec le commerce de la maternité, on attend de la mère réelle qu'elle nie absolument sa propre responsabilité et qu'elle fasse de la filiation elle-même une marchandise.

La question qui se pose à nous, fasse à l'émergence de marchés qui transforment les liens mère/enfant en relations marchandes, est une question de culture, voire de civilisation.

Dans un documentaire diffusé à la télévision, une Indienne cloîtrée dans une usine à bébé, est interrogée par un journaliste. En lui expliquant pourquoi elle ne veut pas que ses voisins ou une partie de sa famille sachent ce qu'elle fait, elle précise : « ce n'est pas notre culture... ».

Ces propos nous interpellent tous sur notre propre rapport à ce que nous appelons une culture. Qu'est-ce qu'une société absorbée par la sphère économique des échanges marchands ? Les marchés doivent-ils s'emparer de tout ce qui jusqu'ici avait une valeur intrinsèque, non échangeable, non monnayable ? Les femmes se sont libérées, dans bien des régions du monde, du pouvoir patriarcal. Il va falloir maintenant, et c'est un combat politique, qu'elles résistent au pouvoir de l'argent.

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² « La maternité pour autrui, lorsqu'elle est légale, consiste en effet à instituer un abandon : la mère doit remettre son enfant à d'autres à la naissance. C'est alors comme si la loi récusait elle-même l'obligation la plus universelle qui soit : celle d'assumer la responsabilité d'une vie dont on est l'auteur. Car le fait de porter un enfant et de le mettre au monde crée un devoir élémentaire à son égard. La relation à la progéniture crée un type de responsabilité, simple, non contractuel et non réciproque, qui pourrait être, comme l'écrit Hans Jonas, l'« archétype de tout agir responsable ». », *Corps en miettes*, p. 85

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The normative importance of pregnancy challenges surrogacy contracts¹

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Introduction

A surrogate mother is a woman who agrees to become pregnant and then carry to term and give birth to a child for whom other, designated, individuals will serve as social parents. Sometimes the surrogate is also a genetic mother, but in other cases the child is genetically unrelated to the surrogate and genetically related to one or both of the intended social parents. Many jurisdictions presently allow individuals to enter commercial surrogacy contracts (such as India, Russia and some of United States), while others restrict surrogacy arrangements to so-called altruistic surrogacy – that is, cases when the surrogate carries a child for another person – usually a relative – out of non-economic interests. Yet other jurisdictions (such as Quebec in Canada) prohibit all surrogacy, or at least rule them as void. Further, there is the question of the enforceability of surrogacy contracts: some jurisdictions do not attempt to enforce surrogacy contracts, such that, if and when the surrogate mother changes her mind and decides to keep the baby she is legally free to do so. (Perhaps after repaying whatever fees she has already received from the couple who employed her and, possibly, various pregnancy-related costs that the couple has supported.)

Whether or not surrogacy contracts should exist at all and, if yes, whether they should be enforceable or not will obviously turn on many questions. So far, most of the literature on the normative status of surrogacy discussed whether surrogacy is intrinsically exploitative or otherwise harmful to the surrogate and whether existing surrogacy practices, in the real world, are in fact exploitative of, or otherwise harming, surrogates. But a different set of equally important questions bearing on the matter

¹ This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation programme (Grant Agreement Number: 648610)

regard the way in which individuals acquire a moral right to rear a child, and whether, once they acquire this right, they can transfer it to other individuals at will¹.

This article engages with the last group of questions in order to make a contribution to the debate concerning the legitimacy of surrogacy contracts and their enforceability. I argue that pregnancy is normatively relevant to the question of who should have the moral right to rear a particular child. At least unless other people are highly likely to make better parents for the child in question and are willing to parent her or him, a gestational mother acquires the moral right to parent in virtue of having gestated the child. Moreover, the reasons for holding the right are such that the right cannot be transferred on to other individuals. The moral right acquired by the gestational mother is, of course, defeasible. As I will explain, the moral right is nullified if the woman in question fails to make a sufficiently good parent to her child; and the right does not exist in the first place – at least not in virtue of pregnancy – in case there is no mutual attachment between the mother and the newborn². If surrogates acquire a moral right to rear the children they gestate in virtue of an attachment formed during gestation, then surrogacy contracts ought not to be enforceable because their enforcement would violate a moral right of the surrogate. And if part of what explains this moral right is the newborn's own attachment to her or his gestational mother, then the surrogate's moral right to parent cannot, in principle be transferred to a third party and therefore surrogacy contracts ought to be always seen as void.

Some surrogates do indeed refuse to relinquish the child they have gestated. When the couple who had hired the surrogate continues to desire to become the social parent of the child custody battles are likely to ensue, and different jurisdictions will rule differently on such cases. Sometimes the law is on the side of the surrogate in acknowledging her as the legal mother of the child (which in turn may or may not result in custody rights), but – again – in different jurisdictions the reason for granting custody to the surrogate may be very different.

In 1988, in one of the first surrogacy cases to be brought to court in the United States, the surrogate, Mary Beth Whitehead, was eventually acknowledged as the legal mother

1 In this paper I use “right”, unqualified, to refer to legal rights. I always make it explicit when I refer to moral rights – and most of the discussion here is about moral rights. I assume that the existence of a moral right to x ought to be an important basis for a legal right to x, but that the translation may not be always straightforward.

2 There might be other cases when the gestational mother does not have, all things considered, the moral right to rear the child she gestated. I explore the possibility that the moral right to parent a particular child is held by the best available parent (and how this relates to being a gestational mother) in Gheaus (2015b).

of baby she gestated (“Baby M”) after being hired by the couple William and Elizabeth Stern (Sanger 2007). Baby M was conceived by artificial insemination and William Stern was her genetic father. (Custody rights were ultimately granted to the father, William Stern, based on the principle of the best interest of the child.) Importantly, in this case Mary Beth Whitehead has been an egg donor as well as a gestational mother, and her genetic relatedness to the child is likely to have influenced the decision. Indeed, in some jurisdictions the most important criterion used to decide disputes over parental status is genetic relatedness¹.

In other cases, however, genetic relatedness need not play a role in the decision to grant parental rights to the surrogate. In a more recent UK case, a surrogate who gestated a baby for a couple, and who has changed her mind concerning the relinquishing of the child, gained custody in virtue of the attachment that has been created between gestational mother and her newborn during pregnancy. In the words of the judge who decided the case, Mr. Justice Baker: “there is a clear attachment between mother and daughter. To remove her from her mother's care would cause a measure of harm. The natural process of carrying and giving birth to a baby creates an attachment which may be so strong that the surrogate mother finds herself unable to give up the child.”² The surrogate's very inability – or, more likely, unwillingness – to give up the child is part and parcel of what makes the surrogate more likely (other things equal) to best serve the fulfilment of the child's emotional needs.

The reasoning of Justice Baker, I assume, is sound – and the following analysis of the normative importance of pregnancy is meant to unpack this belief.

How pregnancy is normatively importantly – a phenomenological approach³

There are two general features of the majority of pregnancies that support a moral right of would-be adequate mothers to keep and rear their birth babies. First, pregnancies involve a variety of costs – physical, psychological, social and financial. Most of these costs can only be shouldered by pregnant women and, to some extent, their supportive partner if they have any. Second, and related, during pregnancy many, perhaps most, expectant mothers form a poignantly embodied, but also emotional,

1 For a philosophical analysis, and defence, of this see Richards (2010).

2 “CW v NT and another [2011] EWHC 33”, Family Law Week blog, 2011 archive. Available online at: <http://www.familylawweek.co.uk/site.aspx?i=ed79071> (Accessed on the 5th of April 2016.)

3 This section draws substantially on Gheaus (2012)

intimate relationship with their foetus. The two features are related because this relationship is fostered by bearing mothers' willingness to take on the costs of pregnancy and from the actual experience of its burdens. A strictly physicalist approach will say that the attachment between the pregnant woman and the foetus she carries results from oxytocin, a substance considered responsible for bonding and which is secreted during pregnancy. Whether one takes the phenomenological approach or the physicalist approach to analyzing bonding during pregnancy might make a normative difference, but not in this context. A physicalist might argue, for example, that we could, and in some contexts should, use oxytocin to help foster the emotional relationship between non-birth parents and babies. But this would not affect the present argument, which says that, one way or another, pregnancy itself fosters this relationship and hence taking babies away from their birth parents is morally wrong.

The two features of pregnancy discussed here can – together with other conditions¹ – ground a moral right to keep one's birth baby – right which is simultaneously grounded in the interest of the parent and in the interest of the child.

Work on the phenomenology of pregnancy is very helpful for understanding both the numerous costs that pregnancy involves and the mechanisms through which it helps create an incipient intimate relationship between the foetus and the pregnant mother and her partner, if the latter is sufficiently involved. In exploring these claims, I rely on work done by several feminists and I refer, in particular, to Amy Mullin's book *Reconceiving Pregnancy and Childcare*.

The costs of pregnancy are varied: physical, emotional, social and financial. They consist in the actual pain of childbearing and childbirth, in pregnant women's reduced autonomy, in the health risks women take in order to carry their babies, in the worries about the mother's and the baby's health and in the daunting risk of miscarriage².

The physical burdens of pregnancy have a significant effect on many pregnant women's ability to carry on with life as usual: "Fatigue, high blood pressure, excessive water retention in one's hands and feet, nausea and vomiting, an inability to carry heavy objects, and other common symptoms of pregnancy do involve suffering and affect a pregnant woman's ability to carry out her daily tasks, whether in paid employment,

1 I believe, but cannot fully argue here, that these conditions have to do with the would-be-mother satisfying certain criteria for parental adequacy.

2 On the serious harms that a miscarriage can entail for the pregnant woman see Ann J. Cahill, Kathryn J. Norlock, and Byron J. Stoyles (eds.) (2015).

domestic work, childcare or interactions with friends and family, regardless of how accommodating her environment may be.” (Mullin 2005, 64). Some of the most important burdens of pregnancy result from the extent and pace of change undergone by pregnant women. Mullin’s book gives a very vivid sense of the many physical changes undergone by pregnant women: “in visual acuity, pigment of her skin, the onset of rashes, nausea, heartburn, raised blood pressure, increased congestion, difficulty catching her breath, swollen hands and feet” (Mullin, 2005, 39). Many of these are relatively minor, but together they can entail significant pain and disruption of one’s normal life. These changes are experienced by the vast majority of pregnant women, and often contribute to a distinctive sense of losing control over one’s life and diminished ability to pursue other projects and interests during pregnancy as well as during recovery from childbirth. As Mullin notes, “at no other time will an otherwise healthy adult undergo such widespread, rapid and undesired change in the shape and size of her body, in the way she moves, eats and sleeps.” (Mullin, 2005, 67).

Many pregnant women also pay behavioural costs in the limitation of what they can eat and drink, the recreational drugs they can take and the sports and other physical activities which they can pursue. There are social costs to pay, such as patronising and uninvited familiarity: pregnant women are often “told that nothing they can do could be more important than their job of bringing a child to life.” (Mullin, 2005, 40). Generally, pregnancy alters the expecting parents’ relationships with their immediate family, friends, co-workers and, when the pregnancy is visible, even with strangers, in uncontrollable ways. Arguably, not *all* these changes count as costs, since in some cases pregnant women develop or strengthen welcomed relationships, based, for instance, on complicity, with other parents. But many of the changes are undesirable and, importantly for the present argument, many of the desirable changes are based on the assumption that the pregnant women/parents will carry on parenting their birth baby. Moreover, the costs of pregnancy would actually be *higher* if bearing mothers did not know whether they will be legally entitled to keep their birth baby. A frequent consolation given to pregnant women is that becoming a parent “is worth all the trouble and pain”.

Finally, gestational mothers have to shoulder specific emotional burdens such as fear of miscarriage and the anxiety of deciding whether to continue a pregnancy with significant health risks. A pregnant woman “needs to come to terms with her welcoming

of a creature who is already transforming her body, her social interactions, and her habits, who will always radically transform her life and about whom she knows virtually nothing.” (Mullin, 2005, 43). While they cannot share all these costs, involved partners typically can and do share many of them. They often are the main source of emotional, practical and financial support of their pregnant partner: they can accompany her to medical visits and support her during childbirth, share and try to soothe her worries, relieve her of some of her regular work and serve as an often needed interface between her and the insufficiently accommodating outer world.

Some, but not all the costs of pregnancy can be socially prevented or mitigated – I elaborate on this point in what follows. Pregnancy often involves specific benefits as well as costs. The benefits and joys of pregnancy however do not cancel out the costs, and do not turn pregnancy into an intrinsically desirable experience. Certain benefits of pregnancy, such as the increased attention and care that pregnant women often receive, are meant to alleviate its costs: if pregnancy did not involve specific costs, the benefits would not exist either (in this respect as well, pregnancy is similar to illness and disability). Other benefits of pregnancy, such as the joyous anticipation of the baby, are only valuable given the assumption that one carries a baby one will keep and raise. Importantly, the most salient positive aspects of pregnancy are conditional on expecting that, at the end of one’s pregnancy, one will become a parent. If, contrary to the claims I advance in this section, pregnancy turned out to be intrinsically valuable, or if the benefits of pregnancy outweighed its burdens without being parasitic on an expectation that birth mothers will have the moral right to keep their babies, then one pillar of my argument for a moral right to raise the baby one has gestated would disappear.

Certain experiences of pregnancy, such as fragmented sleep and disrupted life patterns, may, precisely due to their hardship, prepare bearing parents to better care for their babies. Some authors think that pregnancy helps prepare mothers – and, when they are closely involved with pregnancy, their partners – to be ready for the major changes brought about by childrearing (Levesque-Lopman, 1983, 256). If this is correct, it means that, other things equal, birth mothers are better prepared to take care of a baby and so that there is a child interest in being raised by somebody who is also a birth mother. The burdens of pregnancy then generate a child-based reason for allocating the moral right to parent particular babies, alongside with a parental interest in raising one’s gestated child.

There is a certain similarity between justifying a moral right to parent by appeal to the costs of pregnancy and the libertarian – or proprietarian – argument according to which parents have some kind of ownership over children because children result from their parents’ labour (Narveson 2002). By contrast, I do not argue that the costs of pregnancy, including the efforts it requires, entail anything as strong as ownership rights.

The argument from the costs of pregnancy could provide *some* justification for a moral right to keep and raise the baby one has gestated, but it may perhaps be overridden by other reasons – such as considerations of race or gender fairness¹. Appeal to the costs of pregnancy *alone* cannot exclude legitimate baby shuffling between all bearing parents: the burdens of pregnancy entitle potentially adequate parents, who just gave birth, to parent a baby, but not necessarily the baby they gave birth to. Similarly, it is important to note that an argument appealing to the costs of the pregnancy alone, if that worked, would ground a moral right to rear that would be easily transferable on to third parties, thereby lending legitimacy to surrogacy contracts. If gestational mothers acquired the moral right to rear their birth baby merely in virtue of the costs of the pregnancy – thanks, perhaps, to the labour they put in the process – there would be no obvious reason against an entitlement to sell this right to another person.

A second feature of pregnancy, the fact that it facilitates the creation of an intimate relationship between the bearing mother and the future baby, does the main theoretical work. The two features of pregnancy – its significant costs, and its ability to provide a context for forging an intimate relationship with the future baby – are closely related. Because children come into existence through gestation, pregnant women and, sometimes, their supporting partners have to invest a significant amount of resources into having birth children; this is an often conscious, intentional process, akin to other projects in which people engage: it contains much anticipation and planning, thinking and hoping, imagination and projection. Granted, in the case of surrogate mothers some of these psychological processes may be absent: if the gestational mother does not expect to rear the child she may specifically try *not* to engage in any anticipation and planning, thinking and hoping. It is however not clear that it is possible to avoid any

1 Because the question of who has the moral right to parent a particular child has to be an answer to an all-things-considered question. For the case in favour of the baby lottery see Gheaus (2012) and Earl (2015), work in progress.

such engagement; surrogates, too, may undergo – albeit involuntarily, and possibly unconsciously – some anticipation, hoping and projection.

Through their bodily connection with the baby and their various psychological investments, pregnant women normally build a relationship with their future baby, relationship which is sometimes highly emotional and already quite developed at birth. Bearing mother and their newborns already share a common history including numerous embodied common experiences (“you kicked me on the 1st of March”, “you made me worry”, “you made me cry with happiness”). The fact that the body plays such a central part in pregnancy, makes pregnancy a uniquely privileged context for developing a bond that is at the same time physical and imaginative with the future child. Caroline Whitbeck has gone as far as to argue that people’s affection towards their own children, often explained by reference to a maternal/parental “instinct”, is actually rooted in bodily experiences: “parental affection or attachment is influenced by experience, and this experience is not confined to socialization experience but includes, in a large measure, bodily experiences that are the same cross-culturally; i.e. all women have special bodily experiences that are likely to enhance those feelings, attitudes and fantasies, which induce people to generally care for their infants.” (Whitbeck, 1984, 191). These experiences include pregnancy, labour, childbirth and post-partum recovery, which are unique to the bearing mother. Whitbeck concludes that, although the maternal ‘instinct’ is itself a myth, biology – though embodied experience – plays a very important role in creating a bond between newborns and their mothers. This argument might be soon verifiable, when enough people will be around whose bearing mothers are different from their genetic mothers. If true, then biology turns out to play an important role in parent-children relationships thanks to the biological processes of parenthood, independent of genetic connections.

Like in the case of paying the costs of pregnancy, pregnant women’s supporting partners are capable of being direct participants in the process of creating a relationship with the baby during pregnancy. With the help of medical technology they can see the foetus and hear its heartbeat as early as the bearing mother; during the last stages of pregnancy they can feel the baby, talk to it and be heard by it. Just like the mother, they can experience the fears, hopes and fantasies triggered by the growing foetus.

The phenomenology of pregnancy does not show that *all* pregnancies generate intimate relationships between bearing mothers and their newborns. It only shows that

pregnancy can, and it is likely to, lead to bonding; the likelihood is very significant, since bonding can happen even if the pregnant woman knows she will not be permitted to keep the baby, as we know from cases of surrogate mothers who developed a strong attachment to their unborn, and then newborn, baby. Bonding during pregnancy provides a very solid reason why allocating babies to different social parents would likely destroy already existing intimate relationships between newborns and their bearing parents.

The fact that the relationship with one's future child starts during pregnancy provides the missing step in the justification that some philosophers provided in favour of a moral right to keep and raise the baby one has gestated. The same fact of attachment created in the context of pregnancy provides an answer to the more general question of how to determine the moral right to parent a particular baby. (The answer is general, but not universal: in some cases the gestational mother will have died at birth, or be unwilling to exercise her moral right to rear the child she has given birth to. In these cases considerations other than an existing attachment will determine who has the moral right to rear the child.) Some philosophers who think that all adults who would make adequate parents have a moral right to become social parents – most importantly, Ferdinand Shoeman (1980) and Harry Brighouse and Adam Swift (2006; 2014) – have argued that it is impermissible to disrupt already established intimate relationships between parents and children. The reasons for this have to do both with parents' and with children's welfare. But no reason was provided why such relationships are permitted to develop in the first place – especially if other individuals may be willing to serve as the social parents of the child in case. My account of the normative value of pregnancy fills this gap: If the same process which brings babies into the world is also generating their first intimate relationships adults, relationships between birth parents and their babies need no justification: they are already there from the beginning.

It is important, to this analysis, to add the perspective of the baby, who also usually bonds with its mother whose voice, heartbeat etc., can recognise during the last phase of gestation (DeCasper and Fifer 1980; Beauchemin et al. 2011)¹. That the newborn, too, is usually attached to the gestational mother – as far as we can tell, and as far as a newborn can be said to be attached – provides an additional, and child-centred justification, for the moral right to parent the baby one has gestated.

¹ I am grateful to Jake Earl for bringing these articles to my attention.

In conclusion, the particular way in which we come into existence is essential for determining who has the moral right to rear us. If we all came into the world in laboratories, created by scientists, there would be little reason for granting a right to rear us to the people who provided the genetic material¹. Indeed, elsewhere I argued that there are reasons of fairness for redistributing babies between all potential adequate parents and, in certain social contexts a “baby shuffling” would help tackle historical, and deeply entrenched associations between race or gender and advantage (Gheaus 2012).

To answer this challenge, I offered an account of how people acquire the right to parent a particular baby. One element of such an account is provided by the existence of a moral right to keep and rear the baby that one has gestated. If, at the moment of birth, adequate gestational mothers (and sometimes their involved partners) have already paid significant costs for becoming parents, and, partly in virtue of this process, have developed an incipient intimate relationship with the baby, then they are more entitled than other, equally good, prospective parents to parent the baby they have borne. This difference between adequate gestational mothers and other adequate prospective parents can provide the necessary justification for translating a fundamental moral right to be a parent in general (as defended by Shoeman, Brighouse and Swift) into a moral right of gestational mothers to parent their birth baby.

Conclusions

How exactly can adults acquire a moral right to parent a particular child is a very controversial question, which this short article did not attempt to settle². The available options include appeal to the interests of the child, appeal to the interests of the adults who wish to become social parents and appeal to both sets of interests. Here I argued that the facts of pregnancy – that is, its inherent costs and the high likelihood that pregnancy is a context where the gestational mother and her foetus are forming a mutual attachment – indicate that gestational mothers are very likely to hold a *pro tanto* moral right to parent their newborns on a variety of accounts of how one acquires the moral right to parent. (A notable exception is the account according to which it is one's contribution of genetic material that justifies the holding of the moral right to parent.

1 I argue for this at length in Gheaus (2015a).

2 For a helpful discussion on this see Swift and Brighouse (2014).

This is a very influential account – both in popular morality and in legal practice – yet, I think, also very implausible¹.)

Certainly, gestational mothers do not always have the moral right to parent their birth child, because pregnancy does not in itself confer the right: rather, the right is held by gestational mothers in virtue of the attachment they usually form with the baby, and this attachment does not always exist. Moreover, other circumstances may defeat the moral right – as in cases when, for example, the gestational mother would not make a sufficiently good parent.

But law is, necessarily, a blunt instrument that cannot take into account all the normatively relevant features of every case it covers. If a gestational mother's right is not usually defeated, then surrogacy contracts ought not to be enforced against the gestational mother's wish to parent the child herself (unless special circumstances, like those mentioned above, apply.) Moreover, since the right is held in virtue of an attachment that is mutual, and because this attachment serves the interest of the newborn, the right cannot be transferred at will to other people who would wish to function as social parents of the child in question. This indicates that surrogacy contracts are illegitimate, and therefore void.

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Devant une pratique silencieuse, un féminisme muet. La maternité de substitution en Europe de l'Est

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"My body is my own business" – One of the fundamental postulates of feminism and democratic society. Women in many countries fight for the right to do abortion, right to wear any clothe which they like without judging and sexual harassment. So why did we decide we have right to choose for surrogate mother, why do we think we are more clever?" BioTexCom. Center for Human Reproduction, Ukraine

"As face orice pentru bani. Am asa mare nevoie! (Pour l'argent je ferais n'importe quoi. J'en ai tellement besoin!)" Nounou roumaine, mère, grand-mère, 45 ans ; avril 2015

Résumé: *Cela fait maintenant près de vingt ans que des enfants sont nés de mères porteuses dans les pays de l'Europe de l'Est. Les législations, à l'exception de celle de l'Ukraine et de la Grèce (si on élargit au sud-est), sont aujourd'hui encore hostiles à cette pratique. Si les espaces politiques nationaux ont été plusieurs fois mobilisés par des débats à ce sujet, lancés notamment en vue d'une réglementation, les mouvements féministes en sont restés totalement à l'écart. A partir de ce constat, je rappelle dans un premier temps quelques-uns des principaux éléments de l'élaboration d'une réflexion féministe occidentale sur la maternité de substitution, pour regarder ensuite la présence de cette pratique dans la région et comprendre l'angle mort dans lequel elle est restée pour les féminismes est-européens, et enfin, formuler des hypothèses sur les apports que ce type de réflexion peut (doit?) produire. Concernant les informations sur la maternité de substitution dans la région, les principales sources sur lesquelles je m'appuie sont journalistiques (articles et reportages de la presse écrite et audiovisuelle), ainsi que des forums en ligne (en langue roumaine). Cet article avance des hypothèses que j'explore, dans le cadre d'une recherche sur la maternité de substitution en Roumanie*

Keywords: Surrogacy • Feminism • Eastern Europe

Qu'est-ce que la maternité de substitution pour le féminisme?

La perspective dans laquelle j'envisage ici le féminisme vise à le poser comme repère pour l'approche des nouvelles techniques de la reproduction et notamment de leurs implications pour les femmes. J'en choisis ainsi une explicitation générale, qui peut

ouvrir vers différentes orientations ultérieures ; le féminisme peut être considéré comme « une prise de conscience d'abord individuelle, ensuite collective, suivie d'une révolte contre l'arrangement des rapports de sexe et la position subordonnée que les femmes y occupent dans une société donnée, à un moment donné de son histoire. Il s'agit aussi d'une lutte pour changer ces rapports et cette situation » (Toupin, 1997).

Aux Etats-Unis et en Europe occidentale, la découverte et la mise en application des nouvelles technologies de la reproduction humaine ont suscité très rapidement des questionnements, des débats et des prises de position de la part des féministes (Jacobson, 2016 ; Laborie, 2000 ; Lieber, 1992 ; Roman, 2013). Depuis l'émergence des mouvements pour les droits des femmes, l'une des principales revendications pour lesquelles ceux-ci avaient milité avait été que les femmes puissent contrôler leur corps, et ne soient plus prisonnières de leurs capacités biologiques, ni, à travers celles-ci, des liens traditionnels avec la famille et la communauté. Le développement des moyens de contraception et la légalisation de l'avortement, ont ainsi permis aux femmes de choisir *si et quand* elles désiraient avoir des enfants.

Or, l'apparition des nouvelles technologies de la reproduction (NTR) amène les femmes devant des situations inédites, voire devant de nouveaux choix. Il s'agit des techniques¹ de l'insémination artificielle, de la fécondation in vitro et de la maternité de substitution². On peut y voir l'accès à une liberté nouvelle : c'est le cas pour les personnes qui souffrent d'infertilité (individuelle ou de couple), comme pour les femmes qui souhaitent engendrer sans avoir de rapport sexuel (c'est ce que l'on appelle couramment la PMA³), ou encore pour toute personne qui souhaite avoir un ou des enfants sans avoir ni rapport sexuel ni lien avec la femme qui porte et met au monde l'enfant⁴. Si pendant quelques décennies, les féministes ont perçu et analysé la maternité

¹ Telles qu'elles sont identifiées et mentionnées par l'Organisation Mondiale de la Santé.

² Cette technique est dénommée aussi « gestation pour autrui » (GPA), et c'est l'usage qui s'est imposé dans le langage courant. Admettre ce syntagme revient cependant à considérer que la femme qui porte l'enfant n'est « que » gestatrice. Or, l'emploi de ce terme vient du langage vétérinaire (ce sont les femelles animales que l'on désigne comme gestatrices), ce qui est amené à réduire un être humain, en l'occurrence la femme, à sa capacité gestationnelle. La notion de « gestation pour autrui » « isole dans le mot *gestation* une fonction *partielle* (comme l'ovulation, la fécondation ou l'accouchement), pour imposer l'idée d'une fonction *séparable*. La maternité pour autrui doit passer pour un simple *procédé technique* de procréation » (Agacinski, 2013, p.90).

³ Procréation médicalement assistée.

⁴ Les situations les plus couramment mentionnées par les personnes qui souhaitent le développement de ces technologies, et notamment de la maternité de substitution, sont celles des femmes qui n'ont pas d'utérus (infertilité), ou encore celles des couples dont les deux personnes ne peuvent engendrer ensemble (infertilité médicale ou « sociale »). Or, lorsque l'on regarde de manière plus large, on s'aperçoit qu'il y a de plus en plus de personnes qui y ont recours pour des questions de confort personnel, et invoquent ainsi ne pas avoir de temps à consacrer à la grossesse (comme le fait, par exemple, l'actrice américaine Lucy Liu), ou encore ne pas souhaiter avoir une relation intime avec la mère de l'enfant. "US lawyer Steve Harris last year told Men's Health Magazine, "I wanted a family and

comme une aliénation de la femme, qu'elle maintien sous le règne de l'immanence (comme disait Simone de Beauvoir), et se sont réjoui des moyens de contrôle de la fécondité, les NTR ont fait apparaître l'expression d'un désir d'enfant qu'elles ont dû intégrer dans leurs réflexions¹.

Mais au-delà de cette liberté nouvelle pour certaines femmes, les NTR posaient également de nombreuses questions, liées aux risques spécifiques d'exploitation et d'instrumentalisation des corps des femmes, et plus globalement, d'eugénisme (Lyndon Shanley & Jesudason, 2012). Dès lors, des féministes n'ont eu de cesse de dénoncer ces risques, en mettant en lumière l'ambiguïté de la notion de liberté de disposer de son corps, notamment dans le cas de la maternité de substitution, dans la mesure où la mère porteuse n'utilise pas cette liberté *pour elle* et pour son émancipation, mais bien pour autrui ; cette pratique ne répond pas à un besoin de la femme, mais au désir d'une autre personne (ou de plusieurs personnes). Ainsi les féministes occidentales ont-elles montré, à partir des années 1980, « combien est masquée la forte différenciation sexuelle des techniques dont la lourdeur et les risques sanitaires et sociaux (perte de travail) concernent essentiellement les femmes ; comment est promue la discrimination sociale entre les femmes quant à l'accès aux NTR et mis en évidence les moyens grâce auxquels se développent un marché de la reproduction humaine » (Laborie, 2000, p. 238). Elles ont également déconstruit les discours à travers lesquels des activités qui par le passé avaient été vues et vécues comme des archétypes du statut subordonné de la femme dans les relations sociales, sont présentées aujourd'hui comme des « choix » personnels libérateurs. (Andrews, 1988)

Si les féministes occidentales (américaines, françaises, britanniques etc.) se sont intéressées et ont réagi aux effets sociaux et économiques des NTR sur les femmes, c'est tout d'abord parce que ces technologies étaient appliquées dans leurs propres pays, et que les régimes démocratiques dans lesquels elles vivaient leur permettaient d'interroger, d'analyser et de critiquer ce développement technologique. Il semble néanmoins que les arguments considérés comme éthiques ou moraux, mis en avant par les féministes en s'appuyant aussi sur les droits humains, deviennent à présent

now I have one. I don't have the need for a relationship. My son cost me \$200,000. A wife would have cost me much more." (Blincoe, 2013)

¹ Comme le montre Yvonne Knibiehler dans son article « Féminisme et maternité » : « Au cours des années quatre-vingt, de nouvelles questions surgissent. Les sciences biomédicales ont exploré à loisir le ventre des femmes pour mieux assurer la maîtrise de la fécondité [...] soudain, le désir d'enfant des femmes s'est manifesté avec une intensité imprévue » (p. 14).

obsolètes (Roman, 2013, p.27). La dignité de la personne et l'indisponibilité du corps humain, invoqués aussi bien par les féministes que par les juristes¹, pour interdire certains comportements, perdent de leur pertinence, devant la montée en puissance de l'idée d'un droit de disposer de son corps, idée de plus en plus présente dans les discours pro-prostitution, ou portant sur le don d'organes, ou encore sur l'assistance médicale à la procréation (comme on le voit par exemple dans le texte cité en exergue, et qui est une parfaite illustration de la manière dont les agents économiques, ayant pour principal but le profit, mobilisent un certain nombre de revendications féministes, en les détournant à leur avantage ; la liberté de disposer de son corps en est la principale).

Si les différents courants féministes occidentaux ont ainsi élaboré des analyses et des positionnements par rapport à la maternité de substitution, au fur et à mesure que la pratique s'est développée et répandue, ceci n'est pas le cas en Europe de l'Est, où les NTR n'ont fait leur apparition que beaucoup plus tard, dans la deuxième moitié des années 1990.

La maternité de substitution en Europe de l'Est

Que sait-on de la réalité de la maternité de substitution en cette région ? Qui, comment et dans quel but produit les informations disponibles ? Qu'en font les pouvoirs publics ? Les informations sur lesquelles je m'appuie ici sont produites et véhiculées principalement par des médias généralistes, écrits et audio-visuels. J'ai délibérément laissé de côté les médias d'inspiration chrétienne, dans la mesure où ils abordent la pratique sous un seul angle, consistant à exposer les critiques qui de leur point de vue la délégitiment. Or, ce que je cherche pour ma part dans cet article, c'est d'identifier le plus d'informations sur la pratique elle-même, sur les acteurs impliqués, sur les stratégies qu'ils/elles déploient pour y avoir recours, et sur la manière dont ils/elles la vivent quand cela concerne leur vie privée (notamment, donc, les mères porteuses et les personnes souhaitant y avoir recours). Par ailleurs, il n'y a pas de données officielles sur la maternité de substitution, recueillies et construites de manière systématique, permettant d'en connaître l'ampleur. Des investigations journalistiques étayées commencent à être réalisées, par des journalistes indépendantes, comme la britannique Julie Bindel, la suédoise Kajsa Ekis Ekman, l'autrichienne Eva Maria Bachinger. Il y a en

¹ La Convention du Conseil de l'Europe sur les droits de l'homme et la biomédecine (dite Convention d'Oviedo) stipule que « le corps humain et ses parties ne doivent pas être, en tant que tels, source de profit ».

revanche très peu de données académiques¹. Peu de recherches (connues) existent à ce jour sur la maternité de substitution dans les pays est-européens, et surtout, peu de recherches menées par des chercheurs de la région. Il faut mentionner : deux thèses d'anthropologie (en cours) : celle de la chercheuse française Delphine Lance, qui travaille dans une perspective comparée sur cette pratique en Ukraine et aux Etats-Unis ; et celle de la chercheuse britannique Christina Weis, portant sur la *commercial surrogacy* à Saint-Pétersbourg, en Russie. En Roumanie, une thèse de droit, soutenue en 2009 à l'Université de Sibiu par Sabin Gutau, et intitulée « Reproducerea umana asistata medical si filiatia » (« La reproduction humaine médicalement assistée et la filiation ») aborde aussi, marginalement, la maternité de substitution notamment dans la perspective de ses effets sur la filiation.

On peut ainsi faire le constat que ce que l'on connaît aujourd'hui sur les mères porteuses, en Europe de l'Est, provient principalement des journaux et des chaînes de télévision. Ces médias s'y intéressent avec une certaine constance, néanmoins les informations restent toujours ponctuelles, relatant généralement des expériences de mères porteuses ou de candidates pour le devenir ; rarement, des parents ayant eu recours à une mère porteuse s'expriment aussi. Les auteurs des articles et des reportages prennent le plus souvent le soin d'interroger aussi, à côté d'une mère porteuse, un avocat, un médecin, un psychologue ; néanmoins, tous les articles ne sont pas toujours signés.

La maternité de substitution est pratiquée depuis près de vingt ans dans la région. C'est en 1998 à Timisoara que, pour la première fois en Roumanie, une mère porteuse donne naissance à un enfant, deux ans après une première tentative de transfert embryonnaire. Les traitements avaient été réalisés par le docteur Ioan Muntean, dans la clinique qu'il dirigeait et qu'il s'était préoccupé de doter en technologies permettant d'être à un niveau comparable avec les cliniques occidentales, où il s'était préalablement spécialisé dans les traitements de l'infertilité. Ses performances étaient reconnues dans la région, ainsi que l'indique le dr. Pavleta Tabakova, de Sofia, qui elle-même affirme avoir effectué plusieurs dizaines de traitements et d'accompagnements de mères porteuses, à la fin des années 1990 et au début des années 2000 (comme le montre Doroteya Nicolova dans son reportage sur les femmes des Balkans qui, infertiles et

¹ Je remercie Marina Blagojevic, Research Professor/ scientific counsellor à l'Institute for Criminological and Sociological Research de Belgrade, qui m'a confirmé l'absence de ce type de données en Serbie.

vivant dans des sociétés patriarcales où l'infertilité est vécue comme une honte, se rendent en Ukraine pour y avoir recours à une mère porteuse ; cependant, cette solution est coûteuse, et donc elle ne peut être envisagée que par des femmes fortunées). En Russie, c'est à 1995 que remonte la naissance des premiers enfants nés d'une mère porteuse, à Saint-Pétersbourg (Weis, 2015). Depuis la fin des années 1990, la maternité de substitution est ainsi connue et pratiquée dans plusieurs pays est-européens et en Russie.

Après quelques années où les performances techniques du monde médical et les possibilités qu'elles ouvraient, notamment aux femmes stériles, s'imposaient d'évidence, les pouvoirs publics se sont saisis des nouvelles réalités engendrées par cette pratique. De nombreuses situations problématiques sont apparues – dont on trouve référence dans les discussions sur les forums en ligne, comme ceux que j'ai consultés, en Roumanie, et aussi dans les matériaux réalisés par la presse-, comme par exemple le fait que les parents d'intention se séparent pendant la grossesse et ne veulent plus, ni l'un ni l'autre, de l'enfant ; ou qu'ils changent d'avis, sans explication, et sans se préoccuper de ce que la mère porteuse va décider de la grossesse en cours ; ou que la grossesse n'aboutit pas ; ou encore que l'enfant semble avoir un handicap ; ou bien que la mère porteuse est en réalité déjà enceinte au moment où elle prétend se faire inséminée etc. Devant la gravité et la diversité de ces situations, les pouvoirs publics ont généralement répondu par l'interdiction ou le refus de réglementation de la pratique, ce qui revenait à laisser dans l'incertitude les personnes souhaitant s'y impliquer (comme mères porteuses ou comme parents d'intention) ; cette incertitude et surtout l'interdiction, quand elle est posée (comme en Roumanie, en Bulgarie, en Serbie, en Macédoine), a pu décourager et limiter la pratique. Elle ne l'a cependant pas empêchée.

Dans tous les pays de la région qui interdisent la pratique, plusieurs tentatives de réglementation sont ainsi évoquées, pour deux principales raisons, à savoir : d'une part, la continuité de sa présence malgré des conditions qui fragilisent les relations entre les parties, et d'autre part, des potentialités de développement d'un secteur florissant et prometteur : les prix véhiculés et reconnus par toutes les parties impliquées, ayant accepté de témoigner devant des journalistes ou des chercheuses, attestent des ressources financières que les parents d'intention sont en mesure de mobiliser. En Roumanie, par exemple, plusieurs tentatives législatives ont été menées depuis le début des années 2000 ; les plus récentes datant de 2011 (initiative parlementaire, portée par

une députée libérale) et de 2013 (initiative parlementaire aussi, portée par un groupe majoritairement socialiste). La proposition de loi de 2013, qui est restée longtemps bloquée au Sénat, vient d'être reprise au début du printemps (reportage Antena3, 2015 ; ProTV du 6 mars 2016). Des initiatives similaires sont à l'œuvre en Bulgarie, en Serbie, en Macédoine (articles de *BalkanInsight*, 2010, 2014, 2015). Enfin, en 2014, dans l'absence d'un cadre légal sans équivoque, un tribunal de Timisoara (Roumanie) a reconnu une femme comme mère naturelle des enfants mis au monde par une autre femme (sa sœur), et cette dernière comme étant donc une mère porteuse (Barac, 2014).

En attendant d'éventuelles modifications visant à légaliser la pratique des mères porteuses, des femmes continuent à se proposer comme candidates, et des personnes souhaitant recourir à une mère porteuse, continuent à faire appel à leurs services. Dans ce contexte, les propos des mères porteuses font ressortir une nette distinction entre le secteur de santé public, où la pratique est interdite, et en général évitée, et le secteur privé, où certaines cliniques la poursuivent, en trouvant des stratégies pour contourner la loi (ce qui s'avère parfois dangereux, comme cela a été le cas en Roumanie, à Timisoara, où les propriétaires d'une clinique, mais aussi des mères porteuses et des donneuses d'ovocytes, ont fait l'objet de poursuites pénales en 2014).

Les principaux aspects de la pratique dans la région

Les informations disponibles aujourd'hui mettent en évidence deux choses : la première, c'est le besoin de développer des recherches rigoureuses concernant la maternité de substitution, et l'approche féministe aurait une valeur heuristique particulière, tel que je le montrerai dans la dernière partie de ce texte ; et la seconde, c'est la convergence de nombreux éléments factuels qui permettent de faire plusieurs constats concernant la pratique et les acteurs impliqués, dans la région. Les principaux constats sont les suivants :

1. Il s'agit d'une pratique qui est très vite devenue **transnationale, dans un double sens**, car le passage des frontières est effectué **aussi bien par les potentiels parents d'intention que par les mères porteuses** (ou les femmes qui souhaitent le devenir). A savoir, s'il existe partout un marché interne, en Russie et Ukraine comme en Roumanie, il y a aussi, et de plus en plus, si on se fie aux dires des mères porteuses ou candidates, des parents d'intention d'origine étrangère qui vont dans ces pays pour y avoir recours. En même temps, des femmes originaires des pays de la région se rendent elles-mêmes

dans d'autres pays afin de proposer leurs services en tant que mère porteuse. Le reportage intitulé « Grèce, le prix d'un enfant » montre clairement la présence en Grèce de femmes migrantes, albanaises, bulgares, roumaines, géorgiennes, qui soit sont venues en Grèce avant la crise économique, et se retrouvent aujourd'hui au chômage, soit viennent dans le but de devenir mère porteuse. Par ailleurs, ces situations s'internationalisent. En 2015, une femme bulgare a accouché, en France, d'un enfant reconnu par un couple (d'hommes) français ; la mère n'ayant pas été déclarée par le père, celui-ci a fait état d'un contrat établi précédemment à Chypre (et nul en France, où la maternité de substitution est interdite)¹.

2. **Les difficultés économiques des femmes proposant de devenir mères porteuses sont unanimement reconnues**, elles sont explicitement mentionnées par les femmes elles-mêmes, comme par les professionnels de la santé ou les politiques qui promeuvent la légalisation de la pratique (la pauvreté, les difficultés de logement, le chômage ou les bas salaires sont mentionnés dans quasiment tous les documents que j'ai consultés). Il s'agit là d'un aspect très différent des discours véhiculés en Europe occidentale et qui s'évertuent à mettre en avant l'altruisme des femmes souhaitant porter un enfant pour autrui. A la différence des pays occidentaux aussi, à l'Est cela est facilement admis, tel que le donne à voir Christina Weis dans son travail réalisé à Saint-Petersbourg (« In Russia, the [Euro-American cultural framing of surrogacy as a 'labour of love' or a 'gift'](#) is generally absent. Instead, surrogacy is a commercial enterprise and framed as an economic exchange»). Les titres des articles et des reportages consultés, mettent en avant souvent des sommes qui, comparées aux salaires moyens dans les économies de la région, semblent importantes. Ces mêmes titres adoptent des tons réprobateurs à l'égard des femmes concernées. Le contenu de ces matériaux cependant montre surtout le dénuement des femmes interviewées, et le manque d'alternatives auquel elles sont confrontées.

3. Les mères porteuses qui se sont confiées aux journalistes ou aux chercheuses ont des profils divers : elles vivent aussi bien dans des grandes que dans des petites villes ou à la campagne; elles ont pour la plupart moins de 35 ans, mais peuvent aussi en avoir bien plus ; sont déjà mères d'au moins un enfant ; ont eu avant ou après avoir été mère porteuse, un emploi. Elles partagent cependant toutes un aspect commun : **elles**

¹ Deux autres situations de femmes originaires d'Europe de l'Est, qui ont accouché en France, en 2015, en compagnie de couples très attentionnés à leur égard, m'ont été par ailleurs évoquées par des personnes travaillant dans deux maternités publiques parisiennes.

représentent la principale source de revenu de leur foyer. Parfois (rarement) mères célibataires, plus souvent divorcées ou séparées, les mères porteuses sont aussi des femmes qui vivent en couple, avec le père de leur(s) enfant(s). Certaines annonces publiées sur les forums ou dans les commentaires des articles portant sur la maternité de substitution, sont mêmes gérées par les maris de ces femmes. Le revenu qu'elles escomptent obtenir en proposant leurs services comme mère porteuse est la principale (parfois l'unique) ressource potentielle pour la famille.

4. Lorsque la pratique est interdite, comme en Roumanie, des stratégies de contournement sont rapidement trouvées, avec l'aide de professionnels (notamment des notaires) qui maîtrisent la loi et sont en mesure de proposer des solutions qui respectent une légalité formelle, sans toutefois reconnaître la pratique. Certes, les acteurs impliqués doivent se faire confiance, mais en recourant à de telles solutions la capacité d'anticiper sur les éventuels risques qui peuvent survenir est renforcée (par exemple, le risque que l'autre partie se désengage soudainement). Dans un reportage réalisé pour l'émission « Observator », de la chaîne de télévision roumaine Antena3, en 2014, une femme proposant ses services comme mère porteuse donne des indications, par téléphone, au monsieur qui prétend souhaiter solliciter ces services; elle lui indique la marche à suivre, les risques éventuels, la durée prévisible. **L'interdiction de la pratique est ainsi transgressée, à bon escient, et de manière coordonnée, par plusieurs des acteurs impliqués dans la pratique.**

5. Lorsque la pratique est légale, comme en Grèce, en Ukraine, ou en Russie, la tentation existe néanmoins d'avoir recours à une pratique non-encadrée, moins coûteuse (comme cela apparaît aussi dans les recherches de Delphine Lance, menées à Kiev). Ainsi des offres à moindre coût apparaissent-elles, ce qui fait baisser également les rémunérations des mères porteuses et les prix pour leurs services existant sur le marché officiel. Le contournement du cadre légal se produit aussi dans le but de satisfaire une clientèle qu'il ne prévoit pas (comme les couples d'hommes ou les hommes seuls). Mais le contournement de la loi se fait aussi parce que les conditions dans lesquelles elle prévoit le déroulement de la pratique sont irréalistes. Ainsi en Grèce, l'altruisme que la loi prétend de la part de la mère porteuse, n'est-il qu'un mot, et tout le monde le sait (les médecins, les hauts fonctionnaires, les universitaires conseillers du législateur, les patrons d'agences) : la loi prévoit que la mère porteuse ne doit pas tirer profit de son acte. Cependant, au moment même de sa rédaction, la professeure de droit

qui a conseillé le gouvernement savait pertinemment qu'il n'y aura pas de femmes disposées à le faire sans obtenir en échange une compensation financière. On constate de la sorte que **l'existence du cadre légal suscite et s'accompagne de l'apparition d'une pratique qui se sert du cadre pour le transgresser.**

6. La pratique repose sur **une fragmentation des processus et des étapes bien identifiée et respectée par l'ensemble des parties prenantes.** Il s'agit ainsi de grossesses issues de dons d'ovocytes. Pour les mères porteuses, cet élément facilite la dissociation qu'elles exercent pendant toute la durée de la grossesse afin de ne pas s'attacher au fœtus qu'elles portent. Une mère porteuse roumaine témoigne ainsi, en avril 2011, dans le quotidien *Evenimentul zilei*, au sujet d'une grossesse qu'elle avait portée en 2007 : « Je me répétais à moi-même que j'étais un frigo dans lequel on met de la nourriture ». Cette image fragmentée de la maternité apparaît également dans le refus de la plupart des mères porteuses de revoir l'enfant, ou de garder le contact avec les parents d'intention après la naissance de l'enfant (le reportage sur la Russie en fait mention, par exemple). Pour les parents d'intention, cette fragmentation qui fait que la mère porteuse ne soit pas la donneuse d'ovocytes, est censée garantir d'une part, l'absence de lien entre la mère porteuse et l'enfant, et d'autre part, les qualités du matériau génétique utilisé pour produire l'enfant. Les femmes le savent et participent à ce processus de sélection, comme on le voit dans le reportage sur la Grèce, dans lequel la femme géorgienne qui arrange les relations entre les parents d'intention et les mères porteuses décrit les caractéristiques les plus recherchées par les parents d'intention lors de l'achat d'ovules, et montre également que cela ne coïncide en rien avec les exigences qu'ils formulent quant à la mère porteuse qu'ils souhaitent. Les professionnels de santé le savent également, et participent à leur tour à cette sélection explicite selon des critères parfois eugénistes (le quotient intellectuel de la donneuse, ou le niveau d'études par exemple, sont parmi ces critères), quitte à falsifier les données et à tromper aussi bien les acheteurs que les femmes, comme cela a été le cas dans une clinique roumaine de Timisoara, dont le manager et la cheffe du laboratoire, ont falsifié les dossiers pour vendre les ovocytes de femmes roms comme provenant de femmes d'autre origines ethniques, et avec d'autres caractéristiques physiques que celles des donneuses (*Opinia Timisoarei*, 2012, 2014).

7. Enfin, en Europe de l'Est il n'y a pas d'acteur associatif, ni des discours publics militants produisant un argumentaire favorable à la maternité de substitution suivant

une logique de réduction à l'inéluctable, comme c'est le cas dans les pays occidentaux. Dans certains de ces pays où la pratique est interdite, comme la France ou l'Italie, des personnes ayant eu recours à une mère porteuse à l'étranger, revendiquent le changement de la législation en raison de l'inévitabilité du recours à la pratique, malgré son interdiction formelle. Les arguments mis en avant par les acteurs de la société civile est-européenne sont d'une autre nature. Des associations de personnes confrontées à l'infertilité se mobilisent en vue de faire avancer les législations pour venir en aide avec des traitements accessibles et pris en charge par les systèmes de santé publics. C'est d'abord cet aspect qui est visé, par exemple en Roumanie, consistant à faire admettre aux pouvoirs publics que l'infertilité est une maladie (comme le fait l'association SOS Infertilitatea), et que c'est à la société, à travers le service public de santé, de prendre en charge le traitement (ne serait-ce que partiellement). La maternité de substitution fait aussi partie des solutions envisagées dans leurs revendications, mais c'est loin d'être une priorité.

Les apports potentiels d'une approche féministe de la maternité de substitution

En Europe de l'Est, la maternité de substitution a commencé à être pratiquée une vingtaine d'années après la découverte et la mise en application des NTR¹. La période où cela se produit, pour les pays de la région, est tout d'abord celle de la transition d'un régime totalitaire à un régime démocratique, et d'une économie planifiée (et supposée du plein emploi) à une économie de marché, dont le chômage fait partie intégrante. Une période aussi pendant laquelle la situation sociale et économique des femmes, comme catégorie collective, se dégrade, faisant place à un retour en force des valeurs patriarcales, voire de la misogynie (Miroiu, 2004 ; Vladimirova, 2006 ; Blagojevic-Hughson & Bobic, 2014). Des sociétés qui pendant près de cinquante ans avaient expérimenté une politique formelle d'émancipation des femmes dans l'espace public - ce qui leur avait notamment permis l'accès à l'éducation et à l'emploi-, tout en maintenant des modèles familiaux patriarcaux, ont vécu tout au long des années 1990 de profondes mutations, remettant en cause les places et les légitimités précédemment admises.

¹ Louise Brown naît, en Angleterre, en 1978 ; et Amandine, en 1982, en France, toutes deux issues de fécondation *in vitro*.

Les mouvements féministes est-européens qui apparaissent au début des années 1990 se forment ainsi dans des sociétés en pleine mutation, et pour certaines en guerre, comme cela a été le cas pour les pays issus de l'ancienne Yougoslavie.

Ils relèvent plusieurs défis, dont le premier fut celui de s'imposer et de durer dans des contextes hostiles, où l'antiféminisme s'est manifesté de manière virulente et durable, comme par exemple en Russie (Zdravomyslova, 2001 ; Voronina, 2011). La proclamation de l'égalité des sexes pendant toute la période de transition a été surtout formelle, venant pallier sur le plan déclaratif les conséquences brutales de processus socio-économiques pour lesquelles les femmes ont souvent payé un prix plus important que les hommes (Vladimirova, 2006).

La formation théorique et militante de nombreuses féministes qui ont construit les mouvements à cette époque s'est faite dans des espaces internationaux (Cârstocea, 2011) qui ont facilité une appropriation des divers courants féministes, leur adaptation aux réalités sociales et institutionnelles nationales et régionales (Miroiu, 1996 et 2004), ainsi que le partage et/ou la reprise, contextualisé, d'objets et de perspectives d'étude pertinents pendant les transitions vécues par les sociétés où ces nouveaux mouvements s'installaient. Les questions des discriminations de genre, des rapports sociaux des sexes, les approches intersectorielles classe - sexe - ethnie ont ainsi immédiatement prouvé leur application dans l'analyse des réalités nouvelles et en permanente transformation des démocraties est-européennes. Au regard de l'ampleur des tâches auxquelles les recherches féministes se sont consacrées pendant les vingt-cinq dernières années, dans cette partie de l'Europe, **la problématique des mères porteuses est restée dans un angle mort** - pratique peu visible, à l'image de tous les acteurs qu'elle implique, chacun restant discret pour ses propres raisons.

Il n'en reste pas moins que la maternité de substitution s'est beaucoup développée depuis maintenant près de vingt ans, et que les constats formulés précédemment invitent à dépasser une connaissance superficielle. L'approche féministe pourrait ainsi contribuer à une meilleure compréhension d'un phénomène désormais globalisé et en expansion, qui impacte aussi bien les vies des femmes sur le plan individuel, que les stratégies d'autonomisation et d'émancipation des femmes en rapport avec l'éducation et l'emploi, ou encore, la vision de l'égalité entre les femmes et les hommes promue par les politiques publiques (notamment de santé, familiales et sociales).

En tout premier lieu, **l'approche de la pratique des mères porteuses pourrait être utilement éclairée par un positionnement éthique féministe**, comme celui que propose par ailleurs la philosophe Mihaela Miroiu (1996, p. 96-97). L'éthique qu'elle envisage consiste à partir, dans la production de normes et règles sociales, de la prémisse que nous sommes à la fois mortel/les, l'enfant de quelqu'un, et (potentiels) parents. Cette situation universelle et intrinsèquement plurielle permettrait d'avoir un regard centré aussi bien sur soi-même (en tant qu'être mortel et donc confronté à la finitude) et sur le monde environnant, comme héritage dont nous bénéficions de la part de nos parents, et que nous laisserons à nos enfants. C'est pour ce monde, dans lequel nous pouvons penser que nous nous continuons nous-mêmes à travers nos enfants, que nous devons établir les normes et les règles les plus convenables. Il s'agit de penser ce qui est convenable en rapport avec soi-même (« Est-ce que j'aimerais être traité selon cette norme si je me trouvais dans telle situation ? » p. 96), ainsi que d'être en mesure de l'appréhender de manière plus large. La question à laquelle il faudrait répondre, pour tenir compte de ce critère de la *convenabilité* serait : « quels sont les biens premiers (libertés) dont mes descendants devraient bénéficier pour être en mesure de bâtir une vie convenable, quels que soient leurs qualités, leur sexe, leur race, leur classe sociale etc. ? » (p. 97). Miroiu argumente l'utilité d'un tel positionnement éthique par le fait que les sociétés contemporaines sont caractérisées par la fluidité et l'incertitude, ce qui conduit à rendre caduques aussi bien une réflexion en termes de prédestination (détermination) qu'en termes de contrat moderne (basé sur la rationalité). L'éthique de la *convenabilité* présenterait ainsi l'avantage d'intégrer, en les croisant, les aspects relevant du déterminisme (se rapporter à soi comme descendant de ses parents) et du contrat rationnel (assumer sa capacité d'agir), tout en plaçant l'individu dans le monde/la société, par son inscription généalogique réelle et/ou symbolique.

En m'appuyant sur ce positionnement éthique élaboré par Mihaela Miroiu, et compte tenu du fait que la maternité est une expérience spécifique des femmes, je propose d'envisager de réfléchir à la maternité de substitution en tant que soi-même et en tant que parent (potentiel) d'une fille. **L'éthique féministe de la *convenabilité*** serait fondée sur un double questionnement, à savoir : 1. Est-ce que, si j'étais dans la même situation que cette femme qui agit comme mère porteuse, je souhaiterais être traitée comme elle l'est ?, et 2. Est-ce que je souhaiterais que ma fille soit traitée comme cette femme/mère porteuse l'est ?

La réponse à ces deux questions constituerait une base compréhensive et empathique sur laquelle pourrait être élaboré ensuite un travail de recherche sur différents thèmes liés à cette pratique.

En deuxième lieu, **les études féministes peuvent contribuer à la fois à la construction des objets de recherche, qu'à l'élaboration des outils conceptuels** déployés pour analyser et interpréter les pratiques, les comportements, les valeurs et les représentations des acteurs sociaux participant à la réalisation de maternités de substitution. Je proposerai deux thématiques qui pourraient être problématisées dans une optique féministe, celle du **choix** effectué par la femme qui devient mère porteuse, et celle de la **migration** en rapport avec cette activité.

La question du choix de devenir mère porteuse est aussi sensible qu'incontournable. Il s'agit d'un acte individuel qui implique de nombreux éléments à la fois personnels, intimes, familiaux, sociaux. Le choix renvoie, en amont, à la notion de consentement, dont l'analyse doit intégrer les éléments contextuels, et notamment les ressources des acteurs en présence, et la manière dont le pouvoir est distribué. Il renvoie aussi, en aval, aux conséquences qu'il implique, et à la responsabilité qui leur est liée. On le voit, parler du choix qu'effectue une femme en devenant mère porteuse, suppose de réunir tout un ensemble de données permettant de comprendre comment, dans sa trajectoire biographique, s'inscrit le raisonnement l'ayant conduite à prendre cette décision, dans quelles conditions cela s'est fait. Compte tenu des constats formulés précédemment, montrant que la plupart des mères porteuses sont en couple, et sachant qu'elles vivent souvent avec leur famille élargie (beaux-parents ou parents), le choix doit être mis en lien avec les relations intra-familiales.

Un outil éprouvé pour analyser ces relations, dans le contexte spécifique d'une société de la région (patriarcale, multi-ethnique, post-communiste, capitaliste, démocratique etc.) est la notion de micro-matriarcat auto-sacrificiel (*self/sacrificing micro-matriarchy*). La sociologue serbe Marina Blagojevic-Hugson, qui l'a forgé (au milieu des années 1990), entend rendre compte avec ce concept des situations dans lesquelles les femmes vivant dans des sociétés patriarcales, où persistent des constructions familiales traditionnelles (concernant les rôles et les tâches des sexes et les relations femmes-hommes), trouvent une récompense ou une reconnaissance sociale à travers le sacrifice assumé. Dans des travaux récents (2014) elle considère d'ailleurs que ce concept n'est plus efficace pour

analyser les réalités des familles ayant intégrée une démocratisation des relations de sexe et un partage des tâches domestiques.

Le processus migratoire en Europe de l'Est a connu une féminisation accrue depuis le début des années 1990. Des aspects concernant la migration des femmes ont été abordé par les recherches féministes, concernant entre autres le trafic d'êtres humains et la prostitution, ou encore les travaux domestiques ou agricoles, comme activités spécifiques dans lesquelles les femmes représentent une population de prédilection. Il n'y a pas, en revanche, de recherche portant sur les mouvements migratoires des femmes, à l'intérieur ou à l'extérieur de la région, en rapport avec la pratique des mères porteuses ou de la vente d'ovocytes. Or ces mouvements s'intensifient, et exposent les femmes à des risques divers.

Pour aborder l'inscription des femmes dans la migration liée à la maternité de substitution, le concept d'agir faible pourrait s'avérer utile. La sociologue Milena Chimenti (2009, p. 314-315) explique ce terme par contraste avec celui d'agir en situation d'équilibre, et en montrant qu'il caractérise la situation dans laquelle « l'individu est à la limite de « l'agissabilité » : les contraintes structurelles génèrent un déficit de repères ou de soutien, et le mépris social engendre une perte de confiance, d'estime et de respect de soi et des autres. Lorsque la structure n'est pas suffisamment habilitante (en raison d'un laisser-faire ou d'une structure répressive), l'individu ne parvient plus à agir sur celle-ci pour induire un changement ».

Les mères porteuses qui s'expriment dans les documents que j'ai consultés, affirment ne pas entrevoir d'autre alternative à la maternité de substitution, pour sortir des difficultés où elles se trouvent. Les structures familiales et sociales dans lesquelles elles évoluent ne sont pas perçues comme étant porteuses des ressources susceptibles d'améliorer leur situation. Or, elles sont mères et elles veulent une situation, voire une vie meilleure, pour leurs enfants. Elles agissent ainsi, non pas pour changer la situation d'ensemble génératrice de difficultés pour elles et leur famille, mais pour apporter, à leur échelle, une possibilité de mieux être, notamment pour leurs enfants. Migrer pour être mère porteuse apparaît comme une alternative, tout en exposant à de nouvelles vulnérabilités, plus ou moins connues et prévisibles.

Les thématiques de recherche liées à la maternité de substitution sont nombreuses, et elles gagneraient à être situées dans le contexte national, transnational et régional, afin de mieux comprendre les conditions favorables au développement de cette pratique

dans la région, et les conséquences qu'elle produit sur la vie des femmes et sur les relations entre les femmes et les hommes.

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A reproductive justice lens towards the reasons to be a surrogate mother in Romania

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Abstract: *The aim of the article is to investigate the extent to which women who decide to be surrogate mothers - of those that we could interview by telephone - are victims of injustice and whether the decision is related to any kind of socio-economical inequalities as the reproductive justice lens implies. As a starting point we analyze whether this type of concerns are taken into consideration when it comes to the legislative debate in Romania. In the first and second section we discuss the theoretical framework, by placing surrogacy in the gender studies field. In the third and fourth section we analyze the legislative framework regarding assisted human reproduction, with a focus on the regulation of surrogacy, arguing that the reproductive justice concerns are completely ignored in Romania. In the fifth and sixth section we describe the methodology we used in our research consisting of five telephonic interviews and we draw some preliminary findings that can offer an insights about how this matter is perceived in Romania..*

Keywords: surrogacy • reproductive justice • reproductive rights • gender studies • legal framework

Introduction

The practice of surrogate mothers is banned in most countries in Europe, the states that accept altruistic surrogacy are the United Kingdom, Netherlands, Denmark, Hungary, and the states that allow commercial surrogacy are the Russian Federation, Ukraine, Belarus, Georgia, Armenia, Cyprus¹.

Currently, in Romania, there is a legal gap on this issue although there were several attempts to legislate assisted human reproduction (AHR). Thus, the first time the subject of surrogate mothers came in the public discourse was in 2005, when the Parliament reviewed a first draft law on reproductive health that would have regulated non-commercial surrogacy (altruistic surrogacy). The President in office at the time (Traian

¹2012 Info graphic world map of surrogacy laws by country <http://www.surrogatebaby.com/blog/2012/11/27/surrogacy-laws-by-country/> - last accessed on 30.05.2016;

Bășescu) filed a complaint and the Constitutional Court of Romania declared the project unconstitutional, so the Parliament dropped the bill.

At the same time, on March 10, 2005, the European Parliament adopted a Resolution¹ that was generated by media reports on the existence of specialized clinics in Romania that facilitated egg donations in exchange for money, from Romanian women to other EU citizens, especially British citizens. The resolution states that harvesting reproductive cells from a woman involves serious risks to women's health and condemns the activity of the Romanian clinics. The resolution encourages the states to consider the prevention and treatment of infertility as an alternative to surrogacy and that any cell donation should be strictly regulate, in order to protect both the donor and the recipient. The European Parliament emphasized on the fact that the human body should not be a source of income and that vulnerable people are likely to become victims of trafficking (people or cells), if this matter is not regulated properly. In order to achieve the goal of eliminating all forms of human exploitation, the Parliament encourages the national legislators to create an effective means of prevention, control and regulation. The Resolution states that any woman forced, in any circumstances, to sell parts of her body, including reproductive cells, becomes a potential victim of human trafficking networks within organized crime.

A firm stand was taken recently by the European Parliament, on 17 December 2015, upon the approval of the „Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter“², which in paragraph 114 „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“.

In this context, we intend to analyze the extent to which the legal debate in Romania on the subject of surrogacy targets the particular features of reproductive justice (if the focus is on what this choice would entail, which would be the most targeted women). We

¹<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0074&language=EN&ring=B6-2005-0202> - last accessed on 30.05.2016;

²<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2015-0344&language=EN> - last accessed on 30.05.2016;;

propose an initial qualitative analysis, gain from the telephone interviews we conducted, on which we tried to understand the motivations the women in Romania have when deciding to be surrogate mothers. In our opinion, applying a reproductive justice framework is a good starting point for researching the surrogacy matter in our country.

The reasons we chose the theoretical framework of reproductive justice are related to the manner in which the issue of surrogate mothers is regulated in most national legal systems (Guțan S., 2011: 128-183) - it revolves more around concepts such as adoption, parenthood and filiation and less around the exploitation of women's bodies (their lack of autonomy). Thus, we wish to point out that the phrase `justice in the reproductive justice` refers to the fact that women who choose to be surrogate mothers can be victims of a series of injustices: poverty, part of an ethnic minority, political status etc.¹ In our opinion, the most important aspect on the matter is the choice to be a surrogate mother. From our point of view, only a lens of reproductive justice is comprehensive enough to address issues like the level of access to information, the barriers imposed by poverty which can represent a decisive factor in the choice or the external pressures to provide.

In the first section we discuss the issues of surrogacy (commercial and altruistic), how gender studies perceive it and how different types of feminism relate to this matter. In the second section we discuss the development of reproductive justice framework and its importance, regarding the fact that women may be at certain intersections that emphasize a situation of oppression. In the third section, we outline the debates in Romania, emphasizing the manner in which they were held at the legislative level. And in the fourth and fifth section we discuss the methodology of the article and the conclusions we have drawn from the analysis of legislation and the interviews taken with potential surrogate mothers.

Thus, the main purpose of this article is to investigate the extent to which women who decide to be surrogate mothers (of those that we could interview), are victims of injustice and if the decision itself is related less to empowerment, but more to the pressure of increasing income. Also we analyze whether this type of concerns are taken into consideration when it comes to the legislative debate in Romania.

¹<https://rewire.news/article/2010/02/23/surrogacy-next-frontier-reproductive-justice/> - last accessed on 30.05.2016;

What is surrogacy?

Surrogacy involves an agreement whereby a woman agrees to bear the child of another person or couple, after the implantation of an embryo, in vitro or in laboratory conditions (Moldovan, 2002: 245). In reality, the consent involves a series of legal relations that take place both during pregnancy and after the child's birth. According to a legal draft on AHR (assisted human reproduction)¹ from 2003², a surrogate mother is the woman who consents to the implantation into her uterus of embryos obtained through medical procedure and carry's the pregnancy to term, gives birth and voluntarily gives up her legal rights to that child, under the terms of a surrogate contract. This method is preferred to traditional surrogacy, which implies that the egg comes right from the carrier mother. Currently, the preferred method (gestational surrogacy) requires that an already fertilized egg is implanted in the womb carrier (Stark 2012: 1). So far, 95% of embryos created for surrogacy purposes are foreign genetic material that is implanted in a woman that has no genetic connection with the child (Busby et al. 2010: 8).

Commercial surrogacy differs from altruistic surrogacy by the fact that it involves payment and/or material advantages (Guțan, 2011: 33-34). Feminist critics oppose commercial surrogacy because it is equivalent to the sale of children and exploitation of women (Anleu 1993: 32). Supporters of altruistic surrogacy claim that such criticism can be reconciled by regulating a surrogacy contract that does not involve paying a price (Anleu 1993: 32). They argue that eliminating the payment clause from the surrogate contract, is enough to guarantee the parties protection from the negative effects of a market. But in reality, „the distinction between commercial and altruistic surrogacy is socially constructed rather than based on self-evident intrinsic differences,„ (Anleu 1993: 32). Anleu (1993) argues that the basic idea of altruistic surrogate is that women by nature are unselfish and are able to waive the financial benefits.

Since 1985 feminist authors (Corea 1985, Harding 1991 in Bailey 2011: 1-2) drew attention to the fact that commercial surrogacy is a potential way of arguing that the wombs of economically disadvantaged women can be leased by the rich people in America or Europe (Bailey 2011: 1-2). But this kind of thinking has not been

¹Also referred to as Medical Assisted Human Reproduction (MAHR), in romanian „Reproducere Umană Asistată Medical-RUAM”;

²One of the romanian draft law on reproductive health and medically assisted human reproduction: http://www.cdep.ro/proiecte/2003/200/10/7/cd217_03.pdf - last accessed on 30.05.2016;

unanimously accepted by the feminists. Thus, liberal feminists shared the view that „Surrogacy is a natural extension of women’s reproductive liberty and personal autonomy. If women could contract freely to sell their productive labor for wages, then they should be at liberty to sell their reproductive services.” (Bailey 2011: 8).

This type of argument is closely related to the kind of thinking that targets individual freedom. For example, the only reason Arneson (1992) considered banning commercial surrogacy is related to the effects of this practice on children (Arneson 1992: 148). The author argues in favor of commercial surrogacy saying it should be legalized (Arneson 1992: 133) based on some considerations Mill aimed at individual freedom (Arneson 1992: 133): "I suggest that proposed bans on the market exchange of goods and services should be evaluated according to the expected consequences of such bans. Consequences shall be evaluated according to an egalitarian welfares standard. In the context of public policy formation, welfares holds that the object of policy should be to advance the welfare or utility of those affected by it". (Arneson 1992: 133).

On the other hand, radical feminists advocating for banning surrogate base their arguments on the idea that „women’s oppression (is) directly (tied) to their reproductive capacities and roles” (Bailey 2011: 8). Another common argument against surrogate contracts is closely linked to a materialist approach to the practice, according to which „female poverty make women vulnerable to selling sexual and reproductive services. Contract motherhood is dehumanizing because it commodifies birthing, reduces women to incubators, and alienates surrogate mothers from their reproductive labor” (Bailey 2011: 9).

Phillips (2011) argues that banning commercial surrogacy should have at its starting point the duality of body and mind. Both in the case of prostitution, and in case of surrogacy, the woman cannot be removed from their body and the idea that the body is a distinct entity itself cannot be sustained. The experience of pregnancy is an experience that has profound implications (Phillips 2011:730). The author points out that there is an inherent inequality in terms of economic circumstances that make the difference between people who sell reproductive services and those who are forced to resort to such solutions (Phillips 2011: 741).

An important aspect which Bailey (2011) brings into discussion – and which we take into consideration in this article - is the dual perspective of western feminists: (1) discussing issues of morality and new reproductive technologies or (2) focusing on how

these experiences are lived (Bailey 2011: 2). The author argues that it is not a complex enough framework to point out the injustices behind the choice to be the surrogate mother in undeveloped countries, such as India¹ (Bailey 2011: 22). Based on this observation, we believe that only an approach that targets reproductive justice and includes an intersectional analysis may be right for Romania. Thus, variables like gender, education, financial status and others, can shape the experience of being a surrogate mother or trying to be a surrogate mother.

Although there is the danger of essentialism when referring to the portrait of a surrogate mother, we must keep in mind that many studies show common characteristics (Mohapatra 2012: 198). For example, in India, surrogate mothers are typically presented as poor, live in rural areas and are low educated (Pande in Mohapatra 2012: 198). Therefore, it is relevant that in most cases a disadvantaged woman becomes a surrogate mother for an advantaged one (Mohapatra 2012: 197) which indicates that there is an unequal ratio between the two sides. This can be caused by structural injustice at the level of societies from which surrogate mothers come. Therefore, the major problem is that a contract for commercial surrogacy appears as a way to solve the deepest problems of the community (Mohapatra 2012: 197).

Moreover, we must consider the fact that certain cities, that have major human reproductive clinics, create a venerable context for women living in those areas. Women who deal with poverty are encouraged and even pressured to turn to surrogacy, even though they do not want to sell reproductive services, because they are unable to find a decent paying job (Mohapatra 2012: 199-200). If in the case of India the surrogacy market is rapidly growing, in Eastern Europe, especially in Ukraine and Russia, the surrogacy market becomes more and more attractive to European citizens from countries where surrogacy is prohibited (Mohapatra 2012: 196).

The problem with applying a strictly legal framework to the issue of surrogacy – the reproductive right framework – is that it perceives women as being the same, without taking into consideration their differences and it promotes the idea that there is a common experience for all surrogate mothers (Mutcherson 2012: 194).

¹Her research is focused on the surrogacy market in India.

Surrogacy between a reproductive rights and a reproductive justice framework

If initially the rights framework was most used in discussions related to AHR, the intervention of women of color changed the rhetoric (Mutcherson 2013: 192). Thus it became insufficient in capturing oppression resulting from AHR (Mutcherson 2013: 192). The movement of reproductive justice is closely linked to the "SisterSong" organization of women of color, which emerged from the need to combat both reproductive rights and social justice, thus this new concept was built that represents a holistic view oriented towards the community (Mutcherson 2013: 195; London 2011: 74-5). According to Asian Communities for Reproductive Justice (2005), reproductive justice will be achieved only by achieving „the complete physical, mental, spiritual, political, economic, and social well-being of women and girls" (Mutcherson 2013: 194). It is important to note that this approach moves away from the liberal thinking and the idea of autonomy we have discussed previously. In the absence of empowering women, the choice may not be free of constraints (Mohapatra 2012: 192). The reproductive justice framework analyzes the situation in which the lack of access to economic resources makes women turn to selling reproductive services (Mutcherson 2013: 227). Thus, „Reproductive justice refers to the normative concept that all women, regardless of their ethnic, racial, national, social, or economic backgrounds, should be able to make healthy decisions about their bodies and their families" (Mohapatra 2012: 191). And referring strictly to the subject of surrogacy, by applying such a framework we take into account „the effect of power relations and differential resources of the parties to a surrogacy arrangement that opens potential for exploitation by powerful parties"¹

As London (2011) argues, we believe that a perspective that is strictly limited to reproductive rights is inadequate, because it does not consider how the parties to such contract differs in terms of resources, thus creating an unequal power report, in which surrogate mothers may become subjects of exploitation. The reproductive rights framework has four core principles: „choice, privacy, freedom from governmental interference and personal autonomy" (London, 2011: 76).

While these principles are important, the strictly legal approach is insufficient for two reasons (1) it does not handle matters that could limit access to such rights, issues related to injustices (racism, poverty, etc.) and (2) even their constitutional protection is insufficient because „it does not necessarily alter power relations or shift resources"

¹<http://rightnow.org.au/topics/womens-rights/surrogacy-whose-reproductive-liberty/>, last accessed on 30.05.2016;

(London, 2011: 77). As London (2011: 80) points out „rights do not alter the balance of power”.

Therefore we believe that regulation of AHR and the debates around this topic should consider addressing reproductive justice, as part of the social justice framework, and should not ignore the social conditions of potential surrogate mothers. Moreover, only an intersectional analysis, which considers race, class, gender, sexual orientation or other relevant categories can be complex enough for this topic (Mutcherson, 2013: 190). Thus, „The RJ movement applies an intersectional analysis to reproductive oppression, which allows advocates to <<recognize how each individual is uniquely affected by barriers to information, resources, health care, and social supports at different stages throughout (her) reproductive life” (Mutcherson, 2013: 194). And compared to the rights perspective, the reproductive justice framework has as central subjects - the people who are marginalized in the rights perspective (London 2011: 102).

Given the previous considerations, we tried to analyze both the Romanian debates on regulating medically assisted human reproduction and the discussions we had with women who want to become surrogate mothers, regarding the following aspects¹:

1. The fight against poverty and the fact that in Romania there is a phenomenon of feminization of poverty (Băluță et al. 2011), which would create unfavorable context in which the services of a surrogate mother can become an alternative to poverty.
2. The difference between a legal framework and effective access to it - these services can be of benefit only to certain people, given the high costs of surrogacy. The importance of distinguishing between informed consent and constraint consent, based on financial needs and poverty.
3. Non-comprehensive debates on choice, privacy and autonomy.
4. Regulating/legalizing surrogacy can create a system that permits the objectification of the female body, the uterus being a means to and end for surrogate contract that can benefit another person.

¹The matters listed can be found in „A reproductive justice analysis of genetic technologies” REPORT ON A NATIONAL CONVENING OF WOMEN OF COLOR AND INDIGENOUS WOMEN, 14 to 18 September 2008, Philadelphia, PA, the organization called Generation Ahead, p.11-12;
http://www.generations-ahead.org/files-for-download/articles/GenAheadReport_ReproductiveJustice.pdf ;

Applying the reproductive justice lens on the legal debates in Romania

Medically assisted human reproduction through surrogate mothers produces legal consequences, both at international level - fundamental rights and freedoms, such as the right over one's own body, the right to private life, the prevalence of the interests of the child etc. - and at national level - the national law of each state regarding public order, adoption, filiation etc. Given the effects of surrogacy on national law, the right to procreate or the right to access AHR are not subjects to international regulations or case law (Barac 2014). Thus, in order to regulate the issue of surrogacy, Romania has to enforce the principle of dignity and identity of the human being, to guarantee respect for the integrity and the fundamental rights and freedoms to the application of biology and medicine, for all persons without discrimination. Basically, there is no positive obligation of states to regulate people's right to procreate, each member state has a margin of appreciation (or margin of state discretion) ¹.

However, for developing countries such as Romania, a lack of regulation can mean a lack of protection and even exposure of potential surrogate mothers to unknown risks, caused by their position of vulnerability (poverty, access to information and resources etc.).

Reproductive rights have always been regulated on a national level according to the ideas generated by social institutions such as school, church, or family, but also taking into consideration the needs and interests promoted in the political or economic sphere. The woman's body has always been the object of regulation, even though she rarely was a participant in the regulation process, thus we agree with the argument that the woman as an individual was a subject to the external rules of thought and behaviors (Vincze 2012).

Until the enforcement of the new Civil Code², medically assisted human reproduction (AHR) was not regulated in any way by the Romanian legislation. These services were offered by medical laboratories/clinics all over the country, which took advantage of the lack of provisions, by developing internal regulations through which they provided services like in vitro fertilization (IVF) and others. Even with this elliptical regulatory framework, we believe that the procedures that are implied by surrogacy cannot be

¹Applies to state members of the European Convention of Human Right – Case law S.H. c. Austria, 2010;

²January 1, 2011 – Parliament of Romania enforced the new Civil Code – Law no. 287/2009;

interpreted as being legal, because they do not satisfy the mandatory condition of therapeutic purpose required by the Civil Code (Barac 2014).

However, there have been several legislative efforts to regulate medically assisted human reproduction, including surrogacy, but none of them materialized into an enforceable law.

The draft law from 2003 was declared unconstitutional¹ for the following rights violations: the special protection and assistance to children and youth people (Art. 49 (1) CR); a person's right to freely dispose of himself/herself, without violating the rights or freedoms of others, public order or morals (art. 26 (2) CR); right to one's own image - the clauses in the text of the law considered contrary to the moral order, that life and health of a conceived but not unborn yet child cannot be the subject of a transaction (art. 30 (6) CR); the respect and protection of intimate, family and private life (art. 26 (1) CR); right to life, physical and mental integrity (Art. 22 (1) CR); the principle of equality before the law and public authorities - on condition that the right of a person to resort to medically assisted human reproduction belonging to a couple is discriminatory for individuals (Art. 16 (1) CR). In 2009, there was another draft law on assisted human reproduction that was rejected by the Parliament because it had confusing terminology and other formal issues (Guțan 2011: 227).

The most recent draft law on assisted human reproduction was in 2013 and the legislative process is currently blocked by the debates on the proposal of expanding the regulatory framework created by the new Civil Code, including the legalization of surrogacy (Barac 2014). One of the heaviest critics of this draft law comes from the civil society. The European Center for Law and Justice² has issued a *Memorandum on the legislative proposal on medically assisted human reproduction* through which they require the Parliament to reject the proposal. This memorandum makes two important points: (1) it criticizes the lack of public debate on the issue of AHR, failing to implicate all the stakeholders of the matter and (2) it mentions that there might be certain categories of vulnerable people, highlighting the fact that poverty plays an important role in the decision making process of participating in any assisted human reproduction procedures – donation of gametes and embryos, uterus – without having the proper information of all the risks and implications (Popescu 2013: 5-6).

¹Constitutional Court of Romania – Decision no. 418/2005 based on the Constitution of Romania (CR) 2003;

²ECLJ is a Non-Governmental Organization dedicated to the promotion and protection of human rights in Europe and worldwide. The ECLJ holds special Consultative Status before the United Nations/ECOSOC since 2007.

Even though the legal debate in Romania has a pluralistic view on surrogacy, it focuses very little on the issue of guaranteeing informed choices and on the consequences any legislation on assisted human reproduction through surrogacy might have on the most vulnerable actor involved – the potential surrogate mother. Thus, we state that the reproductive justice framework is completely ignored in the Romanian legal debate on surrogacy not taking into account issues related to access to information, the barriers imposed by poverty which can represent a decisive factor in the choice, or external pressures to provide.

Methodology

Given that the matter of surrogacy is a sensitive topic, we found it difficult to contact people who can act as "gatekeepers", which is generally a requirement in health care research. Also, taking into consideration that in Romania the empirical research on surrogacy is very poor¹, we resorted to an exploratory research as a first attempt of exploring the subject. The only way we managed to contact potential surrogate mothers was through a wide search on the internet which finalized with finding a few phone numbers in the "comments" section of articles about surrogacy in Romania. Later in the research we learned that the main way in which women in Romania are "promoting" themselves in order to become surrogate mothers is through the internet.

Of the 15 people we managed to contact², only 5 of them agreed to grant us an interview through telephone. The research was qualitative and was conducted through a semi-structured telephone interview. Despite the fact that telephone interview is a qualitative research method that has multiple criticisms (lack of eye contact, reduces access to depth discussions, so the quality of the information obtained may be affected etc.) (in Novick 2008) in this research we used this method for the following reasons: a) given that this is an independent research that had no funding, the telephone interview was a cheaper option, especially because the people we contacted were geographically dispersed; b) given the research subject is taboo for the people involved (Novick 2008), in part because of the fact that surrogacy is in an unregulated, legal grey-area, certain information could be obtained more easily through phone interviews, due to the greater anonymity (most people we contacted and who agreed to answer our questions

¹Given the search engines which we had access to, we did not find any quantitative or qualitative data on surrogacy in Romania.

²Even though we found over 30 phone numbers, some of them were invalid or out of order.

reminded us the importance of fact that we did not know their identity (A. "I know that everything is anonymous, the name that I used on the web site is not real").

We emphasize on the aspect that we were constrained by the contact information we've found on the internet and the availability of the people contacted. We did not have the option of selecting our subjects, we had to try and gain as many information possible, from the few people that agreed to answer. We did not have access to database of clinics that offer AHR services that would have permitted us to interact more with the actual respondents (Einwohner 1989, Blyth 1993, Hohman and Hagan 2001).

The questions in the interviews aimed at finding out the motivations that women in Romania have for becoming potential surrogate mothers, the information that they hold about this procedure, the expectations they have from the potential parent/ parents, the advantages and disadvantages that they have considered in the decision making process, if and how the decision was or was not influenced by the husband or relatives and we also tried to collect some personal data, such as age, marital status, education, income, in order to sketch a their profile.

Discussion and preliminary remarks

Most studies done in countries like US or UK (Einwohner 1989, Blyth 1993, Hohman and Hagan 2001) have observed that surrogate mothers have, in general, a secondary education and their motivations for resorting to such a process were not linked only to a precarious financial situation (Busby et al. 2010: 19). Moreover, the profiles of mothers were not those that would be expected - not poor, not part of ethnic minorities, not pressured by family and had the necessary information about the surrogacy process. (Busby et al. 2010: 25). On the other hand, there are studies like the one conducted by Pande (2010) in India, that outlines a different world of surrogacy in which women perceive the idea of being a surrogate mother as labor and this work is heavily stigmatized in India and is often associated with prostitution (Pande 2010: 945). As noted above, there is a major discrepancy between studies done in Global North and the ones done in the Global South, there for any information regarding surrogacy should contextualized to the concrete situation.

In the 5 interviews that we conducted, 4 were with women who want to be surrogate mothers and one with a husband of a potential surrogate mothers. The data collected in the interviews contains aspects that appear both in the specific studies from the Global

North and the Global South. For example, the stated motivations for becoming a potential surrogate mother were many, but the most striking was that of financial need:

C. 23 years old: „If I do it, I'll do it for money! The criteria...I told you...the problem that I was facing...that I am facing now ... a bank debt which I could not honor ... I ran out of a job and so did my husband and now we are working on black labor market ... small jobs, when we can find them.”

A., 40 years old: „The advantages are financial...and a birth, from my point of view as medical staff member, is a benefit to a woman's body”.

On the other hand, we also had answers that referred to the desire to help an infertile couple or the aim of doing a good deed:

M., husband: "how to say thisand even though it would be legal or illegal, it is not just about money ... everyone has something in the past and you feel the need to do a good deed ... that my wife having some issues from the past that she wants to make up for... "

Only one woman was over 40 years old and, in the meantime, gave up the idea of being a surrogate mother („ Several people contacted me ... the problem with me is I am over 40, even though I am healthy, people think I am too old... although women used to have children past the age of 40.”) was also the only one who has a stable job, as a medical staff. The other women were between ages 20-29 and were currently without jobs or were working on the black labor market.

The only common characteristic to the 5 cases was that they all had children, and maximum education level was high school degree.

In most cases, the main source of information on surrogacy was the internet. They first heard about surrogacy in mass-media and they tried to gain more information online. What caught our attention was the fact that despite the briefings of what surrogacy means, they found out about the legal framework from the couples that contacted them or by contacting other women left their contact information in the comment section of various on-line articles.

A, 20: „One night I saw a movie about a surrogate mother and I said to myself to go and look it up on-line ... and I saw there many ads and said to myself I should put out an announcement ... and I did”.

A, 40: „Surrogate mother...legal or illegal, the line between legal and illegal can be crossed easily ... well ... it is neither legal nor illegal. You could not do anything wrong. You would not be putting your freedom in jeopardy.”

Although we did not set out to analyze this aspect, the interviews with potential surrogate mother have revealed that most of them have been contacted by couples from abroad and that although they would like to be surrogate mothers for Romanian women, because it would be easier, the costs are too high and the women in Romania cannot afford them:

A, 20 years old: "I talked with a lady from Spain ... I agreed, she agreed ... now I am waiting for my passport, I have to spend the first three months there. My husband does not agree with this (going to Spain), but he will leave for Italy soon".

A, 29 years old: „Initially I wanted to help a family from Romania and I am still willing to help a family here, not abroad, but unfortunately the costs are beyond expectations (...) and for those who want to have a baby the costs for treatment are very high ... and all procedures involve exorbitant amounts ”.

A 29 years old: "I shook hands with a French family, I was on the road for a good half year (...) And when I met with the biologist doctor he said that chances are approx. 20% per embryo ... it was a shock.”

Regarding the support from husbands/partners, family and close friends, except for one case in which the woman was single, the rest of women had husbands and claimed they feel supported by the husbands and the people that are involved in the process.

A, 29 years old: „ My husband supports me, he even went with me to the clinic when we did tests to see if everything is okay with me.”

The biggest fears that the people interviewed face is related to the possibility of remaining with the child or having legal problems.

M, husband: „The idea was a little crazy at first... but when we acknowledge what the implications were, we abandoned the idea ... we told ourselves that we had two small children to look after and the law is still uncertain on the matter”.

Conclusions

Having in mind the 4 aspects that we followed based on the reproductive justice lens, we can assume to say: (1) the financial aspect is certainly a very important decision making factor for the potential surrogate mothers interviewed, but unfortunately this is

not something that is taken into consideration in the legal debate in Romania. The legal framework is only discussing altruistic surrogacy, which in our opinion represents a dangerous gap between reality and the normative sphere. Taking into consideration that the women interviewed were willing to take on a major risk – even exposing themselves to a legal sanction – in our opinion an altruistic surrogacy law is not acceptable, given the fact that it would only offer the illusion of protection on reproductive rights. (2) There is an unequal position between the intended parents and the potential surrogate mothers. Only foreign westerners citizens can afford the surrogacy costs and the access to information is questionable, given the fact that most of the women absolutely rely on the information they gain from the people they were contact by, or from professionals – doctors, attorneys etc. – that are paid by the parental beneficiaries. (3) Even though aspects like choice, privacy and autonomy are vital for creating a comprehensive legal framework, the Romanian public debates lack of a contextualized approach of what it means for women in Romania to explore this option. (4) Even though the objectification of women is present, potential surrogate mothers accept the whole process by trying to detach themselves from the pregnancy and focusing on the initial motivation, proving there is a „duality of body and mind”.

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‘Humanitarian’ thresholds of the Fundamental Feminist Ideologies: Evidence from Surrogacy Arrangements in India

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Abstract: *Developments in reproductive technologies and its use for practices such as surrogacy and sex determination has challenged the very ideologies that feminism fundamentally represents; equality, liberty and justice. These challenges have become even more pronounced with a growing transnational movement for the use of reproductive technologies which is embedded in existing global inequalities. Practices such as surrogacy in ‘transitional economies’ like India has raised concerns of exploitation, commodification of women and children from a structural injustice, racist and colonial perspective and stirred yet again the discourse on violation of women’s bodily integrity and reproductive justice. Drawing on the Feminist ideologies of equality (socio-economic, health, legal), liberty (freedom of choice, autonomy) and justice (social and reproductive justice), the paper aims to identify the ‘humanitarian’ thresholds of Feminist ideologies and its global relevance to reproductive justice using a case of surrogacy arrangements in India.*

This paper observes that the surrogacy practice reinforces the existing global inequalities and causes exploitation, commodification of women and children and violation of basic human rights. Technologies such as surrogacy provides a wider reproductive choice for the affluent people but at the cost of the health, freedom and life of some others (mostly the less affluent women) while designating substantial control and power in the hands of intermediate institutional agencies. While scholars have proposed alternative solutions to reduce inequalities, the debates between ‘liberty’ and ‘justice’ are yet to be resolved. The liberals support the idea of procreative autonomy, individual rights and unlimited choices. However, the reproductive justice framework aims at identifying individuals also as social beings in order to be able to analyse the implications of reproductive technologies on women’s dignity and integrity as well as in the context of international rights relations.

The Asian Communities for Reproductive Justice (ACRJ) developed a Reproductive Justice framework that acknowledges the histories of reproductive oppression in all communities. This model is based on organizing women/girls to change structural power inequalities by examining the control and exploitation of women’s bodies, sexuality and reproduction which has been used as an effective strategy for controlling women and communities, particularly those of color manifested through the multiple oppressions of race, class, gender, sexuality, ability, age and immigration status.

Global markets based on the supply of ‘free-of-cost’ or cheap and uncomplicated wombs have developed as a solution to ‘infertility’ or to the ‘profound socio-economic inequalities’. However, pregnancy contracts put women offering this service through social stigma, psychological challenges, violation of her bodily integrity and moreover their health, freedom, liberty and even life at stake. Hence this motherhood market does not conform to

the broader reproductive health-rights-justice from a feminist perspective and clearly crosses the 'humanitarian' threshold of the very ideologies that 'feminism' and 'reproductive justice' itself stands for.

Keywords: Surrogacy • Global Inequalities • Reproductive Liberty • Social/Reproductive Justice • Human Rights • Feminist Ideologies • Humanitarian thresholds of feminism

Introduction

Feminists have upheld the inclusion of certain reproductive rights as international human rights especially in using medical technologies for abortion (ICPD 1994, UNFPA 2004). However, in the last two decades, developments in reproductive technologies and its use for practices such as sex selective abortions and pregnancy contracts has challenged some of the very ideologies that Feminism fundamentally represents; equality (socio-economic, health, legal), liberty (freedom of choice, autonomy) and justice (social and reproductive justice). While scholars have proposed alternative solutions to reduce inequalities, the debates between 'liberty' and 'justice' are yet to be resolved. This paper aims to identify the 'humanitarian' thresholds of these Feminist ideologies using a case of surrogacy arrangements in India and its global relevance to reproductive justice. It is beyond the scope of this paper to include all the feminist discourse, but the aim is to include those that are relevant to transnational surrogacy arrangements especially in the context of 'transitional economies' like India. The paper draws on my research conducted between 2009 and 2010 from participant observation and personal accounts of 13 contract mothers¹, six of their spouses, five intended parents and five doctors in two IVF (In-vitro Fertilisation) clinics in Western India (one clinic had a surrogate home² and the other without surrogate homes³). Most of the contract mothers (7/13) had relinquished the child(ren), four were in the post-natal stage and were caring for the new born babies and the remaining two were pregnant as a contract mother for the first time.

Some of the known reasons for transnational surrogacy are; legal diversity; resource constraints (cost, expertise, equipment and waiting lists); quality and safety; and

¹ In India, women referred to themselves as 'surrogate mothers' and intended parents as '*party wale*' (a Hindi terminology commonly used for buyers in business dealings) in conformity with the market settings of the practice.

² Surrogate homes are hostel like accommodation and some clinics make it mandatory for contract mothers to stay here during pregnancy.

³ Contract mothers were allowed to stay with their families with conditions depending on what the intended parents wanted them to do such as; change their place of residence if they didn't like the place they lived in, they were not allowed to do any housework, eat spicy food or have physical intercourse with their spouse lest the fetus is affected.

personal considerations (support networks and privacy concerns). Many countries in Europe prohibit all surrogacy agreements; Austria, Bulgaria, France, Germany, Italy, Norway, Portugal, Switzerland, Spain and Sweden. While in some other countries, certain groups of persons are prohibited such as; homosexuals and single parents. In Belgium, Denmark, Ireland and the United Kingdom altruistic surrogacy is allowed. Other countries in Europe and Americas are comparatively permissive (Belgium, Ukraine, Russia, and Poland) creating a patchwork of legally 'restrictive' and 'permissive' countries. People seeking surrogacy options hence move from restrictive countries to comparatively permissive countries. Russia, Ukraine and USA continue to be popular destinations for surrogacy. Although most of the movement for surrogacy is from 'affluent' to 'transitional' economies, it may not always be the case. Affluent people also move from Asia, Europe and Australia to USA.

Until 2014, it had seemed that India was the only prominent destination for global commercial surrogacy in Asia. It was not until Baby Gammy was abandoned by an Australian couple in 2014 because he had downs syndrome that the existing market in Thailand became globally evident. In the same year a Japanese man was found to be a commissioning parent for at least 16 babies born through surrogacy in Thailand and thereafter the government decided to ban surrogacy. Similarly, the hidden markets of surrogacy in Nepal came to light after the earthquake in 2015; when an Israeli government operation airlifted 26 babies stranded in Nepal born to their citizens through surrogacy and callously left behind about 100 contract mothers in a disaster zone. Following this episode, Nepal banned surrogacy in 2015. With a spread of information on women being retained in surrogate homes and evidence of other exploitation within the practice, India too banned commercial surrogacy for foreigners since November 2015. Similar stories from Mexico about poor women desperate for money being involved in surrogacy, also prompted a ban on surrogacy in this country in 2015. Meanwhile Cambodia, Dubai, Iran and Lebanon are the emerging hubs for surrogacy. Despite this ban, some of the concerns on inequalities, exploitation and injustice remain. In India, surrogacy will be allowed only for those needy people seeking this service and a case-to-case review will be conducted for all such requests. Transnational surrogacy is one source but many affluent people who can afford these services from within the country also use the services of poor women through agents and clinics.

India has been a global attraction for transnational surrogacy also because of affordability. The expenses of surrogacy in India is generally only one-third (50,000 USD) of its cost in USA (200,000 USD). However, this may not always be true as the cost largely depends on the number of IVF trials before a successful pregnancy, additional cost charged by clinics for multiple births, neonatal intensive-care units and many other unanticipated costs (Saravanan 2013). Intended parents preferred India also because some of the clinics monitored the contract mothers throughout the pregnancy in 'surrogate homes' and the payment pattern was attractive to many as nothing much had to be paid until the baby was physically handed over to the intended parents (Saravanan 2013). One intended mother from Canada in my study explained, *"Although it is legal in my country (Canada), the process is very complex there. The law makes it mandatory for contract mothers in India to sign off all their rights towards the baby even before the surrogacy begins, which is a big relief"* (Saravanan 2013).

The more affluent source countries have been criticized for allowing their citizens to avail surrogacy services by using the vulnerability of impoverished citizens in 'transitional economies' like India, while protecting their own citizens. The destination countries have also been blamed for viewing surrogacy merely as an opportunity for economic gains and thereby permitting objectification and exploitation of their own citizens, especially when the citizens of their own country do not have adequate access to basic health care services. While high quality reproductive health care is provided to 'contract mothers' during their contract pregnancies, they have had almost no access to any quality health care for their own pregnancies. This disparity brings to light reproductive injustice that accords a higher value to certain pregnancies and babies (Bailey 2011). It is important to overview the kind of existing inequalities in transitional economies like India to understand the socio-economic circumstances in which the contract mothers make choices and decisions.

1.1 Overview of Inequalities in India

Although poverty in India has reduced over time, according to official figures 267 Million (22 %) of the total population in India presently live below the poverty line (NSSO 2013). The McKinsey Global Institute (MGI) developed a revised analytic index, the 'Empowerment line' which estimated that 680 million people, 56 per cent of the population lacks the means to meet their essential needs (Gupta et al. 2014). Also

important to note is the extent of gender inequalities in India. While India has shown considerable improvement in overall literacy levels more than one-third of the women still cannot read and write. Despite a high enrolment rate at primary school, a larger number of girls and boys drop-out from school before completing secondary schooling (52 and 53 per cent for girls and boys respectively) (MHRD 2014). Many of these girls and boys who drop-out from schools are married off young. Data shows that women with no education are six times more likely to be married than those with 10 years or more of education. According to the NFHS (National Family Health Survey) data, 47 per cent of the girls are married before the legal age (18 years) leading to early childbearing (IIPS and Macro International 2007). One in six (16 per cent) girls in their youngest reproductive age group (15-19 years) begin child bearing (IIPS and Macro International 2007). The average age of marriage in India is 17 years and the average age at childbirth is 19 years.

Women usually of the above given socio-economic background are the ones participating in surrogacy. Most contract mothers are illiterate or on an average have completed only up to middle school (Saravanan 2013, Pande 2010). The employment opportunities they can chose from is hence very limited. Contract mothers work as household-help, agricultural labourers and some were even 'homeless' (Saravanan 2013). The remuneration offered through surrogacy, although unequal, is hence of great significance to them. By participating in surrogacy, the contract mothers earned approximately 250000 to 500000 Indian Rupees (USD 4000 to 8000), an amount they would take at least 15 years to earn with their present earnings. They participated in surrogacy mainly to provide their family with basic needs; adequate income, food, education for their children and to avoid slipping further into poverty. Some of their financial needs were to; repay debts, to buy a house and thereby save on the house rent, to add to their savings and to avoid falling further into debts (Saravanan 2013; SAMA 2012; Pande 2010). Some contract mothers had serious health problems in their households which needed immediate medical treatment; either an ailing family member or a child with severe disabilities (Saravanan 2013). These socio-economic circumstances effect their negotiation powers leading to unjust surrogacy arrangements. Pande (2010) observed that the contract mothers with higher education attainment had an enhanced negotiating power in the surrogacy process.

1.2 Inequalities in the Surrogacy Arrangements

Disadvantaged women are more vulnerable to the unjust surrogacy contracts and to face further kinds of exploitation within the contract. Contract mothers in India have comparatively lesser rights over the child, no legal or psychological support, they receive a lesser share of the total surrogacy costs, submit to unfair payment pattern, with no additional payment even for a miscarriage, are not safeguarded with medical/life insurance and some clinics make it mandatory that they remain in 'surrogate homes' away from their families. Contract mothers have to sign off all rights over the child while entering into the contract, according to the ART (Assisted Reproductive Technology) Bill. The clinic with surrogate homes did not allow the contract mother to see the child(ren) as they are whisked away while she is half-conscious after a caesarean section. While the other clinic with surrogate homes expected the contract mother to bond with the child for a lengthy period of time (varying from 3 weeks to 3 months) and then they are abruptly separated from the child(ren) without a plan for future relationship with the parents/baby or much psychological assistance.

Although the success rate of the gestational surrogacy is considerably low, the contract mothers are not given any compensation if they experience a miscarriage at any stage of the pregnancy. Studies reveal that the overall pregnancy rate per cycle after IVF surrogacy was only 24 per cent, with a clinical pregnancy rate of 19 per cent, and a live birth rate of 15.8 per cent, while the clinics usually publish an exaggerated success rates on their websites (Goldfarb et al., 2000). Although legally only 3 embryos are allowed to be implanted into the contract mother's womb in India, up to 5 embryos are known to be implanted with a high likelihood of multiple pregnancies. In case of these multiple pregnancies (triplets), the doctor suggests "selective reduction" of one or more fetuses. This procedure may also result in; miscarriage of the remaining fetuses, preterm labor or infection. The preference of the contract mother is not asked either for the number of embryos to be implanted or in the decision making about selective abortions. In the surrogacy contract, women have to sign off all rights on medical interventions. Only a nominal payment (36 Euros per month) is made to the contract mother, but the bulk amount (2500 Euros) is paid only after she hands over the baby. In the words of one of the intended parent *"it's a good incentive for her (the contract mother) to keep the baby*

and not miscarry as she doesn't really get compensated until the very end" (Saravanan 2013).

Maternal mortality in India is high at 174 per 100000 live births compared to the one digit numbers in most developed countries. One of the major reasons for health problems during birth is deficiency of hemoglobin. More than half the women in their reproductive age group (15 to 59 years) in India are anaemia (55.3 per cent) and more than one-third are underweight (35.5 per cent) (IIPS and Macro International 2007). Although it is known that contract mothers are given the best medical facilities during pregnancy and delivery, a few deaths of contract mothers and egg donors have been reported in India. One contract mother, Premila Vaghela in Anand, reached the hospital for a regular check-up in the eight month of her pregnancy and had convulsions, the first thing the doctors did was an emergency caesarean to remove the child, she died soon afterwards of a severe cardiac arrest (ToI, May 2012). She is also reported to have had hepatitis related complications. Another contract mother in South India Easwari, died of severe post-partum hemorrhage. She was referred to another hospital for treatment as the clinic was ill-equipped and was also asked to pay for her own transport expenses; she died en-route. Easwari was a second wife in a polygamous marriage and the husband had seen an advertisement in a local newspaper and coerced her into this process (Global Bioethics Blog 2012). There are also cases of women, even teenagers who have died of egg donation. What goes unreported though is the near-death situations and those causing life-long health or psychological problems. The other unknown health impacts that contract mothers face is from the excessive and repeated doses of hormones as many have to go through several trials before a successful conception. There have been no studies on the health or psychological impacts of surrogacy on the contract mothers, the children or on the intended parents.

The contract mother's consent is not asked regarding their preferred kind of contract (open or anonymous); the payment pattern or the kind of relinquishment (whether they would prefer to see the baby or keep the baby for a particular period before relinquishment). In m study one clinic had not given the contract mothers a copy of their contract and the other clinic had registered the intended mother as the pregnant woman rendering the contract mothers completely anonymous and making it impossible for them to file a legal case against the medical institution (Saravanan 2013). While, in the USA, contract mothers are provided with social support group, insurance for multiple

pregnancies, maternity benefits, life insurance, psychological support, compensation for all expenses and loss of employment and also assisted with legal representation among many other rights and benefits.

The medical practitioners in India earn a much higher share of the surrogacy benefits. In the USA, surrogacy costs approximately 200,000 USD of which 73,000 USD (about 35 per cent) is paid to the contract mother (Surrogacy Source Companies 2015). Whereas in India, they are paid only 15–25 per cent of the total costs (Saravanan 2013). The profits earned by the medical practitioners is evident in a forthcoming building complex planned by one popular clinic in Western India which is published online (Dailymail 2013). It was called the world's first baby factory and was being built as an all inclusive complex including; self-catering apartments for couples, a floor for contract mothers to stay, offices, delivery rooms, the IVF clinic, restaurants and shopping area costing millions of Indian Rupees.

Some clinics in India make it mandatory that women stay in 'surrogate homes' during the entire surrogacy process that can last for almost a year. It is more than three decades since Andrea Dworkin (1983) wrote about 'reproductive brothels' wherein technologies similar to animal husbandry would be used on women. She described 'farming model' within which women will sell their wombs using in-vitro fertilisation. Women will be held in places similar to prisons where they cannot move freely and will be restricted to a strict standard of behaviour and sell themselves to make babies. This might have then sounded like a piece out of science fiction, but the reality of this fiction can be seen in the surrogacy markets in India today.

1.3 Surrogate homes

Within the surrogate homes, beds are lined up in a hostel like environment where women are being over-fed, they are restricted in movement, they are not allowed to use the stair- case, even the elevator cannot be used without the assistance of the nurses or other hospital personnel. They are not supposed to do any work, food is provided to them and all other housework is taken care of. They have to spend their entire time in their beds, watching TV, talking to each other or with their family members on their mobile phones. Their own children and family were allowed to visit their mothers only on Sundays, under restrictive conditions and they are not allowed to go home. One of the clinics I visited had installed cameras in each of their rooms to monitor the contract

mothers. The contract mothers complained of water shortage, cramped conditions, substandard food quality and poor sanitation and hygiene at the surrogate homes for which they have had internal conflicts as well as confrontations with the warden. The contract mothers living in these homes were missing their families but were trying their best to keep themselves cheerful. Pande (2010) deconstructs the contract mother's experiences in order to develop a deeper knowledge of the complex realities of these women. While some authors criticize the concept of surrogate homes as a place where women are detained during the surrogacy pregnancy and how this affect their other children and immediate family, others see these homes as a gender-safe environment providing emotional links and sisterhood among the women through intensive contact to share information and grievances with one another and to come up with strategies for future employment and possibly even acts of collective resistance. This helps to understand the micro level agency but it is also important to take into context the broader socio-cultural issues.

It was normal for contract mothers to be asked to wait after delivery for taking care of the children. There were three kinds of situations that I observed in the clinic with surrogate homes where the contract mothers had to wait after delivery (Saravanan 2013). One contract mother had to wait along with the baby girl in a children's hospital because the intended parents had arrived from abroad late (20 days after the child was born). According to the doctor, there was nobody who could take better care of the child than the contract mother herself. She was breastfeeding and caring for the baby along with her husband (Saravanan 2013). Another contract mother was asked to take care of the babies for 2 months in a hotel room as a full-time nanny while waiting for the children's passports and because the intended mother was unable to look after the twins. And yet another NRI (Non Resident Indian) couple asked the contract mother to remain at the surrogate home after birth so that she could provide her breast milk but through breast-pump as they didn't want the child to bond with her. It is assumed that the contract mothers will be willing to do just anything and the justification given by the medical practitioners and intended parents is that they are paid in return for all their services. Being confined to 'surrogate homes' during their pregnancy hence meant women are denied participation in public life and cannot meet their non-reproductive aspirations such as; educational, occupational and any other social well-being. Many of the above mentioned surrogacy procedures in India are a violation of basic human

rights, dignity and freedom as stated in Articles 1¹, 2², 9³ and 14⁴ of the Universal Declaration of Human Rights and The Universal Declaration on Bioethics and Human Rights 2005⁵ (UNESCO 2006; UN 1948).

2. Reproductive Liberty

In order to understand the political totality of liberty from a Feminist perspective it is important to reflect on the various levels that may work in conflict or favour of women's equality. The political structures and constitutional rights define liberties, while the familial and micro level organisational agencies operate within this broader political structure (Eisenstein 1981). In the context of surrogacy, the state plays a significant role in determining the policy, while the agencies operate at the micro level and it is here that alienation, commodification and patriarchy plays on the vulnerabilities and inequalities affecting women's autonomy and consent.

2.1 Alienation

A system that expects the contract mother to isolate herself from any emotion or attachment to the fetus growing inside her while considering the genetic connections as superior is described as alienated labour, objectification, commodification and denial of subjectivity (Saravanan 2013, 2010; SAMA 2012; Tieu 2009, Berkhout 2008, Van Niekerk and Van Zyl 1995). Requiring a contract mother to decide even before the pregnancy about her feelings in this relationship (motherhood) during and after birth and thereby repress any feelings that may possibly emerge towards the child during pregnancy or childbirth and then giving others the power to hold her guilty if she diverges is alienation (Pateman 1988). *"What if, despite her initial intentions, she finds herself coming to love her own child?"* (Anderson 2000: 27). Hence some of the arguments that emphasize on women's empowerment reflected in the contract mother's

¹The Universal Declaration of Human Rights, Article 1 states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (UNESCO 2006).

² The Universal Declaration of Human Rights, Article 2, states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UNESCO 2006).

³ The Universal Declaration of Human Rights, Article 9 states, "No one shall be subjected to arbitrary arrest, detention or exile" (UNESCO 2006).

⁴ The Universal Declaration of Human Rights, Article 14 states, "Everyone has the right to freedom of movement and residence within the borders of each state".

⁵ The Universal Declaration on Bioethics and Human Rights 2005 recognizes that technological advancements in medical science should be ethically sound, giving "due respect to the dignity of the human person and universal respect for, and observance of, human rights and fundamental freedoms" (UNESCO 2006: 3).

ability and power to be able to detach from the feeling of motherhood with the fetus growing inside her violates the integrity of women who may develop an attachment for the child. The individualistic approach limits the enquiry of reproductive technologies as an institution. Scientifically also there is evidence that the mother and child relationship cannot be completely alienated as it is now a known fact that cells migrate during pregnancy and this exchange occurs not only from the mother to the fetus but also from the fetus to the mother (Dawe 2007). Meaning all the babies and the contract mothers have exchanged DNA (Deoxyribonucleic Acid) material during pregnancy. There is a debate among scientists whether or not 'DNA' can be accepted as 'genetic material' and if it is so, all contract mothers should be considered 'birth mothers' and the entire definition of 'gestational surrogacy' and descriptions of wombs as containers could be questionable. Moreover, erasing a birthmother from her maternal identity and denying her such rights within surrogacy contracts can only be possible under the garb of patriarchy (Cornell, 1998).

2.2 Patriarchy

While some academics consider surrogacy as an arrangement that reinforces stereotypical notions of motherhood and women's social roles, (Berend 2010, Roberts 1998) others say, the contract mothers defy these common definitions of nature and motherhood by being able to define their own pregnancy with the child termed as 'incubated' (Teman 2009, Shalev 1998). Most people seeking surrogacy desire children not merely for themselves but also because they have endured social stigma due to childlessness and to acclaim social dignity. In India, it is known that having a baby is valuable for women as they are symbols of motherhood and it increases their honour and esteem in the eyes of the in-laws, especially so on the birth of a boy child (Mishra and Dubey 2014). This is reflected also in surrogacy practices. In India, it has been observed that having a boy child would entail higher bonus amount for the medical institutions, brokers and the contract mother as intended parents tend to be more contented. Contract mothers are also blamed in case the child has some problems (disability or sometimes even for the birth of a girl child). It is understood that they would not be paid any bonus or sometimes they are not even paid the full amount promised in the contract with the birth of a child with disability. Another stereotypical role of women is the tendency to put other's need and priorities before their own (Baker

1996). This motivation is evident among contract mothers in India who want to sacrifice their lives for the sake of the family (Saravanan 2013, Pande 2010). The surrogacy markets hence operate amongst those who (consciously or unconsciously) subscribe to patriarchy (a subordinate position of women in society) and they may not always necessarily be men. These may include lawmakers, medical institutions, contract mothers themselves, intended parents and brokers consisting of people from different gender categories including 'women'. Another instance of State enforced patriarchy is the example of Israel, where the surrogacy laws is strongly patriarchal (Shalev 1998). Patriarchal control and racial privilege, is reinforced over women's reproductive bodies through law implementation. Only people who are married, heterosexual and both Israeli partners with a Jewish descendent proof can opt for surrogacy in Israel. In Israel, couples have to go through psychological and genetic testing to prove that they are not 'unsuitable' so as to prevent the birth of 'unhealthy children' (Shalev 1998).

2.3 Commodification or Autonomy of Women and Children

Carrying a child for someone else is equivalent to reducing a human being to a 'material object', as a 'means to the gains', a 'baby oven' (Berkhout 2008). The concern is that such reproductive technologies violate the integrity of woman's body and her dignity in ways that are demeaning, also referred to as a form of 'violence against women' (Raymond 1993). The manifestations of objectification in the surrogacy arrangements include; instrumentality, denial of subjectivity, inertness and exchangeability (Berkhout 2008) and there is enough evidence of all these kinds of objectification of contract mothers in India (Saravanan 2013, SAMA 2012, Pande, 2010).

2.3.1 Commodification of Children in India:

The payment pattern in India is targeted towards the child and not for the reproductive services of the contract mother (Saravanan 2013). Some clinics pay the contract mothers according to the weight of the child born putting a pressure on the contract mothers to eat more. The medical practitioners fix an extra charge on the birth of every additional child (in case of twins), a small proportion of which is paid also to the contract mother as a bonus amount. Most babies born, especially of multiple pregnancies were preterm and grossly underweight and hence rushed immediately to the Neonatal Intensive Care Units. It is not known how many of these children survive.

There are instances of disabled children born through surrogacy left in orphanages or on the streets in India. My research also found some children who were left stranded in India without any identification (passport) as their intended parents had been involved in surrogacy illegally. These children were taken care of by strangers while their parents shuttled between two countries as they could visit India only on a tourist visa (Saravanan 2013).

Since several decades, feminists have cautioned about the exploitative aspects of surrogacy contracts, making use of the vulnerability of poor women to produce babies for the wealthy people which has raised further concerns about the racial and colonial dimension of such markets (Mahoney 1988, Rhode 1989). Many of those who are against prohibition too agree that surrogacy arrangements have an exploitative potential due to class, race and structural inequalities (Andrews, 1986; Purdy 1992). This is relevant not merely in India but also all over the world where women of lower socio-economic status are being used for surrogacy by the affluent. Those critiquing surrogacy see such contracts as exploitative especially when women enter into such contracts for money (Field 1988; Pateman 1988, Rothman 1989, Okin 1990). Economic motivations, a contract out of dire economic needs hence cannot be defined as free choice (Raymond 1993, Dworkin 1983, Rhode 1989, Field 1988, 1990; Pateman 1988; Rothman 1989; Okin 1990). The intentions of the intended parents are criticized as being opportunistic towards individualized benefits at the expense of the poor, creating a class of 'breeders' (Mahoney 1988). In India, surrogacy functions as a free-market system where there is a surplus of contract mothers willing to comply to the unjust contracts due to their desperate need for money as well as a long list of intended parents demanding this service. The surrogacy practice in India reinforces inequalities, causes exploitation, commodification of women and children and violation of basic human rights. These technologies provide a wider reproductive choice for affluent people at the cost of the health, freedom and life of others and gives control and power to several intermediate institutional agencies. Raymond (1993) is sceptical about what is being offered to women in the name of reproductive technologies and the ease in which 'right to chose' is becoming more and more a 'right to consume'.

2.4 Subjectivity and power relations

Some academics describe the power of ‘agency’ and ‘subjectivity’ of contract mothers in India and celebrate their power and decision making capacities in dealing with complex situations representing negotiations and strategizing at the micro level (Pande 2010, Deomampo 2013). Contract mothers are said to be involved in collective resistance within the surrogate homes regarding food, hygiene and relationships formed within the ‘homes’. The same authors also note that such resistance is least likely to change the structural exploitation in the surrogacy process (Pande 2010, Deomampo 2013). The system treats contract mothers in India as nothing more than ‘wombs for rent’ having relevance to commodification, exploitation and violation of women’s bodily integrity Deomampo (2013).

Deomampo (2013) observes ‘agency’ applied by women in India who convince their husbands to allow her to participate in surrogacy. However, neither the state nor the family consider her ‘rational’ enough to take her own decisions as she had to legally take the permission of her husband to participate in surrogacy. Surrogate agents (generally ex-contract mothers) looked for desperately poor women who are selling their body by involving in drug trials. Agents also combed the poor-income residential areas in search of women facing financial hardships or family problems and convince them to become contract mothers. One of the important information conveyed to contract mothers was the clarity about chastity in the surrogacy process. On being thus informed, women convinced their husbands. Women generally also try to convince at least one friend or a relative to go along with them into the surrogate homes for the first time as they are scared of the unknown (Saravanan 2013). Where men first received the information, they have convinced their wives and other women in the family into this practice. In my field research I didn’t come across any women who had to convince their husbands for repeating the surrogacy process. Some men quit their jobs and coerced women into repeated attempts of surrogacy. Contract mothers who have had their uterus removed in complications during delivery is not unheard of in India. There are no studies that have been conducted as yet to know how much of this agency is exercised by contract mothers after their reproductive capacity becomes dysfunctional. This is not to say that contract mothers are timid, submissive or completely passive in the entire process or afterwards in familial relationship or with the medical institutions but too much focus

on subjectivity and micro-level autonomies that women exercise within the process of surrogacy mystify the larger picture of structural inequalities and injustice.

3. Reproductive Rights

The liberals support the idea of procreative liberty, individual rights and unlimited choices and are against prohibition of surrogacy as it denies the contract mother's right to enter into any contract that she may wish to enter. (Katz 1986, Andrews 1986, Shalev 1989, Shultz 1990, Robertson 1983 1986). From the perspective of the intended parents, Robertson (1983) defines procreative autonomy as *"the notion that individuals have a right to choose and live out the kind of life that they find meaningful and fulfilling"* (Robertson 1983: 230). Hence Robertson (1983) justifies the use of technology for any reason that would realize the couple's 'reproductive goals'. From a Philosophical perspective this notion would be termed as 'Utilitarian' or a 'realization-based' approach which emphasizes on the 'ends' and overlooks the 'means' to the end. The primary criticism of this reasoning is that *"utilitarianism would permit grave injustice in pursuit of general happiness"* (Saravanan 2015: 4).

Feminists have strived for women's freedom from their stereotypical motherhood role in the society to be able to participate in the public sphere to follow non-reproductive aspirations. The contract mother's ability to separate herself from the fetus is described as a liberating experience that increases her autonomy (Baker 1996, Teman 2009, Shalev 1989). But liberation from such stereotypical roles proved by participating in precisely the same roles (reproduction for others, paid or unpaid) for someone else and being involved in an activity that limit women's participation in any other non-reproductive aspirations is highly questionable.

The argument from an individual liberty perspective is that; the state should not have the right to interfere into a woman's will to participate in surrogacy. However, Dworkin (1983) notes that it is *"The state (that) has constructed the social, economic, and political situation in which the sale of some sexual or reproductive capacity (becomes) necessary for the survival of women. The state denies women a host of other possibilities, from education to jobs to equal rights before the law"* and hence there should be more focus on providing women with all these basic entitlements and human rights so that she doesn't have to sell her body in the first place (Dworkin 1983: 182). *"But it is the state intrusion into her selling of sex or a sex-class-specific capacity that provokes a defense of her will, her right,*

her individual self" (Dworkin 1983: 182). There is a surplus supply of women choosing to be 'contract mothers' in countries like India. Women were even willing to travel abroad (from India to Nepal) to evade the law after homosexual surrogacy was banned in India in 2013. This is because they do not have access to essential basic needs such as; food, energy, housing, drinking water, sanitation, health care, education, and social security to be able to achieve a decent standard of living. In this situation of bare subsistence, their choice is between poverty or surrogacy. A similar surplus of contract mothers is not observed in affluent countries allowing altruistic surrogacy. Protest needs to be directed towards enhancing the essential needs of people in transitional economies like India. Any activity that violates a person's dignity or integrity and involves economic exploitation would not be considered a constitutional 'right' (Raymond 1993). She observes that, viewing reproductive technologies and contracts mainly as woman's choice emerges from a Western ideology of individual freedom and value neutrality. An individualistic perception overlooks the impact of surrogacy on a society as a whole and the structural injustice, racial and colonial elements of this industry.

3.1 The Regulation Question

Raymond (1993) observes that legal prohibition can be a useful tool in controlling certain human rights violations. While McLachlan and Swales (2001) draw analogies to the failures in anti-prostitution laws to argue that prevention can be ineffective. However the prohibition of sex determination and sex selective abortions in India has proved to have had a positive impact over a period of time. Despite strong criticism from liberals for being radical, feminists in India have strongly opposed sex selective abortions as a form of 'femicide' and 'violence against women' (Patel 1989, George 2006, Sharma 2001). The Supreme Court of India imposed strict regulations on the use and sale of 'ultrasound machines' since 2001 and a fine and withdrawal of the medical license on medical practitioners if caught guilty with this offence. Twenty years of implementation of the Pre-natal Diagnostic Technology (PNDT) Act has revealed that the law has been affective in controlling further elimination of girls. It is only the most powerful doctors who are confident of evading the law who continue conducting sex determination. A recent analysis of the effect of the PNDT Act using a treatment-effect analysis framework concluded that the law implementation has had a significant impact in preventing any further worsening of the gender imbalance. A possible absence of the

law would have led to at least 106000 fewer girl children in India (Nandi and Deolalikar 2013).

4. Reproductive Justice

Reproductive rights and equality has been widely discussed from a feminist perspective rather than reproductive justice. Raymond (1993) has made reference to 'justice' in the last chapter of her book 'Women as Wombs' in explaining that women's individual bodily dignity and the integrity between individuals and groups in society should be important considerations in determining international human rights. Similar reference to bodily integrity and structural inequalities has also been made from a global gender justice perspective (Donchin 2010). Using a social justice approach, Callahan and Roberts (1996) oppose paid pregnancy contracts as it contributes to subordination of women, poor and people of color. Surrogacy has also been discussed from a 'global justice' perspective as practices that aim for a world that is held together by mutual fellowship of companion as well as self-interest with an overall goal of love of human dignity for all (Saravanan 2015). Bailey (2011) critiques liberal feminism for extending Western frameworks of liberty to Indian contract mothers and criticizes feminist biomedical ethnologists for weak moral absenteeism resulting in under-theorizing structural harms and injustices. The shortcoming of her work as she herself claims is that she has not included the perspectives of radical feminists. In the context of surrogacy practices in India she suggests that in order to theorize 'reproductive justice' the starting point should be to understand the deep injustices that emerge from the surrogacy-or-poverty dilemmas that compel women to take on surrogacy. A key principle of a reproductive justice model is to bring to center the vulnerable people; the poor, people of color people with disabilities and people with non-normative gender expression and sexualities (Luna and Luker 2013). However, it is important to note that reproductive exploitation can occur also within and between these vulnerable groups.

A feminist perspective includes commitments to human rationality along with individual autonomy and to understand the social context of personal choices. Thus questions of individual reproductive freedom needs to be raised in conjunction with human progress which is required for a just society (Ryan 1990). Feminism stands for individual reproductive rights that comes along with responsibilities towards a just and humane society. Procreative liberty achieved by violating women's bodily integrity and

overlooking mutual human fellowship hence cannot be considered as an individual 'right'. According to Janice Raymond (1993), rights needs to address power imbalance, justice, self-determination and international relations which should in turn be grounded in dignity of the individual and integrity of relations between individuals and groups in society.

However, Feminists have been caught up in debates of universalism versus relativism. The difference of opinion has been on the grounds of cultural/gender essentialism and cultural relativism that is based on postcolonial theories. Narayan (1998) has expressed concerns about the disadvantages of this line of thought. Giving due respect to cultural differences and social context, it is also important to understand that women's experiences from different parts of the world even though contextually diverse also meet at some point of their lives. It is important to identify this points of convergence. It is very important that more cross-cultural studies understand this so that feminism can work in solidarity with mutual respect towards certain principles that is universally acceptable regardless of which part of the globe these women may belong to. "*A transnational feminist practice depends on building feminist solidarities across the divisions of place, identity, class, work, belief, and so on. In these very fragmented times it is very difficult to build these alliances and also ever more important to do so*" (Mohanty 2003: 530) To do so would involve building a transnational feminist alliance by uncovering the naturalization of the patriarchal, racist and other such notions of global capitalism that deter women's progress (Mohanty 2003).

4.1 Humanitarian Thresholds of Reproductive Justice

A step towards this would be to examine where reproductive technologies cross the 'humanitarian' threshold of the feminist ideologies of equality, liberty and justice. Asian Communities for Reproductive Justice (ACRJ) has developed three frameworks on reproductive health, rights and justice. The Reproductive Justice framework includes recognizing the histories of reproductive oppression in all communities. This model is based on organizing women/girls to change structural power inequalities. It examines the control and exploitation of women's bodies, sexuality and reproduction as it has been used as an effective strategy for controlling women and communities, particularly those of color which is manifested through the multiple oppressions of race, class, gender, sexuality, ability, age and immigration status. "*Controlling a woman's body*

controls her life, her options and her potential" (ACRJ 2005: 2). This model is based on the human rights framework published by ACRJ along with the SisterSong Collective with an aim to bring 'reproductive justice' into the mainstream 'reproductive rights' and 'social justice' movements.

I add another dimension of identifying the 'humanitarian thresholds' to this existing framework using the fundamental feminist ideologies of liberty, equality and justice. The first question that needs to be addressed and is repeatedly being raised is whether procreation by any means should be considered a constitutional right to be provided by the State. Infertility is universally accepted as a serious problem leading to psychological issues. These include social stigma and the strong desire of parenthood, embedded in the stereotypical concepts of 'motherhood/parenthood' and 'patriarchy'. Radical Feminists have cautioned about the medicalization of infertility, the pervasive nature such technologies and its marketing techniques that exaggerate the success rates (Raymond 1993).

The aim in examining humanitarian thresholds is to identify the humane responsibilities that may be crossed in asserting reproductive rights. Individual reproductive rights come along with responsibilities towards a just and humane society. Those seeking surrogacy face issues such as social stigma, psychological problems, physical stress of infertility treatment and violation of bodily integrity. But by opting for surrogacy in order to resolve this, they are inclined to put another woman through the same set of problems; social stigma, psychological challenges, violation of her bodily integrity and even more, put the contract mother's health, freedom, liberty and even life at stake. The surrogacy market based on the demand and supply of free-of-cost or cheap and uncomplicated wombs hence cannot be a solution to 'infertility' or to the 'profound socio-economic inequalities'. 'Reproductive justice' aims to reduce inequalities and not to use someone's vulnerability as a solution for infertility. These technologies provide a wider reproductive choice for affluent people at the cost of the health, freedom and life of some others. Hence the surrogacy arrangement clearly crosses the 'humanitarian' threshold of the very ideologies that feminism and reproductive justice itself stands for.

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Surrogacy: from Commodification to Empowerment. A Literary Perspective

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Abstract: *This article deals with aspects of surrogacy presented in the novel ‘The House of Hidden Mothers’ by Meera Syal (Doubleday, 2015). Surrogacy is explored within a postcolonial feminist framework circumscribed to the issue of power in the private and the public domains. The author asks all the relevant questions related to it, among which ownership of woman’s body (as a whole and its parts), ownership of the fetus and the born child, heteronormativity and patriarchal relations as opposed to de-linking reproduction from marriage and heterosexuality by making it available (for a price) to LGBTQI individuals, possibility of abusing Assisted Reproductive Technology (ART) in order to create ‘perfect’ individuals of one’s choice, possible or necessary regulation, and the medicalization of women’s experiences (pregnancy, abortion, miscarriage, birth, menopause). The evolution of the feminine characters revolves around their empowerment, seen as a learning process: Shyama, the ‘employer’, comes to accept her age as a normal stage in life, Mala, the surrogate mother, moves away from a commodified self and learns to speak in her name, while Tara finds her feminist voice and a new/old country where to exert it. Meera Syal’s view on surrogacy is many fold and not very definite; she asks questions and attempts to answer them, and manages that, up to a point. Nevertheless, the final idea is of optimism: although surrogacy involves so many unanswered questions, its main value lies in the possible empowerment of the surrogate mother. Given time and the right environment and the right human material, which more often than not in real life is not the case.*

Key words: surrogacy • postcolonialism • commodification of women’s bodies • empowerment

Introduction

“Each of us holds in her lap a phantom, a ghost baby. What confronts us, now the excitement’s over, is our own failure. Mother, I think. Wherever you may be. Can you hear me? You wanted a woman’s culture. Well, now there is one. It isn’t what you meant, but it exists. Be thankful for small mercies.” It is by this quotation from *The Handmaid’s Tale* by Margaret Atwood that Meera Syal decided to begin her latest novel, *The House of Hidden Mothers* (2015, Doubleday). The connection is obvious: Atwood’s dystopia (first edition, 1985) dwells on the issue of forced motherhood and on the power relationships between the childless wife, the barren husband and the maid appointed to bear them children, the story being set within a totalitarian theocratic state which has overthrown

the United States government. Surrogacy was at its very beginning at the writing of the novel¹, but the idea of (non-voluntary) impregnation of the woman is present as part of a totalitarian future in which conceiving your master's child – as well as separation from your own - was punishment for seeking freedom.

The House of Hidden Mothers, in its turn, deals with issues of power relations within the postcolonial framework, among which an important one revolves around power in the private and public spheres, regarding claims over *woman* and her body, as well as over her child. Some of the subthemes include ownership of woman's body, ownership of the unborn child, issues of the medicalization of woman's body, the aging woman's body, etc. All of them are explored in connection with the topic of surrogacy as an option for what is usually called a 'cello tape baby', i.e. a baby made to stick together an otherwise bound to separate couple: Shyama and Toby form a couple, she is in her late forties, he is much younger and wants a baby; she already has a nineteen year-old daughter from a previous marriage. As her own feminist daughter aptly puts it, "Mum's not doing this because she wants another kid, she's doing it so Toby won't leave her for somebody younger"².

Although the conflict mainly explores issues connected with surrogacy, Meera Syal throws in a bit of every other issue that has been debated over and over in the postcolonial context: Indo-English dialogue, the insider-outsider view over the Indian/English lifestyle, race and racism, language (Indian dialects vs. English), centre-periphery and shifts in the paradigm, creation of multiple centres, balancing between traditions and modernity, the trip to London, as the centre of the Empire and back to the land of origins and ancestors, etc.

¹ In 1985 the first successful gestational pregnancy was carried to term. In 1986 Melissa Stern (otherwise known as 'Baby M') was delivered in the US and her birth was followed by a trial, as her surrogate mother refused to give her away to the couple with whom she had made the surrogacy agreement. The courts decided that the surrogate was the child's legal mother and invalidated the surrogacy contracts. Also they decided that it was to the child's best interest to award custody to the child's biological father and his wife. (Haberman)

² The other option considered was adoption. But Sita (Shyama's mother) discards it: "We are modern, but not stupid. What happens if you adopt a baby and your Toby runs off with someone younger? Someone more like him? You want to be a fifty-year-old on your own and with a little one?" (Syal 2015, 41). Indeed her words are somewhat premonitory as Toby will run off with the surrogate mother, a younger version of Shyama, also a version of Shyama "more like him".

Postcolonialism and feminism.

Postcolonialism offers Meera Syal the appropriate framework for the surrogacy story: an NRI¹ woman, Shyama, and her (younger) partner Toby go back to her country in order to acquire a baby. In the postcolonial context, NRIs, as well as generally Indians not living in India, have their multiple and diverse voices and cannot be easily contained, as the Indian authorities have tried to. According to Homi Bhabha, giving way to the vox populi – colonials, postcolonials, migrants, minorities – they “will not be contained within the Heim of the national culture and its unisonant discourse, but are themselves the marks of a shifting boundary that alienates the frontiers of the modern nation (...) They articulate the death-in-life of the idea of the 'imagined community' of the nation; the worn-out metaphors of the resplendent national life now circulate in another narrative of entry-permits and passports and work-permits that at once preserve and proliferate, bind and breach the human rights of the nation” (Bhabha 1994, 145).

The trip back to India is regarded as an ironic reverse journey in search of happiness and fulfillment, in the same way in which Shyama’s own parents had done the original one, to London. In fact, Indian migrants more often than not nowadays do this return journey either to uncover their forgotten ancestry or as a safe haven in old age. In the novel itself, Shyama’s parents had planned to go back when they retired and to this aim had bought some property “Back Home”. Syal very aptly describes this situation through the musing of her main character, Shyama: “Ironic, she mused, that she was making the same optimistic pilgrimage in reverse that had taken her own parents to Britain fifty years ago. For them, until recently, India had remained Back Home, the very reason they had invested in the flat: it was the place to which they would return to warm their old bones until the day when their ashes would be scattered on the Ganges, joining all their ancestors before them, reunited in the river that reputedly sprang from Lord Shiva’s flowing hair” (Syal 2015: 110).

In fact, nowadays the reverse trip is done in search of another centre, the centre of a new modern world, in the same way as London used to be for Shyama’s parents in the previous century. While driving through New Delhi, she can see signs of this new thriving modernity and understands the shift in the power paradigm. It is a reverse

¹ NRI (Non Resident Indian), a name given to a person of Indian origin and a whole category created by the Indian authorities to include a diversity of people with this common denominator. This is in fact part of a larger set of categories – such as, for example the PIO, Person of Indian Origin - imagined by the Indian authorities to name their citizens.

*Orientalism*¹, to a certain extent, as Shyama regards this new India as an empowered version of the 'exotic' one which she had shown to her English friends when she was in college: "But something felt different. The shame had gone, realized Shyama, the weight of the colonial yoke, the embarrassment at the dust on your feet and the things that don't work or break down or just look second-best, eyes always raised towards England, the West, those who got it right and had it all" (Syal 2015, 113). Moreover, it is the reverse gaze that India (this time through the eyes of a mannequin in a shop window turns upon the Indian visitors from England: "The mannequin seemed to regard her with blank superior eyes, telling her, You can't fob us off any more with your bargain-basement lipsticks bought for your aunties and your Marks and Spencer socks for your uncles, expecting us to ooh-aah at your exotic foreign gifts. Now you are coming to us, nah?" (Syal 2015, 113). Thus we learn that exoticism works both ways and that England has become a not so desired 'exotic' in the postcolonial context.

Whereas in his well-known *Orientalism*, Said describes the way the Orient is seen by the Occident through metaphors of depth, secrecy and sexual promise: "the veils of an Eastern bride", "the inscrutable Orient", in *The Book of Hidden Mothers* we can see the Orient through Toby's eyes as a place where his dream of having a child can become reality. Also Mala (the surrogate mother) is perceived by Toby (a typical English country boy) through his realistic almost naturalistic, agricultural gaze: "There is something ripening about her: the about-to-turn ear of wheat, the almost bursting bud. She reminds him of late spring, when the land and shrubs seem to vibrate with suppressed sap, life waiting to be unleashed" (Syal 2015, 142).

According to Said, for the Europeans, especially the British and the French, the Orient is simultaneously the place of Europe's oldest and richest colonies and its cultural contestant, where one of its deepest and most recurring images of the *Other* is placed. The subordinated, peripheral, dominated nation(s) have to be represented as the "Other", different and evil, so as to offer the ground for a discourse of power enforced upon it by the dominant and central West. While European identity was seen as superior in comparison with non-European nations and cultures within a hegemonic relationship of Europeans vs. non-Europeans, the Oriental identity had to be represented as something one judges (as in a court of law), something one studies and depicts (as in a

¹ Orientalism was presented by Edward Said as an academic tradition and a western style for dominating, restructuring and having authority over the Orient.

curriculum), something one disciplines (as in a school or prison), something one illustrates (as in a zoological manual). The resulting image was that of the irrational, depraved, fallen, childlike, different, as opposed to the European who was rational, virtuous, mature, *normal*. The power discourse could be imposed due to this very constructs of the two identities. The alternative of Orientalism today, in the new context given by postcolonialism, in the view of Edward W. Said, is that of “decolonization”, in the process of which scholars have to try to free themselves from the old ideology, as so far Orientalism has failed both humanly and intellectually because the West could not identify with the human experiences of the Orient.

This process of decolonization can be decrypted in the novel through the return of Tara (Shyama’s 19 year-old daughter) to her grand-parents’ land to heal after the trauma provoked by her rape. Her return and the way she imagines ‘India’ as her country/nation are her “optimistic pilgrimage” (Syal 2015, 110), her way of fighting her struggles and of finally finding her peace – through feminism and motherhood. Also part of this process is her Indian cousin’s perspective of England and London as former centre. When questioned whether he would like to come to London, he replies: “No, no, *didi!* America. Everyone wants America only right now” (Syal 2015, 125).

From a postcolonial feminist perspective, the relationship of power is placed within the debate over who has the right to name native (Indian) *woman* and to construe her through the act of saving her. Kavita, an Indian feminist activist, re-iterates Gayatri Spivak’s words over and over again: “It’s just we don’t need white men saving brown women from brown men”¹. Which is obviously what Toby does with the surrogate, Mala. He saves her from her husband (whom he believes to be violent, although he admits he hadn’t actually seen punching her – in the restaurant scene) and he saves her from her environment through surrogacy and – later – through their relationship.

Woman’s Body. Embodiment and experiences

Women’s bodies are explored from a multitude of perspectives in *The House of Hidden Mothers*. Meera Syal seems to have the ambition to cover all possible aspects regarding women’s bodies and their experiences: the body beautiful, the mature body, the old

¹ The sentence “White men are saving brown women from brown men” was used by Gayatri Spivak in her essay “Can the Subaltern Speak? and it “indicates a collective fantasy symptomatic of a collective itinerary of sadomasochistic repression in a collective imperialistic enterprise” (Nelson, Grossberg 1988, p. 296). Her analysis is based on *sutee/sati* (the self-immolation of widows on their husbands ‘pyre) and it is placed within a discourse of colonial critique, connected to the issue of the subaltern learning to speak (Nelson, Grossberg 1988, p. 295-305).

body, the slim body due to eating disorders, pregnancy and all its aspects (avoiding pregnancy, expecting pregnancy, miscarriage, lack of pregnancy, abortion, surrogacy), the medicalization of the female body, menopause, infanticide of baby girls, rape (date rape and gang rape), sexual harassment, the male gaze over female bodies, the female gaze over the same and own body, etc. At times, it seems too much; it is as if Syal was trying to cram all her beliefs into one novel, and to prove her point regarding them all.

One such experience is pregnancy, as the novel focuses on its different aspects, and Syal describes them with subtle irony and a lot of humour. Avoiding pregnancy and expecting pregnancy come together with age: one avoids pregnancy when too young and wishes for it when it becomes impossible: “All those years spent avoiding getting pregnant, all those hours of sitting up on cold plastic toilet seats in student digs/shared houses/first flats, praying for the banner of blood to declare that war was over, that your life will go on as before. And then the later years, spent in nicer houses on a better class of loo seat (...) – still waiting. But this time praying for the blood not to come, for a satisfied silence that would tell Shyama that her old life was most definitely over as, inside her, a new one had just begun” (Syal 2015, 9).

Pregnancy is a life changing experience for Shyama, and so it is for her daughter, Tara, who at the end of the novel is expecting a child and will make Shyama a grand-mother, a situation which is more appropriate for her age (she had been previously mistaken for one by a shop assistant). In this situation, Tara’s pregnancy symbolizes her complete healing, the fact that she is ready to go on with her life.

In the case of Lydia, Shyama’s friend who is a therapist, refusal of pregnancy came due to her rational decision as she was a reformed alcoholic. It is a decision that she imposed to her husband and that she looks back upon doubtfully.

Loss of pregnancy is another aspect covered in the novel: Shyama had had a miscarriage when she tried to conceive with Toby. Mala, the surrogate mother, had had a miscarriage before the surrogacy, which in fact would not recommend her for the process, had she and her husband not lied about it and provided two false children as proof of her motherhood. The description of the actual miscarriage is very realistic, as if Syal was trying to underline women’s connection with nature: “the blood and clots plopped and pooled out of her as she was squatting on the river bank with ropes of wet saris coiled around her arms, waterlogged iridescent snakes. (...) she became like the river, an unstoppable tide flowed from her, the banks of her womb too weak to hold it

(...) the too-tiny baby curled in on itself, a bloody comma, a pause in the paragraph of her life” (Syal 2015, 37). Mala’s attitude to her miscarriage is perhaps surprising, and would not have brought her any points on the surrogacy waiting list; it is an attitude which basically underlines the idea that motherhood does not come automatically with being born a woman, it is not a given, as the patriarchal mindset would have us believe: “But Mala had not been crying with grief, just relief” (Syal 2015, 37).

Shyama can’t have children as she has “an inhospitable womb” (Syal 2015, 13), as her gynecologist proclaims right at the beginning of the novel. It is not surprising, as she approaches menopause, a normal stage in a woman’s life, but a stage which nowadays women are trying to postpone as much as possible, as a result of social pressures to stay young and present a body beautiful to the others. In more ‘exotic’, archaic societies, this is celebrated, as Lydia tells Shyama: “Did you know that some Native American tribes actually used to hold menopause ceremonies? A sort of party to celebrate the end of the slog of childbearing?” (Syal 2015, 10). The friends themselves had decided to celebrate menopause when time comes, “once the hormonal watershed had been crossed. Find a leafy spot on Wanstead Flats, gather a tribe of fellow crones – the three of them plus a few of the game birds from their Body Zone class – choose a full moon night and chant defiantly at the skies, ‘What do we want? Respect! Adoration! Our right to exist as non-fertile yet useful attractive women! When do we want it? As soon as someone notices us, thanks awfully sorry to bother you’. Or something more snappy” (Syal 2015, 10). But this impetuous celebration of menopause is placed in opposition with the medicalized reality which transforms the mature female body into a version of its former self: “Besides, nowadays, no one had to have a real menopause. You could just ignore it, take the drugs which keep a woman’s body into a permanent state of faux fertility and parade around in hot chick’s clothing, long after the eggs had left the building. A whole phase of life wiped away, glossed over, hushed up, for as long as you could get away with it. And given how society treated older women, why the hell not?” (Syal 2015, 11). The implication, of course, is that society puts pressure on women to behave in this way and to try to push their own bodies to an impossible limit. So the question, once again, is related to the power balance in society.

However, Shyama herself – as well as her younger partner - realizes this is a futile exercise and we witness from the very beginning of the novel her thoughts regarding the relationship between women’s inner selves and the appearance they project: “They

[Shyama and Toby] both knew that it didn't matter how many sit-ups and seaweed wraps and nips and tucks a woman went through to pass herself off as a decade younger. In an age where you could cougar your way around town with a wrinkle-free smile, inside you were not as old as you felt, but as old as you actually were" (Syal 2015, 15).

Shyama's choice of profession is another indicator of her decision to cling to youth and appearance for as long as she can: she is the owner of a beauty parlour, a place where women's appearances are dealt with (even if sometimes this involves pain, as in the episode of Priya's trip to the salon). Mala will eventually join Shyama's team and will – predictably enough – bring natural remedies from an exotic place, coveted and sought after by Western women. Her empowering dream was at a certain moment to have a beauty parlour of her own in India, but later she realizes that the invisibility of skin or caste which she faces in London will no longer be the case "back home", thus the impossibility of this dream.

Mala, however, comes from another type of culture, one that is closer to the normal cycles of life, so she envies Shyama for being old. This, in her view, means she has reached a certain balance in life, a point in which the gaze of others does not affect her: "They [older women] didn't have to pretend and they didn't care what people thought of them because an old woman is almost invisible anyway, henna?" (Syal 2015, 163). It is this very invisibility that gives older women protection from the surrounding society. But also it is this very invisibility that Shyama still fights throughout the novel to find its acceptance eventually.

Marriage as an institution is also presented in opposites: the Western-type free union which does not take into account differences of age, race, skin colour, social group or class (as in the case of Shyama and Toby) or gay and lesbian couples in the West are presented in opposition with the Eastern patriarchal marriage in which the woman is always silent and "hidden", as the title of the novel suggests. In Mala's case, Ram, her husband "would take pity on fatherless Mala with her cursed widow of a mother and unmarried sister. Mala didn't feel she could complain. He was taking her on with virtually no dowry, just a wooden trunk full of second hand saris and stainless steel pans" (Syal 2015, 33). Her father's sudden death meant for Mala abandoning her dream of going to college and accepting any marriage that came her way.

Sexual harassment and infanticide of baby girls (together with abortion of girl fetuses) are other instances of exerting power over the female body. Vivid descriptions of both

create strong emotions, whereas the play between the private and the public and the confusion between the two deserve a special note. Sexual harassment is done in full view and with the complete understanding and acceptance of everybody. Mala “had been shocked at the level of violation. Not just above her clothing, but under it, pincer fingers pinching her nipples, fingers so determined and angry they pushed up inside her, dragging her trouser material with them, sending hot darts of pain through her trembling legs (...) all becoming the same man with many eyes and hands” (Syal 2015, 138). Once again, it is the victim’s fault: “Stupid woman, coming on this bus at this time, what does she expect?” (Syal 2015, 139). It is some sort of anticipation of the gang rape episode described later in the novel, which is a real life episode and which also happened on the bus and for which the victim was also blamed.

Infanticide of baby girls is also a private/public affair: it is a family’s own problem, but it is also a problem of society. For, together with the general discrimination against women, it is at the bottom of India’s great unbalance in the numbers of the two sexes¹. The description is very realistic: “She [Mala] had stopped counting the bodies she found on her stolen solitary walks, abandoned in dried-up wells or washed upon the riverbank or hidden like death presents in thorn bushes, the hours-old baby girls still with the stump of their mother’s cord on their tiny bellies, their mouths sometimes packed with sand or dirt, or their eyes and skin bleached and pinched with whatever poison they were given instead of Mama’s milk” (Syal 2015, 57-8).

Surrogacy. Commodification of women’s bodies

Surrogacy, also called ‘reproductive tourism’, ‘wombs sans frontiers’, ‘cross-border reproductive care’, ‘cross-border reproductive labour market’, poses primarily a series of power questions. Among those: who owns women’s bodies and who controls them? To what extent do patriarchal family relations dictate the surrogates’ selection? Does surrogacy reinforce heteronormativity or, on the contrary, does it de-link reproduction from sexuality, marriage and heterosexuality, as it makes parenting available (for a cost!) to LGBTQI individuals? Who owns the embryo(s)? Who owns the child/children resulted from surrogacy? How is the nationality of the baby of the child decided? Who decides it? Who has the power and the right to regulate surrogacy? What is/should be

¹ According to the Population Census of India from 2011 the ratio is 940 females per 1000 of males (<http://www.census2011.co.in/sexratio.php>)

regulated? Over whom? If it is circumscribed to a power framework, then is surrogacy about women getting power over their own bodies and selves? Is surrogacy about women's freedom, as in the case of contraception, abortion and pregnancy?

All legitimate questions. *The House of Hidden Mothers* attempts to answer them. The effort is enormous, and the result doesn't live up to the expectations: the author tries to do too much and it is unjustified from a literary point of view. A good example of this is the episode in which a possible Bill to regulate surrogacy was close to be introduced in the Indian Parliament – The Assisted Reproductive Technology Bill - and Dr. Passi, the owner of the surrogacy clinic, muses over all the difficult cases encountered throughout the years. The text of the Bill-to-be would exclude many (or most of the) categories of actual and potential clients, as “surrogacy will only be open to heterosexual couples married for two years minimum and only those from countries where surrogacy is legal, and surrogate children will be given automatic citizenship” (Syal 2015, 108). We could interpret this Bill as an attempt to regulate the surrogacy market in a more conservative sense; consequently surrogacy would become impossible for more diverse couples, such as gay or lesbian couples, or career women, who haven't got the time and the disposition to have their own children, although they are perfectly capable of having them, the ones who are “too busy to breed” and have a “baby as accessory”, from a “Baby mother”, “Rent-a-Womb” (Syal 2015, 170, 193 & 194), or “mummy-as-microwave: it calls us with a ping when it's ready and we can take it home”(Syal 2015, 171).

“India's fertility industry is an integral part of the country's medical market and medical tourism industry, within which commercial surrogacy is often portrayed as a win-win situation, seen to give “desperate and infertile” parents the child they want, and poor surrogate women the money they need” (Marwah, “Commercial Surrogacy in India”). This quotation just about sums up everything there is to say about surrogacy in India, plus, of course, the postcolonial nuance, i.e. the idea of saving Indian women from the post-colonial oppression of their own kind. The justification of surrogacy has many aspects, all dealt with in the novel. Doctor Passi at the surrogacy clinic knows this is pure business, and so do the women. They have signed a contract (or rather, their husbands signed the contract for them) by which they gave up all claims to the goods delivered (the child or children) in exchange for money. Also it is a business exchange between the West and the East, based on supply and demand, an old economic principle. Her words mirror the quote above almost word-by-word: “This was a business transaction.

Fundamentally. Money made it possible, money was the incentive. Supply and demand, the basis for all successful trading. India had fertile poor women; Britain and America and most places west of Poland had wealthy infertile women. It had begun with companies moving their call centres towards the rising sun, so what was wrong with outsourcing babies there too, when at the end of the process there was a new human being and a woman with financial independence? It was a win-win situation, wasn't it?" (Syal 2015, 83). A more detailed explanation of surrogacy in India and its multiple advantages are also dealt with (in an unsustainable episode from a literary point of view) later in the book (pages 106-107), when Dr. Passi is confronted with the imminence of passing the regulatory surrogacy Bill.

Moreover, it is to the benefit of the Indian economy, therefore to the benefit of everybody: "A 2.5 billion-dollar industry at the last count, all of it helping the Indian tiger economy to stretch its jaws, flex its flanks and leap even higher, snapping at the sun" (Syal 2015, 103). By this the doctor and the lawyer try to justify surrogacy as an action benefitting everybody, not just themselves.

The economic argument is present not only regarding surrogacy, but also the choice people make of abortion or infanticide in case of female babies: "Girls cost money, no matter what they may give you back in kind". However the supply and demand rule does not work in the case of India, with its scarcity of women: "Even though their numbers went down, somehow their price got lower. And so she was still finding the bad investment dumped in the bushes, to save their parent the price of a crippling dowry. Maybe better than letting them grow up and get married into one of those snake-eyed families who would torment them for years or burn them in an unfortunate kitchen accident" (Syal 2015, 59-60).

There is also the evidence brought forward by Dr. Passi regarding the Hindu religion and the Hindu upbringing to justify surrogacy both to herself and to the surrogates. When she is accused of playing God, she wonders whose God, as her "reference points were the amoral deities of their Hindu upbringing, blue-hued and smiling, constantly reminding humanity to accept and endure joy and pain equally, as both are temporary, and neither can be ordered or controlled (...). Take action without presuming to know, to remain static and undecided, was the worst sin of all" (Syal 2015, 171). The Hindu

religion is referred to in front of the women in the clinic¹: “Surrogacy is even blessed by our holy books. You have heard about Lord Krishna’s own brother, Balarama? He was transferred from the womb of Devaki to the womb of Robini to ensure his safe birth! (...) remind yourself that what you are doing is approved by the gods...”(Syal 2015, 306). *Birthing a Market*, the Sama report on surrogacy in India, also refers to this type of justification from the part of surrogates (Sama 2012, 16).

The traditional Indian lifestyle justification is also present in the novel, i.e. a type of surrogacy has always existed in India, as Sita describes it to her daughter: “Well, in our day, if you couldn’t have a baby, your sister or brother would give you one of theirs. Except of course there was none of this taking a bit from here, and a bit from there. Like cooking with leftovers” (Syal 2015, 99-100). So present-day surrogacy would be some sort of continuation of the same tradition; it is the private brought in the public domain. The same kind of justification comes from Priya in an attempt to explain the choice to Shyama’s daughter: “in India this ... process has been going on for centuries, family members having kids for each other” (Syal 2015, 195).

These justifications are necessary as the actors involved in the surrogacy process are aware of the stigma it involves: in the novel, the first surrogate – Seema – does not disclose the source of all the money she and her family has stumbled upon, as she is afraid the village folk would not understand: “I know people must be saying dirty things about me” (Syal 2015, 92). In order for the surrogates not to consider the stigma, the “good deed” pedal is pushed to the floor: in the clinic presentation film, the doctor talks to a surrogate in the kind of language one uses for a baby, which is of course derogatory and degrading, “They were so happy. You have done a wonderful thing. You should be very proud. We are all proud of you, Gowri” (Syal 2015, 87). Mala takes over this discourse, before she finds a voice for herself: “No problem for us. We like to help you” she tells the family who hired her womb.

On the other hand, Tara, as a feminist, is the one who considers surrogacy immoral (85), exploitative for the women forced into it by poverty: “We both know this is fundamentally wrong. This is no different to the old crones who cut off girls’ labia in the name of tradition or the mothers who insist their daughters have their feet bound or marry their fat old cousins or stay in violent marriages because if they had to suffer, why shouldn’t all the others who come after them? (...) It’s women once again exploiting

¹ In the same way, The Bible is used sometimes by Christian surrogates to the same purpose.

other women". And, at Priya's argument that Mala didn't strike her as a victim, as nobody forced her to be a surrogate, Tara answers: "Maybe no one did (...), but her poverty did. Her lack of choices." (Syal 2015, 232 - 233).

Even Shyama has doubts at the beginning of the process: "What about the woman's right to choose, own her body and all that?" But her doubts are scattered by her friend Priya, who blames it on traditions and even mentions that it is to the surrogates' benefit: "It's India, darling. And most of these women are from rural areas (...). It's for their protection, at the end of the day" (Syal 2015, 80).

Women's bodies are commodities to be bought and sold, as well as their body parts. The vocabulary used is a specific one, and Meera Syal wants to make absolutely sure her readers got this message – as in the episode when Shyama and Toby are searching the database for an eggs donor "Did she really mean "browse"? Like we're going shopping?" (Syal 2015, 146).

Seema's husband tries to convince her she is just a surrogate, not a real mother: "you are just the nest, not the egg. The bird gets strong and then flies away" (Syal 2015, 92). Ram's gaze over his wife's body demonstrates the same idea, expressing not his ownership but his intention of commodification: "not seeing her breasts and belly as his, but as valuable treasures for hire" (93). Mala also thinks in terms of a business transaction at the beginning and regards her body as if it were up for hire: "I am just a safe house until you hatch, little chick" (283). The women at the clinic, too, are aware of the existence of the contract and of the fact that the child has to be "returned" to the parents (Syal 2015, 82).

The surrogacy process takes place at the clinic, which is a site of surveillance and control for the surrogates. However, this is seen by Mala as a possibility of escape, a way to find some freedom, a holiday; she pictures herself "reclining on a soft bed, leafing through a *filmi* magazine and eating cake off a china plate (...) balanced on her proudly pregnant belly. To be paid to rest and eat well, it would be her first-ever holiday – and in Delhi itself" (Syal 2015, 140). It is so good that it is worth deceiving the buying couple: Mala and Ram lie about her having given birth to two healthy children and about her age. The doctor herself forgets to examine her and then conveniently lies to Shyama and Toby about the eggs donor, by using Mala's. So the criteria that the clinic was so much advertising about were not at all met. The clinic had advertised as "pretty strict in their parameters: all the surrogates have to be married, have a clean bill of health and medical

history, to have had two healthy births themselves, agree not to have sexual relations during the pregnancy (...). And they have to have a signed permission form from their husbands to offer themselves up for surrogacy at all” (Syal 2015, 79-80).¹

The clinic itself looks to Shyama as “a female world in miniature, a living doll’s house” (156), the very “house of hidden mothers” from the title. But in fact it is a well-guarded (although open to a small bribe) prison-like building, where visitors are not allowed “without permission”. For the surrogates (I almost called them inmates) there is a strict self-imposed hierarchy, based on whether they had been surrogates before (and how many times) – and these women received the spots in the shade, based on their religion and more significantly, based on caste. There are a couple of Dalit women, who were avoided by the other Hindu ladies (they refused to use the same toilets or eat near them). This difference becomes significant when the subjects of the contract are considered, as the Hindu women “privately wondered if the poor *firengy* couples realized their expensive offspring were being grown inside an impure vessel” (Syal 2015, 167).

The product of this process – the child – poses problems of ownership (whose baby is it (102), citizenship and belonging (described in the novel on page 107), or simply as damaged goods it could be returned or discarded, as in the case of disabled children (169). Meera Syal also raises the question of genetic selection of the child: to what extent can this be acceptable, as medically it is possible. Doctor Passi reflects on the evolution (or involution) of these choices over time: it had started with choosing the sex of the child, it continued with discarding disabled children, “But then as time went on, the demands and requirements became more specific, the boundaries of what could be done more elastic”(Syal 2015, 171).

But there are other problems related to surrogacy (or ART) explored in the novel. For example, that of the age of the mother: the case of a woman who had a daughter in her sixties to die soon after of a form of cancer, presumably triggered by the amount of drugs and hormones she had had to absorb (Syal 2015, 19).

¹ This is clearly similar to what can be read in the surveys and studies on surrogacy clinics in India. For more information, see Sama group’s publication, *Birthing a Market. A Study on Commercial Surrogacy*.

Surrogacy. Empowerment

Another perspective over surrogacy is that of empowerment of the surrogate mother. *The House of Hidden Mothers* explores this very issue, as Mala, the native Indian woman, is empowered through the very act of surrogacy. There is also the empowerment of second and third generation Indians in England (Shyama and her best friends, Lydia, a psychotherapist and Priya, a successful business woman, as well as her daughter, Tara, a feminist activist) and the model of sisterhood they put forward to Mala.

Mala moves from “My body. His child” (page 182) to “I think I have always known. He is mine” (page 306). This is in parallel with Shyama’s words “I think I have always known. He was never mine” (307). Empowerment starts with her awareness of the power she holds over her husband, the moment she realizes she had become meaningful and useful to him. Her words “now you need me more than I need you” (Syal 2015, 95) show the beginning of the process of becoming a really independent and well-rounded person. Surrogacy is thus cleverly used by Mala as a means to reach the state of coveted independence.

Mala takes ownership over her body and appropriates the state of pregnancy to eventually take over Shyama’s place in both the private and the public. In this respect we could say, Shyama acts both as a mentor and as a role model. At the beginning she was just an employer – and here we can discuss surrogacy as a way of bringing the private state of motherhood into the public sphere by construing it as work – she employed Mala as a surrogate. Then she employed her, although unofficially, at her beauty parlour by getting from her old traditional recipes for beauty products made of natural ingredients. Eventually, Toby draws Shyama’s attention towards Mala’s role in the business, by prompting her to offer Mala a share of the profits from the new products. So it is a double exploitation, or as Tara put it “women exploiting other women” (Syal 2015, 232). Mala is aware “she carried his son, not through an act of love, but for money” and she tries to convince herself that the maternal feelings she has for the baby are not real: “Just because he ate what she ate, pissed with her, laughed with her, missed the smell of ploughed fields with her, made her jump when he got hiccups, made her wince when he turned over, fed on her blood and her breath, that didn’t mean he was hers. I am just your safe house until you hatch, little chick” (Syal 2015, 283).

Seema, the surrogate in the village, from whom Mala had found out about surrogacy in the first place, had had the same maternal feeling. This is in fact one of the most

controversial aspects discussed in specialist literature over surrogacy (see *Birth of a Nation*, 22, 57, 96). In the novel it is also through Mala's eyes that we take notice of Seema's condition due to lost maternity: "But Mala could see that Seema had left something behind, as if the city had nibbled quietly, softly at her plump corners, and everything fat and free about her had been swallowed up" (Syal 2015, 36). Then Seema gets a voice of her own and can speak for us: "He told me not to tell anyone (...). Afterwards I felt glad. But also too sad, crying all the time. Stupid, hah? (...) When I was crying afterwards, my husband said, you are just the nest, not the egg. The bird gets strong and then flies away. What is there to be upset about? (...) But how would he understand? He did not feel her knees making bumps in my belly. He did not see his skin jump like the river when the rain falls on it, when she got hiccups. He did not feel her flip like a fish under my ribs whenever Pogle sahib sang one of his loud wedding songs. He did not have to push her out with legs so far apart that one foot is in life and the other in death, did he?" (Syal 2015, 92-93).

In the house, Mala takes over Shyama's role, first by offering to help in the kitchen, to cook, to clean. She is aware of this: "As I climb, she is falling, Mala realized. It made her feel powerful and also sad" (218), and so does Shyama's friend: "it was the way she seemed to glide around Shyama's kitchen as if she lived there" (219).

Mala's empowerment comes with another revelation: "that you didn't work just for the money, you worked for the freedom work gave you, for the chance to be a stronger, more interesting version of yourself" (Syal 2015, 282). This realization is at the basis of her decision to refuse Toby's offer for more money to give up the child when she eventually decides to keep it. She explains her decision in commercial terms of buying and selling, but also she emphasizes her complete empowerment and the role Toby and Shyama had played in it: "All my life I am a thing bought and sold. I thought this is all I would ever be. But you and Shyama Madam have shown me another kind of life. Where honey costs more than gold (...). You won't believe me when I say I don't care about the money because that is what you think I only understand. Here I am someone. And so can my son. You have a price for that? (...). You have given me so much. But now we are equal" (Syal 2015, 307).

Tara is witnessing Mala's empowerment and this changes to some extent her strong position against surrogacy: "I'm still not sure it's right, what you're doing...but I can see it's going to change Mala's life so much and she says anything's better than what she had

before” (Syal 2015, 251). In fact, Tara and Mala’s lives are described somehow in parallel, they are of approximately the same age, had been through similar experiences (rape in the case of Tara, sexual harassment and forced marriage in the case of Mala) and they eventually find their fulfillment partly in the family and with children. Moreover they both undergo a journey of initiation and/or empowerment: from India to the UK or the other way round.

Toby’s feelings for Mala also evolve from his first gaze (discussed above) to his thinking of her when he needed to give a sample of semen for insemination (as some sort of sexual act) to his saving her from her husband (in Spivak’s words, reiterated in the novel, the white man saving the brown woman from the brown man). This episode brings some confusion to Toby’s mind and he reflects upon ownership over her body, the idea that she owns herself never crossing his mind: “We are just cavemen swinging our clubs, he thought to himself. We are both only doing what we are programmed to do, somewhere deep down. We are, in fact, fighting over the same woman. And who has the bigger claim over her now?” (Syal 2015, 183). Toby’s confusion is growing even bigger, with Shyama’s sudden departure to India to fulfill another womanly duty, that of caring for her father: “When Shyama was here, he knew who they all were: the couple and their surrogate, Mummy and Daddy waiting for their employee to safely deliver their son. But since Shyama had gone, all the boundaries and definition had faded to nothing but watermarks” (Syal 2015, 284). Toby’s falling in love came with the moment he saw his son for the first time, during a scan (246). Eventually Toby and Mala and their child will form the *family*, in its traditional sense, departing from alternative types, previously explored throughout the novel.

Conclusion

The novel ends with an extra chapter, one year after the events. Shyama and her friend Lydia visit the happy parents and their son, but have no interaction with them – Shyama chooses to cast her gaze over them and leave a present for the child. The final thought summarizes the conflict: “It was just a baby after all. Just another every day miracle” (Syal 2015, 318). Life goes on as usual, with surrogacy just the means to reach an objective, but eventually order is restored.

Surrogacy is similar to postcolonialism in that it silences women, they are only vessels to carry somebody else’s fetus to term and to fulfill other people’s hopes and dreams.

Postcolonialism does the same; in her essay “Can the Subaltern Speak?”, Gayatri Spivak tackles this very issue. She refers to learning to speak rather than listen to or speak for in the case of the historically muted subject of the subaltern woman. In so doing the postcolonial intellectual systematically “unlearns” female privilege; this involves learning to critique postcolonial discourse and not simply to substitute the lost figure of the colonised (Spivak 1988, 295). In “Questions of Multiculturalism”, Spivak and Gunew (During 1994, 194) raise two questions: “who should speak?” and “who should listen?” The question of “speaking as” involves a distancing from oneself; when one speaks as an Indian, a feminist, a woman, etc., one tries to generalize oneself, to make oneself a representative. When the hegemonic, dominant people talk about listening to someone “speaking as” something or other, we have a problem: they make some kind of homogenization, they want to hear an Indian speaking as an Indian, etc. (During 1994, 194). One gains the right to criticize, according to Spivak, when one wants to learn through language, through the specific progress of study, and at the same time through a historical critique of one’s position as the investigating person: “The person who knows has all the problems of selfhood. The person who is known, somehow seems not to have a problematic self (...). Only the dominant self can be problematic; the self of the Other is authentic without a problem, naturally available to all kinds of complications” (During 1994, 202).

The Handmaid’s Tale (which offers the quotation at the beginning of the novel under discussion) is the oral narration of the surrogate mother in the dystopian patriarchy of Gilead, whereas *The House of Hidden Mothers* is the story of gaining a voice, of learning to speak. From the simple commodification of her body, at the beginning sold/hired by her husband to the couple desiring children, the surrogate mother learns to speak as herself and for herself and her child. In this way, Meera Syal has a rather optimistic view upon surrogacy. A literary view, obviously, which does not necessarily have an equivalent in reality.

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Gender representation across political regimes: a comparative analysis of Romanian films

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Abstract: *This paper examines how gender roles, power relations, and the relationship between the state and individual are illustrated in two Romanian films. Both “4 months, 3 weeks and 2 days” and “Child’s Pose” manage to recreate the historical context of the periods under discussion, communism and post-communism in Romania, while also highlighting the realities of oppressiveness and endemic corruption specific to each regime. This comparative study was conducted by using relevant theories, which were necessary in order to build the theoretical framework, and by coding the actions and dialogue extracted from the films under existing concepts from gender studies. Afterwards, a Feminist Critical Discourse Analysis approach was helpful in revealing the complexity of current and previous unequal social arrangements, as portrayed in contemporary Romanian films. The main contribution of this research is that it sheds light on the evolution of gender roles, power relations, and the relationship between the state and individual through an analysis of social-realist films.*

Key words: gender roles • power relations • patriarchy • oppression • corruption

Introduction

This study was designed as a comparative case study. The two cases that the analysis was conducted on are the films: *4 months, 3 weeks and 2 days* and *Child’s Pose*. My decision to examine them was influenced by the fact that they were both critically acclaimed, being especially praised for their accurate portrayal of the two periods in question; a great opportunity to observe how gender roles, power relations, and the relationship between the state and the individual are revealed through cinematography. The notions of ideology, power, hierarchy and gender are all sociological variables that are relevant for an interpretation and explanation of a discourse, as Wodak argues (2001, p. 3). Each film manages to illustrate the oppressiveness of communism, or how corrupt Romania is during this transition period. Setting the historical context for the comparative analysis was fundamental in accurately interpreting the discourses, therefore concepts from gender studies are introduced after describing each particular regime and its specificities.

The first part of the paper tackles the sacrificial role of women across regimes, and how motherhood was and still is considered to be the most important female “duty”, as a result of societal values and asymmetrical power relations. The second part of the paper addresses different gender roles categories and how are they relevant for maintaining unequal social structures, as well as how there was a shift from an oppressive state to one which becomes an instrument for personal interests. The last part of the paper is dedicated to the Feminist Critical Discourse Analysis, which is applied to the films *4 months, 3 weeks and 2 days* and *Child’s Pose* in order to reveal how gender roles, power relations, and the relationship between the state and individual are illustrated in contemporary cinematography.

Child’s Pose (2013), a film directed by Calin Peter Netzer, could be viewed as an allegory about the “new Romania” (Dargis, 2014), a country where the transition to democracy exacerbated the already existent corruption, which is manifested through illicit traffic of influence, bribery and theft. With regards to *4 months, 3 weeks and 2 days* (2007), a film directed by Cristian Mungiu, the story takes place in 1987, basically 3 years before abortion was legal in Romania. The film portrays a woman’s reaction to the hegemonic discourse of the period, by presenting her efforts to fight against the predetermined role the oppressive communist regime has assigned her to play – the sacrificial role of the mother for the sanctity of the nation. Back then, women were treated as means to support the development of a prosperous and autarchic nation. The “ideal woman” had to sacrifice herself for economic purposes. Paradoxically, the fall of communism kept that image vivid, the self-sacrificial women still representing a common gender stereotype, although now her devotion and sacrifice is directed to her children. Both *4 months, 3 weeks and 2 days* and *Child’s Pose* successfully manage to convey the atmosphere and specificities of the two periods, as social-realist films, being internationally acclaimed and transformed into a channel through which foreigners got acquainted with some aspects of the regimes – communism and unconsolidated democracy - in Romania.

Methodology

For the comparative analysis I used the approach of Feminist Critical Discourse Analysis (CDA), proposed by Lazar (2005; 2007). This approach was really helpful because the data analyzed includes “contextualized instances of spoken and written

language, along with other forms of semiosis such as visual images, layout, gestures, and actions in texts and talk”, (Lazar, 2005, p. 13; Lazar, 2007, p. 151), while also being interdisciplinary in nature (Wodak, 2001, p. 64). Since the purpose of this paper was to examine how gender roles, asymmetrical power relations, and the relationship between the state and the individual are portrayed in two films, set during two distinct regimes, I decided to focus on analyzing the dialogue between the characters in conjunction with actions (as non-linguistic practices). I considered a CDA the best approach because it studies the relations between discourse, power, dominance and social inequality (van Dijk, 1993, p. 283). However, I did not opt for a conventional CDA, but for a feminist one.

There are several reasons which made me choose the Feminist CDA approach, as opposed to a conventional CDA. First, since my perspective is already a feminist one, why not be open about it and hide behind a conventional CDA? Even though I am not implying that all studies that deal with gender should be tackled from a feminist standpoint, I still consider that this option was better suited for my research. Second, the absence of self-naming made it difficult for people who were interested in CDA, from a feminist perspective, to come together in a shared forum (Lazar, 2005, pp. 3-4). Therefore, the feminist CDA can contribute to the creation of a community interested in developing a coherent feminist perspective on unequal social arrangements, especially since they are becoming increasingly more complex and hard to identify. Third, CDA already owes its development to feminist approaches in women’s studies in the 1980s (Lazar, 2005, p. 2), therefore, this represents a celebration and recognition of its important contribution. Furthermore, in terms of emancipator goals, there is already an undeniable overlap regarding feminism and CDA (Lazar, *Feminist Critical Discourse Analysis: Articulating a Feminist Discourse Praxis* 2007, 144).

In developing my research I combined an *a priori* coding process with an inductive one that resulted in various concepts from gender studies. Afterwards, I reviewed the literature regarding the concepts and structured my theoretical framework accordingly, all the grand theories serving as a foundation for the interpretation of the discourses. The last step was to explain the recurrent film narratives by linking them to the theoretical background, while also illustrating which are the emergent leitmotifs and patterns with regards to gender roles, asymmetrical power relations, and the relationship between the state and the individual, during communist and post-communist Romania.

1. The sacrificial role of women across political regimes in Romania

Right after the death of Dej in 1964, Ceaușescu assumed the leadership of the Communist Party in Romania. During his first years of ruling, his policies were mildly liberal, but the beginning of the 1970s brought an important change with regards to how policies were designed (Negoita, 2011, p. 82), after his visit to People's Republic of China and North Korea. Soon enough Ceaușescu's autarchic ambitions and his project to reimburse the foreign debt led to a series of outrageous measures. In order to increase the labor force and thus expand the labor industry Ceaușescu's regime made heavy use of propaganda centered on promoting the image of women as workers for the Industrial sector. This developmental strategy was influenced by the protectionist economic nationalism. Bluntly put, women emancipation was primarily based on their participation in paid employment, something that supposedly will free them from being dependent on men or forced into marriage (Brunnbauer 2000, 152). On the other hand, after 1971 the preferred propaganda theme became the emancipation of women through motherhood and for the benefit of the nation.

The overlapping roles of worker and sacrificial mother resulted into what researchers called "the second shift" or "the double burden". This phenomenon was first summarized under this concept by Arlie Russell Hochschild and Anne Machung in *The Second Shift* (1989), and it refers to the burden is put on women to find a balance between housework and childcare, without being able to rely on support from their life partners or from the state (external help), as a result of how traditional gender roles are socially constructed and understood. This situation was even worse in Romania. Women had to not only be extremely dedicated to their job, but also raise multiple children, due to the fact that abortion and contraceptives measures were illegal. That was what showed authentic and unconditional devotion to the regime (Miroiu, 2010, p. 582) in a state where family was regarded as the "basic social cell" (Iordache, 2014, p. 8). Women's autonomy in family planning was possible only in certain instances: when they reached 45 years of age, when they already had 5 children, when they became pregnant as a result of rape, or when the pregnancy was too risky for their safety or for the child. Under this circumstance, women became caregivers and caretakers, "heroines of the private sphere", while educating the nation morally and having both a nurturing and a sacrificial role (Miroiu, 2010, p. 577; Andreescu, 2011, p. 661).

Even though the regime was further legitimizing its ruling through the use of a gender equality narrative, “this agenda was not feminist in intentions and meaning” (Miroiu, 2010, p. 580). Mihaela Miroiu, one of the most prominent feminist theorists in Romania, claims that, although the regime proclaimed a gender-egalitarian ideology (mainly for economic purposes), in reality it did not generate positive changes for women with regards to political representation or other individual rights (2010, p. 580). Furthermore, she adds that gender equality was just one piece of the ideology of equality puzzle, the official dogma even stating that women had the right to political participation and economic independence (2010, p. 581). In CDA, ideology is seen as being fundamental in establishing and maintaining asymmetrical power relations (Wodak, 2001, p. 10). On the other hand, in modern democracies liberty is considered to be an absolutely necessary condition for its functioning, due to the fact that it guarantees at least the equal access to opportunities and the freedom of choice, if not equality *de facto* (Hurubean 2013, 12). Therefore, a gender-egalitarian ideology is irrelevant without the freedom of choice. The constant interference of the state into the private realm totally compromises the existence of an individual autonomy, especially during oppressive regimes that auto proclaim themselves as gender-egalitarian.

Similarly, although Romania is currently a democracy, women still feel pressured to be mothers, subordinated to men and under intense patriarchal protection. Besides the particular values promoted during communism, today marriage becomes, especially in the rural area, an additional goal for women, something they have to achieve in order to fulfill their destiny and develop their true identity. A woman in her 30s and still unmarried is considered to be ‘less of a woman’ than the married one. Given this circumstances, women who rebel against this imposed social roles, or are sexually liberated, are automatically considered to be immoral human beings, their decision to not conform to the status quo and preponderant religious beliefs ultimately pushing them to the margins of the society. Furthermore, some of them are forced into prostitution by poverty and unemployment, especially the young ones (Brunnbauer 2000, 159); another reason for social exclusion in general, and even more in such a profoundly religious country¹. However, some authors (Brunnbauer, 2000, p.162) claim that the Orthodox Church in eastern European countries does not have a great influence

¹ In Romania 89% of people declare themselves as being religious, according to the global index of religiosity and atheism (2012).

on public matters. Although this might be true, given that so many people adhere to its values it still indirectly shapes traditional societal role models.

A feminist perspective on gender roles claims that gender is an ideological structure which divides people into two classes, men and women, men dominating and women being subordinated to them, based on sexual differences (Lazar, 2007, p. 146). A particular role of women, which was perpetuated even after the collapse of Ceaușescu's regime, can be summarized under the concept proposed by Hays (1996): 'intensive mothering'. This behavior is not so much related to a specific political regime, but to how gender roles are socially constructed in a patriarchy. This concept could also be linked to the role of the 'sacrificial mother', a narrative used during communism in Romania, the only difference being that currently the subject of total devotion is only the child, not the nation as well. Motherhood is no longer constructed as a 'patriotic act', an instrument to achieve an ultimate goal. Basically, 'intensive mothering' became one of the various manifestations of patriarchy, which reemerged after the dissolution of communism. When explaining the concept of 'intensive mothering' Hays (1996, p. 69) argues that "there is an underlying assumption that the child absolutely requires consistent nurture by a single primary caretaker and that the mother is the best person for the job." (1996, p. 8). This gender stereotype is accurately portrayed by the situation in which the female protagonist of the film "Child's Pose" finds herself, something we will touch upon during the comparative analysis.

2. Asymmetrical power relations under patriarchy

Right after the collapse of communism a revival of patriarchal values with regards to families occurred (Robila, 2004, p. 6). The reemergence of patriarchal values was further manifested through a change concerning the hegemonic discourse, a shift from the 'ideal woman' narrative - as worker and heroic mother- , to the traditional woman: daughter, mother and wife (Andreescu, 2011, p.673). Brunnbauer calls it "domestication"¹ (2000). Additionally, Wodak argues that the "dominant structures stabilize conventions and naturalize them", inequality being taken as a 'given' (2001, p. 3). As a consequence, the transition to a democratic regime in Romania did not have a significant positive impact with regards to gender equality due to the fact that people still have the tendency to

¹ Policies are designed in order to force women to play traditional social roles (Brunnbauer 2000, 154).

legitimate the negative discrimination and subordination of women by referring to either traditions or religion.

Patriarchal values in Romania were revitalized as soon as the communist regime collapsed. According to Reeves & Baden (2000, p. 3; p. 28), a systemic patriarchy is manifested through the institutionalization of male physical, social and economic power, all arrangements constraining women to make certain choices that ultimately diminish their chances to act autonomously. Additionally, Connell (1987), a sociologist better known for introducing the concept of 'hegemonic masculinity' (which we will further discuss later), describes the patriarchal state as a "center of ever berating set of power relations and political processes in which patriarchy is both constructed and contested" (p. 132). On the other hand, Butler (1990, p.5) rejects the notion of a universal patriarchy because gender oppression should be studied in the particular cultural context in which it resides, by also taking into consideration the historical and political background. She sheds light on the fact that this type of feminist theory is not suitable to analyze non-Western cultures, since notions of oppression have to be contextualized and should not just be explained as non-Western barbarism. Bluntly put, she argues against a manicheistic perspective on cultures, which frequently idealizes western cultures and demonizes all the rest.

On the other hand, also regarding patriarchal values, Brunnbauer (2000, p. 161) argues that they have not been eradicated during communism, especially since the emancipation of women was not focused on increasing their individuality and independence, but on placing their rights and duties into the public sphere, under the control of the state. Thus, he rejects the 'reemergence of patriarchy' thesis, proposed by Robila (2004). The dissolution of communism triggered a moral vacuum which also contributed to the straightening of old role models and values (Brunnbauer 2000, 161). Furthermore, the institutionalized constrains, which transcended regimes, as van Dijk points out (1999, p. 255), currently represent a major obstacle for gender equality.

In a patriarchy, power relations are constructed as asymmetrical. In late modern societies asymmetrical power relations can assume subtle forms, which make them harder to notice (Lazar, 2007, p. 142). Women are generally excluded from the control of resources and public matters, as well as being treated as second-class citizens because of the presumed biological differences which make them inferior to men. On the positive side, gender hierarchies are culturally influenced and therefore subject to change

(Reeves & Baden, 2000, p. 18) if approached correctly, particularly through an authentic institutionalization of gender equality, drawn upon international laws such as the CEDAW or the Treaties of the European Union. An important argument against gender inequality is the fact that “it represents a major barrier to human development, the modernization and democratization of a society, with important social costs” (Hurubean 2013, 4). Holter supports this idea and says that prosperity in Europe cannot be achieved without gender equality, which he calls „the main key” (2005, p. 125), gender becoming a fundamental element in economic and social development. Ultimately, gender equality is basically a human right, and should be treated as such.

The “appropriate” behavior for both men and women is determined by beliefs which are socially constructed through ideologies and commonly expressed through emerging stereotypes. Gender ideologies often straighten male power and the idea that women are somehow inferior by comparison (Reeves & Baden, 2000, p. 4), frequently becoming the subject of violence because of that. Since gender violence occurs in both public and private spheres, in the late 1960s a phrase was introduced: ‘the personal is political’. This phrase or concept, which appeared during the second-wave of feminism, was proposed in order to inspire women in being politically active, as well as representing a strategy to draw attention to the fact that violence and rape, even if are occurring within the private sphere, have to be addressed publicly. Equally important to mention is that women also deepen this inequalities by adopting certain models of socialization (Hurubean 2013, 10) which limit their development and accession to decision making and power structures in general. Moreover, in a patriarchal regime, women have the tendency to raise their sons as the future dominant males – the Alpha males of certain groups - to protect them from social exclusion. Therefore, women often become an accomplice in supporting and reproducing male hegemony through the education they provide to their sons (Bannon & Correia, 2006, p. 248).

3. Hegemonic masculinity, subordinated masculinity, and the ‚manly woman’

There is a clear distinction that needs to be made between sex and gender, the first being biological and fixed, and the second entirely culturally constructed and determined by ideas and practices about how to be a ‘proper’ male or female (Butler, 1990; Reeves & Baden, 2000; Beynon, 2002). Strictly regarding masculinity, Beynon (2002, p. 2) observes it as diverse, mobile, even as an unstable construction.

Traditionally, men are regarded as breadwinners – the great mark of patriarchal masculinity (Beynon, 2002, p. 14) -, the nucleus of the nuclear family, but this ideal is slightly different when applied to various cultural contexts.

The pressure to be “masculine”, as a socially accepted behavior, frequently drives men on a path of destructive behavior that involves alcoholism, drug addiction, and violence towards other men or women. These constant anxieties, to act according to the imposed standard, along with the fear of expressing feelings and emotions trigger frustration among men which can ultimately make them turn to violence. As an illustration, the vast majority of violent crimes are committed by boys or men, the conclusion being that crime is in fact a gendered phenomenon (Edwards 2006, 9). Men often resort to violence as a desperate act to reaffirm their masculinity when faced with unemployment or poverty. Crime becomes an alternative way of living when no other opportunities arise (Edwards 2006, 10), and domestic violence when men lack power at their workplace and want to mask this powerlessness by dominating at home (Beynon, 2002, p. 20). Beynon (2002, p. 15) further examines traditional masculinity and comes to the conclusion that what is needed is “male liberation” from predetermined gender roles.

There are three types of masculinity: hegemonic, dominant and subordinated (Paechter 2006, 4-5). Connell (1995, p. 77) defines hegemonic masculinity as „the configuration of gender practice which embodies the currently accepted answer to the problem of legitimating patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women”. The concept ‘cultural hegemony’ was first introduced by Antonio Gramsci in his *Prison Notebooks*, being described as a means to maintain the capitalist state and “manufacture consent” (Gramsci, 2010). Connell basically borrows the term ‘hegemony’ to reveal a similar situation where a certain behavior is based on consensus from a large majority, and reproduced through media and institutions which directly participate to its legitimization. This perspective on hegemony is also shared by van Dijk (1993, p. 255).

For Lazar (2007, p. 148) modern power (and hegemony) is precisely effective because of its cognitive nature, gender roles being internalized and transformed into everyday routine. Additionally, Groes-Green (2009, 288) claims that hegemonic masculinity should mostly be linked to a privileged social class, while subordinated masculinity is a particularity of the working class, which needs a reaffirmation of power, as we already discussed before. Consequently, hegemonic masculinities do not implicitly mean a nasty

behavior towards women (Connell, 1987, p. 187; Holter, 2005, p. 115). Van Dijk (1993, pp. 249-250) defines dominance as the exercise of power that generates political, cultural, class, ethnic, racial and gender inequality. Moreover, Beynon (2002, p. 20) argues that a stereotypical picture of male dominance emerges as a result of a display of physical power, appreciation for sports, drinking, machismo¹ and sexual appetite.

Since features associated with masculinity, such as “rationality at the expense of empathy and affection/emotion, competition at the expense of cooperation, quantifiable/measurable aspects and less qualifying (in-depth) features, the appearance at the expense of the essence/substance/meaning of behaviors or actions” (Hurubean 2013, 6) are widely valued within a society, the image of a ‘manly woman’ is often adopted by women in order to hopefully enjoy the same privileges as masculine men do. This type of woman could easily be described as being aggressive, ambitious, authoritarian, and ferocious, (Hurubean, 2013, p. 5), lacking empathy and willing to fight her way up the social hierarchy. Moreover, a “manly woman” is also portrayed as a person that can cause an emasculation of men around her, especially within a romantic partnership or at her workplace. A strong woman can potentially cause an inversion of gender stereotypes, as we will further discuss when referring to one of the two films we are analyzing: *Child’s Pose*.

4. The relationship between the state and the individual: a shift from oppression to endemic corruption

Until the dissolution of communism, people in Romania lacked autonomy, in the context of a collectivized society, the state constantly dictating their behavior (Falls, 2001, p. 33). Since there was no real delimitation between the private and public sphere, any decision taken in either one of them had profound consequences on the other. As an illustration, the state exercised control even concerning reproductive rights in a nationalistic quest² to forcefully increase the population. Birth was regarded as a “patriotic act” (Iordache, 2014, p. 2), the communist 770/1966 Decree prohibiting abortion and contraceptives measures with a minimum of 5 children of each fertile woman under 45 required. Brunnbauer (2000, p. 153) also states that during that period

¹ “Machismo is a socially constructed, learned, and reinforced set of behaviors comprising the content of male gender roles in Latino society” (De La Cancela, 1986, p. 291).

² Iordache (2014, p. 5) argues that the communist regime in Romania was also undertaking ethnic assimilationist policies in order to ultimately obtain a nation of many (ethnic) Romanians.

women had the 'duty' of enlarging the socialist nation. Basically, in managing institutions such as motherhood the state was playing a major part in the constitution of the social categories (Connell 1987, 132), those who did not conform being transformed into outcasts, situated at the margins of the society while also putting their lives at risk for their disobedience.

As a result of the measures taken within communist regime, the tension between the interference of the state, expressed through the objectification of the body, and people's fight to reclaim their lives resulted in the highest rates of maternal deaths in Europe until the collapse of the regime (Flister, 2013, p. 306). In order to prevent such opposition, the regime was constantly inculcating to the people a sense of guilt for considering abortion (Miroiu, 2010, p. 585), or even a sense of fear. Moreover, paradoxically, the policy was branded as one that supported women empowerment (Iordache, 2014, p. 6).. On the other hand, the situation of wealthy families was slightly different, women having the necessary economic means to import contraceptive or experience illegal abortions, in comparison to those originally from less prosperous backgrounds, where poverty was actually exacerbated by an unsustainable growing family.

Mihaela Miroiu (2010, p. 585) considers the pro-natalist policy as one of the most damaging interferences of the state into the private life. This violation of the right to choice was primarily developed on a nationalistic ideological basis. However, the public discourse on reproduction in post-communist Romania is still controversially nationalistic, with an even more pronounced ethnic component (Iordache, 2014, p. 15), even though one of the first measures, after the dissolution of communism, was to legalize abortion. Furthermore, this act is currently condemned by the Orthodox Church, which does not advocate for its outlawing (Iordache, 2014, p. 15), but it conveys the idea of a decision in opposition with Christian conservative beliefs and the moral principle of the right to life. And since in Romania there is only a *de jure* separation of church and state, and not a *de facto* one, this can become quite problematic for women.

In a democracy the decision to have children is based on an economic rationality, the relation between costs and benefits ultimately prevailing. However, under communism this decision was dictated by an exterior authority, thus triggering an unsustainable family planning. The state did not take into consideration the negative consequences of a forced increase in birth rate, such as child abandonment or an escalation of poverty

(Andreescu, 2011, p. 663). People were dehumanized, transformed into instruments in support of the ultimate goal – “build up the next stage of socialism: communism itself” (Miroiu, 2010, p. 585) -, in total opposition with ethical values and morality, which should determine all human actions: people should never be used as means to an end (Kant, 2009). For a better understanding of the period we will later refer to the film *4 months, 3 weeks and 2 days*, a cinematographic production which accurately illustrates the specificities of communism in Romania. This film successfully conveys the agonizing condition of a young woman during communism, her body and sexuality being strictly controlled by the state, a perfect example of the oppressive practices that people had to deal with during the regime, one of them being the violation of reproductive rights.

Before becoming a member of the EU Romania consistently ranked as one of the most corrupt countries in Europe (Gugiu, 2012; Ristei, 2010, p. 342). The communist period left deep scars, but there was also a lack of political will to curb corruption and consolidate democracy after the collapse of communism. Moreover, the implementation of a major judicial reform was difficult since not even professional structures have changed. People were still appointed under the communist system, being constantly subject to influence (Pridham, 2007). Becoming an EU member was insufficient in changing ‘business as usual’ in Romania, even though a new regime of sanctions was introduced and the conditionality was extended into the first three years by the EU. Pridham (2007) was right in saying that after reaching its ultimate goal (EU membership) an obvious relaxation with regards to anti-corruption measures will appear in Romania. Furthermore, it is difficult to tackle corruption effectively in Romania since it affects so many layers of the public sphere, “the state and economy becoming the reservoir for furthering personal or party-political interests” (Pridham, 2007). Ristei (2010, p. 341) argues that for post-communist countries is particularly hard to curb corruption, something which still undermines the process of democratic consolidation.

Post-accession and Romania is still considered to be extremely corrupt, currently one of the most corrupt countries in the EU, although measures such as the creation of the institution CNSAS, responsible for conducting screening processes in order to prevent the coming to power of former communist party activists or secret police officers, under the law 181/1999, were taken. Private bribery and illicit traffic of influence is quite common in contemporary Romania. This practice is more frequent

among the privileged class because of the obvious economic means which come in their support, besides having the 'required' social status to exercise illicit influence. As an illustration, we will focus on analyzing this kind of behavior in the film *Child's Pose*.

5. From gender oppression to moral regression? A comparative analysis of 4 months, 3 weeks and 2 days, and *Child's Pose*

What generates the whole action of the film *4 months, 3 weeks and 2 days* is the rejection of motherhood, a decision that empowers one of the women in taking back possession of her body, considered to be, during communism, a public property (Miroiu, 2010, p. 577; Andreescu, 2011, p. 661). However, this opposition needed to stay hidden from the vigilant eye of the state. Basically, the fear of repercussions led to a duplicitous life, influence by the necessity to preserve appearances, when the sense of guilt, inoculated through the regime's propaganda (Miroiu, 2010, 585), was not powerful enough to stop women from resorting to abortion. In some cases, when women were disobedient, drastic measures were taken, together with the already implicit social stigma generated by this "decadent behavior" (Falls, 2011, p. 37). The male protagonist (Bebe) even says, when he is preparing to carry out the illegal abortion and finds out that the pregnancy is more advanced than he initially thought: "Young lady, this isn't a game. We could go to prison for this. Both of us. Only I'd face a longer sentence".

In the film *4 months, 3 weeks and 2 days* we are presented with asymmetrical power relations, which, contrary to the official communist dogma, were not eradicated by the regime. Paradoxically, the decision to escape the oppressive regime, which objectified their bodies, made the two female characters do the same thing, by accepting the proposal to sell their bodies to the male lead in order to obtain an illegal abortion. The male lead is a character which perfectly illustrates the subordinated masculinity stereotype we discussed in theoretical section of this paper. Bebe is an aggressive extortionist, the only way he could exercise power being in relation to a woman. The fact that masculinity is associated with independence, assertiveness and, most of all, with the capacity to dominate (Broverman et al., in Daigle & Mummert, 2014), influences his behavior by making him turn aggressive. Nevertheless, his decision to pressure the two women in selling their bodies is coherent with Bannon & Correia's theory (2006, p. 247). They argue that among the features directly associated with masculinity is the sexual experience with multiple partners, even by extortion or rape. With the purpose of

deconstructing gender roles, Bannon (et al., 2006, pp. 248-249) states that poverty can trigger this kind of behavior. Men are frustrated as a consequence of their social status and start expressing their frustrations through violence, crime and domestic abuse. Since we already pointed out that subordinated masculinity is a particularity of the working class (Groes-Green, 2009, p. 288), we could consider Bebe, the leading male character in *4 months, 3 weeks and 2 days*, the archetype of this gender role category, especially since he gets involved in illegal activities in order to financially sustain himself, get sexual partners and eventually reaffirm his power.

However, in *Child's Pose*, both male characters – the husband and the son – are portrayed in a way that is totally different to the subordinated masculinity role, discussed above. Cornelia's husband lives in the shadow of his wife, his main role being to act as the breadwinner of his household, therefore adhering to a hegemonic masculinity role. In support of this claim also comes the fact that he is a doctor, therefore part of the privileged class, and we already established that this is a particularity of hegemonic masculinity (Groes-Green, 2009, p. 288). On the other hand, his social status and role within his family do not transform him into an authority figure, which could mean that hegemonic masculinity is just partially achieved in his case. The character's frustrations are not triggered by poverty, social exclusion or the inability to show strength at the work place, but by his lack of power in relation to his controlling wife. As an example, at one point he even calls her, while being sarcastic, "Controlia", because she tries to constantly control everyone's life. Furthermore, Cornelia's son (Barbu) experiences the same situation due to the fact that he is unable to find his own path, thus becoming dependent on his parents, particularly on his mother, which makes him lack confidence and display weakness throughout the whole film.

What is really interesting to observe is the inversion of traditional gender stereotypes in *Child's Pose* regarding the private realm, where the female protagonist represents the authority. She fits the description of a 'manly woman', an aggressive, ambitious, authoritarian and ferocious women (Hurubean, 2013, p. 5), who does whatever necessary to protect her beloved son. Her obsessive love clouds her judgment so much that she even resorts to bribing people in order to protect him. Cornelia's lack of empathy situates her in antagonism with the image of the traditional woman (weak and subordinated), basically contradicting what social norms usually dictate, and even

managing to emasculate her husband and son. Both male characters are illustrated as weak, in the company of the strong personality of Cornelia.

At the present time, strong women are portrayed as emulating features traditionally associated with those of men as a survival strategy in a world currently dominated by them. Moreover, a more masculine behavior of a woman may lead to a pro-social behavior, such as success at the work place or in sports, and a decrease of violent responses from others, contrary to the experiences of more feminine, fragile females (Daigle & Mummert, 2014, pp. 269-270). Interestingly enough, Connell (1987, p. 111) argues that, contrary to popular beliefs, marital power struggles are mostly won by wives, an authentic inversion of power occurring at home. However, he also adds that it would be wrong to consider this local victory a successful attempt to overthrow patriarchy, merely being an apparent hold of power which can be revoked at any time (Connell, 1987, p. 111).

A representation of women in both analyzed films involves motherhood, their approach to it. From this point of view, Cornelia, and one of the female characters in *4 months, 3 weeks and 2 days* find themselves in total opposition. In *Child's Pose* the obsessive love of the mother generates various dynamics in the film, while in *4 months, 3 weeks and 2 days* the rejection of this role represents the central theme of the film. One of the mothers is excessively devoted, while the other firmly rejects what social stereotypes and an oppressive regime dictated her to be and do. What both films successfully illustrate, through a comparative analysis, is the transition from the 'heroic mother' stereotype, during communism, to the 'traditional woman' stereotype, during democracy – the latter being a woman trapped within the reproduction of patriarchal values.

The obsessive love displayed by Cornelia can be summarized under the concept of "intensive mothering" (Hays, 1998, p. 8), one of the traditional features being an exaggerated devotion of women towards their children, sometimes even close to reaching a pathologic stage, and manifested through a constant interference into their life. Cornelia shows this kind of behavior throughout the whole film. As an example, when two policemen were taking blood samples and the testimony of Barbu, after the car accident which caused the death of a little boy, his mother (Cornelia) says: "Coming here like hyenas, ganging upon my baby". Important to realize is the fact that her son is 30 years old in the film. Mothers like this frequently act as a buffer, isolating their

children from dangers or any obstacles encountered (Robila, 2004, p. 8), regardless of what their age is. The purpose of Cornelia's extreme devotion was to build the "perfect child", aligned with the new standards proposed by researchers (Macdonald, 2009, p. 415). As an illustration of this, while defending him, Cornelia begins to enumerate all the achievements of her adored son:

He's got a good heart, my child. He's warm-hearted. He's generous. He never liked to boast, he didn't brag about his things. He is very shy. He didn't join gangs. He doesn't drink. Since he was little, he was so good and careful not to get low grades in school, he learned English and French, and poems...We sent him to swimming lessons, skating...

Basically, women in this situation start neglecting their own life for the sake of their child. "He's my whole life. To me and his father he's the apple of our eye", adds Cornelia about Barbu. Given that, even though the female leading character in *Child's Pose* does not embody the traditional stereotype of a weak and obedient woman, she still embodies a sacrificial role, although not for the sanctity of the nation, as it was during communism, but for the well-being of her son. Therefore, although she lives in a democracy, patriarchy still undoubtedly shaped gender roles and inoculated the idea of self-sacrifice to women.

Experts develop an ideal maternal behavior which grabs attention through scientific papers, conferences or the media (Macdonald, 2009, p. 413), thus reaching a large audience. Mothers who are not devoted to their children experience guilt when they take a step back from what social norms dictate. „Good mothers” are „stay home mothers”, they do not formally work, they dedicate their whole existence to their children (Macdonald, 2009, p. 411), starting to live vicariously through them. The idea that women have to keep their status as primary parent and adhere to 'intensive mothering' is considered to be of great importance in a patriarchy (Spehar, 2005, p. 107). As an example, in Romania, there is a predominant mentality which dictates that the ideal nuclear family is ultimately supported through 'intensive mothering'.

The film *Child's Pose* also portrays the dysfunctional relation between state and individuals, public institutions becoming a means to systematically break the law. During communism, with the exception of the nomenklatura¹, people feared the state authority, which was controlling even their reproductive rights, as already discussed

¹ The nomenklatura in Romania could be defined as a social group who held various key administrative positions within the regime and enjoyed a privileged status among all the other groups.

with regards to *4 months, 3 weeks and 2 days*. However, in a young democracy, public institutions start obeying those that are willing to pay the most. The director of *Child's Pose* perfectly conveys the normality of these current activities in Romania, where bribe and illicit traffic of influence is part of the culture of one of the most corrupt countries in Europe. The intention of Cornelia to bribe people and disobey the law reinforces the idea that corruption has reached such endemic levels within various institutions that being wealthy makes all the difference for people faced with possible punishments. As an example, we can refer to the reaction of Cornelia when her son is questioned by the police: "He can write whatever he wants. It's his signature", says Cornelia, even though her son was clearly giving a false testimony. On the other hand, in *4 months, 3 weeks and 2 days* there is still an apparent social equality, although an equality in levels of poverty, in a society which positively discriminated only the nomenklatura.

What generates the reprehensible actions of Cornelia in *Child's Pose* is the threat to her son's existence, for whom she sacrificed herself, living vicariously through him. She is considering bribing the authorities, the parents of the child, anyone (!), just to protect her son. In fact, what helps us to observe the dysfunctions of the state is exactly Cornelia's determination to protect her son. Every new frame, after the accident, portrays Cornelia as lacking empathy and ultimately being dehumanized by her immoral and decadent behavior. The moment Cornelia meets the parents of the child reveals a sinister image of her. She pleads for her son while being in tears. Without even caring that those parents lost their child, Cornelia says: "You have another child, but I only have him".

Concluding remarks

Gender inequalities have always been an issue in Romania, no matter the regime. By using a comparative analysis we were able to notice that some aspects transcended communism, while others emerged at the beginning of the recently established democracy. Women are still represented as sacrificial, although currently for different purposes, a shift from the 'heroic mother' to the 'intensive mother' occurring. Women's approach to motherhood represents a central theme which helps reveal the political context as either repressive or corrupt. During the repressive regime, illustrated in *4 months, 3 weeks and 2 days*, the two women were totally objectified, used as a means to an end. This situation was quite common in Romania, since the state was regulating the

reproductive rights of women, the country ranking first with regards to maternal deaths in Europe. Regarding the image portrayed in *Child's Pose*, we are faced with the reality of endemic corruption, in this case manifested through frequent attempts to bribe people or disobey the law, an obvious illustration of the social decadence and moral deterioration of the 'new Romania'. As for the male characters in both films, their roles range from subordinated masculinity (Bebe) to an apparent hegemonic masculinity – apparent because it only reaches the surface, in the private realm an inversion of gender stereotypes taking place.

Limiting gender to certain socially constructed features is what pushes people to the margins of the society, eventually even impeding the development of a country at its real potential. The Feminist Critical Discourse Analysis was quite effective in unveiling the perpetual nature of unequal social arrangements, legitimized through the use of various emancipator or patriarchal narratives. However, since CDA is quite a challenging discipline, some might say the toughest one, given its multidisciplinary nature (van Dijk, 1993, p. 253), my initial concern has been that I will not manage to adequately use it as a research method, which hopefully was not the case.

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Kind auf Bestellung: Ein Plädoyer für klare Grenzen (“Child to order. A Plea for clear limits”)

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I am an author and journalist, based in Vienna¹. I did research on the surrogacy issue for two years, in Austria, Germany, France, Great Britain, Israel, South and Eastern Europe, Russia, India, USA, Nigeria. I have talked with more than 200 persons involved, in one way or another, in this practice (doctors, midwives, Psychologists, experts on philosophies, ethics, genetics, persons with disabilities, parents, children, egg donors, sperm donors, surrogate mothers). I also documented my research, in particular in the bioethics, philosophical, and sociological fields, trying to include recent works (mostly in German and English).

To have children is no longer dictated by nature. Medicine and science are able to fulfill almost any desire and make nearly everything possible. Everybody can have a child, has even a so-called right to a child, it does not matter in which kind of relationship he or she lives. Everything can be planned, controlled and seems to be safe.

Of course this is an illusion, but one our society believes in. The Reproductive Medicine and Genetic Diagnostics are only symptoms of the prevailing thinking that says: „Everything is possible“. Everything is for sale - a desired child as well.

There are nearly no official statistics about the number of surrogate mothers or their children. The profit is estimated at about four billion US-Dollars, a number that seems to me to be too low. In Thailand alone about 2,000 couples from abroad per year hire a surrogate mother. As Thailand and India have stricter laws now, the market is booming elsewhere, in countries like Mexico or regions like Eastern Europe.

Commissioned by the European Parliament the London School of Economics tried to get facts. Thirteen clinics were contacted in Europe, only six have sent relevant data. Their figures show an increase at a low level. In the Netherlands, where so called

¹This presentation is based on the intervention that Eva Maria Bachinger made on the Assises pour l'abolition universelle de la maternité de substitution, Paris, 02. 02.2016.

altruistic surrogacy is admitted, only two children were registered in 2013. As the number of children from surrogate mothers is steadily increasing it shows that the reproductive tourism does not stop, even if there is a liberal national law in place.

Most of the couples go abroad, in cheaper, poorer countries. In addition, in western European countries there is a lack of women who are available for surrogacy. In 2013 in France about 200 children were born in this way, in the UK about 150. The surrogate mothers all came from abroad. Since many private clinics are not registered, the authorities have no overview.

Also in Russia experts assume that the data are not complete. More than 900 surrogacy- programs were documented in 2012, about 300 children were born. Two thirds of the programs did not lead to a child. The agency Surmama alone reports about 76 children in 2012. So we can assume the total number is much higher, since there are at least 140 clinics. Officially.

The price differences are huge. In Russia the entire program costs 60,000 US \$, in India 30.000, meanwhile in the States you have to pay up to 150,000 US \$. In Russia the surrogate mother gets a maximum of \$ 10,000, in the USA \$ 30,000, in India \$ 6.000.

In Russia so-called „all-inclusive packages“ and „flat-rate programs“ are offered. The couple gets a baby guarantee, they can try and try as often as they want, change the donors and change the surrogate mothers. The women who are not successful get no money at all.

In Ukraine there are so-called „Best Deal Offers“ for 30,000 Dollars, also with 100 percent baby-guarantee. Surrogate mothers in Russia live together in an apartment for nine month but they are not allowed to talk about the details of the contracts. They come mostly from rural areas or from Belarus and Ukraine, recruited by ads on the Internet or in newspapers. Most of them are single moms, from poor and middle income groups. Women have little chance on the labor market, wages are low, many social benefits have been abolished. So the situation is difficult, egg donation or surrogacy therefore are seen as a possibility to gain a certain amount of money quickly. The clinics present themselves as benefactors, which give women a chance. But actually surrogate mothers have no choice, only the clinic and the couple: they have to accept several attempts to get pregnant, even if the hospital knows that the couple has only embryos with „poor quality“. The surrogate mother is not informed about that. Is the baby too big because of the body height of the intended parents, she has bad luck. There are no independent

checks of the clinics, to the disadvantage of the surrogate mothers, reports the anthropologist Christina Weis, who did field research in St. Petersburg. In Russia surrogacy is allowed only for heterosexual couples or single women, if it is medically necessary. But de facto also gay couples and single men are clients of the clinics. The international clientele is increasing, but not to the extent as in India and the USA.

In the womb of the 28-year-old Natalia grows the child of a 36-year-old Russian couple, who lives in a wealthy part of Moscow. More she does not know and she doesn't want to know more, she says. Nobody of her family knows what she is doing in Moscow, no one should know about it. „I get a million rubles after birth and now 20,000 rubles per month. That's very good.“ Otherwise, she and her husband have no chance to get so fast so much money. „We could just rob a bank,“ she says, because to get a loan, is „utopian“. Too uncertain is their income: He works as a construction worker, when there is work, she studies law. „We are realists, there is no other way. Because of the current ruble exchange rate we are already uncertain whether there is enough money to buy a small house.“ Her long absence from home isn't unusual, because they often must work somewhere else. Their little boy is with her mother. Natalia wants to know how much gets a US surrogate, and swallows: It is twice as much she gets. Her surrogacy contract is very simple - and undifferentiated. „If there is a problem, it can be interpreted in this way or in another. It's not clear what will happen if the child is handicapped. But it is part of the daily life here that nothing is clear and sure. Well, only one detail is really important to me: How much money I'll get in the end.“ Her husband says: „Natalia is just the container for this child. When this is over, we take the first train from Moscow and we are gone.“

As the market is growing, the Dutch Rapporteur on Human Trafficking, Corinne Dettmeijer, published a report on surrogacy. For her surrogacy falls under trafficking because it is a „misunderstanding“ to believe that it is only trafficking, when people are trafficked, it is also trafficking when parts of them like organs or germ cells are for sale. The agencies are therefore the one who exploit the surrogate. The doctors are supporters, the intended parents are consumers. The intended parents cannot be legally prosecuted for trafficking, but Dettmeijer calls upon the states to act and to tell couples not do go abroad to engage a surrogate mother. Global action is needed to get the problem under control, she says.

Surrogacy is not prohibited in every EU-country, many countries such as the Czech Republic, Hungary and Romania have no specific laws, which allows a black market. In the Czech Republic for example you can fix a private contract with the help of a lawyer. „We give treatment to couples with a surrogate mother about three to six times a month, but the patients must have medical reasons and they need to bring the surrogate. They have to go to a lawyer and have a contract. When we see that everything is fine, we make the treatment“, explains Doctor Stephan Machac in Brno. A clinic in Zlín opens the website with the headline: „Our surrogate mothers have already given birth to a dozens of children“. Czech women offer their uterus in the internet for 12 000 to 50 000 Euro.

Even in countries where there are so-called „altruistic surrogacy“, like in Great Britain or Greece, surrogacy is paid illegally or they call it refunding of expenses like hotel, food,.. etc. In UK for example this amounts to 20.000 US\$ Dollars. In Greece, where each case must be controlled by a judge – the law says that there must be a close relationship between the couple and the surrogate mother and they both have to be resident in Greece. But in most cases there is no close relationship, the majority of those women come from Eastern Europe. It is most likely that they get paid for their services, the Greek sociologist Aristides Hatzis reports. The lawyer Takis Vidalis says that no official statistics on how many women are brought from abroad to Greece for egg donation or surrogacy are available. „Many of them come from Bulgaria, Romania, Ukraine, Albania, but also from other countries, „which logically means that their motives are not altruistic“. Not only Greek, but also Spanish clinics recruit women from Eastern Europe. „It is very well organized, an extremely lucrative market“, says a doctor. The Romanian journalist Andrei Ciurcanu has interviewed women from abroad. They told him, they get 14.000 Euros for the birth of a healthy child.

Between a bank and fast food chain at the Unirea Shopping Center in Bucharest I wait for a woman offering her uterus on the Internet. „Hi, I am Elena,“ she says when she arrives. Only a few months ago she has registered on the website. Within a few days she got dozens mails from around the world. From Canada, the UK, the USA, China, from many European countries, couples, homosexual couples, single men. She wants to get 8.000 euros for the surrogacy. „Life is just very hard here, the prices are high, income is very low. It is a way to make money. Of course I am ready to do that only because of the money.“ Elena has also thought about egg donation. „Of course it is forbidden, but Romania is like a wild jungle. Money make everything possible, money, nothing else

matters.“ The authorities are not interested to see the reality: the Romanian Ministry of Health said that they have no knowledge about such practices in Romania. However, in June 2014 it was reported that the authorities against organized crime had revealed a network of illegal agencies for surrogate mothers in Timișoara. The women came not only from Romania, but also from Hungary and Slovakia. They received 300 euros for egg donation and 350 euros per month during the pregnancy.

I have not found a privileged, rich surrogate mother. Maybe there is sometimes an altruistic reason, a will to help childless couples, but the money is the main reason. Reportedly „altruistic surrogacy or egg donation“, in most cases is just propaganda of the clinics and comes from the intended parents to avoid to feel guilty. I don't see much freedom for a surrogate mother: They must complete all prenatal tests and report daily to the intended parents via telephone, email, text message. If the child is handicapped, the woman has to abort, she has actually no choice. So if the supporters of surrogacy talk about the great freedom of a surrogate mother I can only view this as cynical.

Most of the women receive no money for their many attempts to get pregnant, not even for pregnancy per se, only if it leads to a child. That needs to be a healthy child, of course. Therefore by every right you can call it a child trafficking. Money for child. A Child is ordered, delivered and paid. As we know, the trade with children is not allowed. If we allow surrogacy worldwide and therefore the sale of children, then the question has to be raised: Why do we not legalize the trading of human at all? Even human trafficking cannot be prevented always and everywhere, but no thinking person would want to legalize it. When it comes to children, sadly this principle does not exist anymore. The right to know ones origin, this right of children is ignored, too. Since neither European nor global donor- and surrogate-register exist, the children rely on the good-will of private clinics to find out about their biological and genetic parents. It is the states that must guarantee access to these data.

Moral and ethical standards are obstacles for maximizing profit. Therefore capitalistic systems ignore and destroy those standards. One ethical standard, the International

Convention of the Rights of Children is ignored – in favor of the so called right to have a child and the profit of clinics. That is the real scandal. Many supporters of surrogacy talk a lot about human rights. In this issue, they tend to forget the right of the children.

Actually I have the feeling that they do not know much about the meaning of human rights. Nearly each human right must always be balanced out with other human rights.

But in this issue the right to have a family is interpreted as an absolute right. That's wrong. It is limited because of the rights of children. Human rights were established to protect mainly the weak not the strong. It is obvious that in this case the children and surrogate mothers are weaker than the adult clients. The international convention of the rights of children is a fact, all states of the world – except the United States – have adopted the convention. We have to follow international law.

So, I resume: Surrogacy contradicts the Convention of Children's Rights, surrogacy is against the dignity of woman and it is just a proof that we want to have everything for sale. My book has the subtitle: for clear limits. I think, with regard to surrogacy, we already passed the limit.

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Le Corps-marché, la marchandisation de la vie humaine à l'ère de la bioéconomie

by Céline Lafontaine
Published by Seuil, 2014

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« Le Corps-marché, la marchandisation de la vie humaine à l'ère de la bioéconomie » publié en 2014 (Edition du Seuil), est le quatrième ouvrage de Céline Lafontaine, professeure agrégée de sociologie à l'université de Montréal, experte sur ces questions entre la bioéthique, la sociologie, le droit et la philosophie politique.

Avant cela elle avait publié déjà deux ouvrages chez le même éditeur sur des thèmes connexes : « L'empire cybernétique. Des machines à penser à la pensée machine » (2004), ainsi que « La Société postmortelle » (2008). Et un autre chez un autre éditeur (Boréal, 2010), « Nanotechnologies et Sociétés ».

En effet, avant de s'attaquer à l'entité de la Bioéconomie qui a transformé le corps en marché, il fallait penser le devenir-machine du monde par la domination progressive des algorithmes sur le vivant, et sa conséquence la plus essentielle, la pensée de la fin de la condition mortelle. Le maillon manquant de la démonstration semble bien être l'analyse du recyclage du vivant par lui-même.

Pour s'atteler à la déconstruction de l'immense entreprise de commercialisation du vivant, Céline Lafontaine procède en cinq étapes. Dans une 1^{ère} partie, elle analyse le nouveau statut du corps à l'horizon de la bioéconomie, un corps qui n'est plus simple monnaie d'échange mais un corps qui se dématérialise à mesure qu'il se morcelle et se privatise, dans une 2^{ème} partie, elle étudie les rouages du recyclage du vivant qui suivent la découpe du corps: du corps ressource aux bio-objets.

Ensuite dans une 3^{ème} partie, elle s'attaque à la face cachée du biocapital, l'envers du don, une des valeurs morales de la bioéconomie, qui se révèle être le mécanisme affectif de l'amour de la vie considérée comme sacrée, valeur utilisée par la bioéconomie pour « vendre » l'idée de corps-marché. La 4^{ème} partie va plus loin car elle dessine en creux une nouvelle économie de la génération, ce qui pourrait bien être le but ultime de la

bioéconomie : s'approprier le processus entier de l'enfantement, de la fécondation à la gestation, et dans un temps futur la mise au monde. Le corps devient usine à gamètes. L'embryon, une entité immaculée, sortie des laboratoires, et les cellules souches, les données corporelles qui n'appartiennent plus à aucun corps.

La 5^{ème} et dernière partie de ce panorama exhaustif de la bioéconomie montre les inégalités raciales, et de genre et de classe, à l'œuvre dans la nouvelle échelle des corps marchandisés, ce qui signifie que tous les corps n'ont pas la même valeur, tous les organes ne se monnaient pas pareils.

Les sources utilisées par l'auteure sont diverses et très complètes. Elle utilise les références classiques de la sociologie et de la philosophie politique (Karl Marx, Marcel Mauss, Günther Anders, Michel Foucault...) mais aussi les derniers articles de journaux scientifiques et académiques, et essais de bioéthique parus sur ces questions en Angleterre et aux Etats-Unis (Kaushik Sunder Rajan, Donna Dickenson, Margaret Locke...) ainsi que des articles de lois de journaux officiels, gouvernementaux et des textes publiés en ligne issus de sites associatifs, informatifs et médicaux.

Est-ce une énième vision d'apocalypse servie par un énième essai réactionnaire, d'extrême-droite et aux relents religieux ? Non, bien pire. L'analyse documentée, objective, précise et factuelle de Céline Lafontaine montre sans doxa et sans esprits échauffés combien la bioéconomie est déjà infiltrée partout, et sa logique, immiscée en nous au point de nous faire concevoir le corps comme un lieu d'investissement subjectif et par conséquent, un lieu qui peut être commercialisé, le tout étant de faire passer cela pour la volonté du sujet !

Revenons un peu sur le pourquoi de l'essai de Céline Lafontaine, et sa nécessité politique et épistémologique. Le paradigme invisible qui gouverne aujourd'hui la politique n'est plus la biopolitique mais la bioéconomie. En effet, la bioéconomie est la manipulation technoscientifique du vivant qui est devenue la source de la productivité économique. La mise en valeur des processus biologiques est le nouveau modèle de l'économie globalisée. Pourquoi ? Pour lutter contre le principe d'entropie, c'est-à-dire les limites propres à toute production énergétique, en somme, pour éviter ainsi la perte d'énergie, il suffit de revitaliser, de réinvestir les organismes vivants eux-mêmes, comme source d'énergie renouvelable, dont on peut économiquement tirer profit.

Ainsi pour éviter les limites écologiques de la planète, il suffit de transformer les humains en ressources vivantes, investir « la vie en elle-même » pour nourrir la machine industrielle forcément limitée par les principes de la mécanique et de la physique.

Ce modèle d'exploitation du vivant dépasse le corps humain car il brise les frontières du corps, et propose une définition uniquement génétique, moléculaire ou en jargon philosophique, monadique. Le corps a été « molécularisé ». Fini les limites corporelles, et les frontières étanches d'un corps protecteur d'une intériorité individuelle et subjective. Le corps est aujourd'hui socle passager abritant des processus qui s'organisent et se désorganisent en fonction des flux informationnels car ils ont pour modèle premier les modèles cybernétiques de l'après seconde guerre mondiale. La parcellisation du corps permet d'isoler des cellules, de les cultiver *in vitro*, de les congeler et de les modifier, et surtout de les vendre, en les brevetant et en les privatisant. De cette parcellisation résulte leur biovaleur.

Pour surmonter les limites écologiques de l'industrialisme, et poursuivre ainsi un modèle de développement infini, il faut investir dans ce qui ne s'arrête pas, c'est-à-dire, la croissance des cellules-souches, et le vivant infiniment petit qui possède l'Elan vital cher à Bergson. Mais là où la logique de la bioéconomie est forcément pervertie, c'est quand on voit que dans les faits, il s'agit de spéculer sur une économie qui mise sur la vie en elle-même, car pourquoi y aurait-il de limites au biocapital dont le processus cannibalistique est de se nourrir maintenant des vivants en s'appropriant le matériel biologique d'origine humaine.

La « vie en elle-même » est mise en valeur de façon spéculative, ou en d'autres termes, on spéculé sur ce que les corps vivants et leurs morceaux pourraient « rapporter ». Céline Lafontaine propose ainsi dans « Le corps-marché » une sociologie du corps marchandisé, et expose aussi les enjeux anthropologiques, philosophiques et économiques de la bioéconomie en définissant au passage tous les nouveaux aspects de cette galaxie (biovaleur, biobanques, biocapital, bio-objectivation, biocitoyenneté...).

Tout a commencé avec Descartes et son découpage du corps humain conçu comme machine assemblée. Comprendre un organisme complexe demande de le découper en parties. C'est exactement la méthodologie de la médecine qui commence dès le XVIème siècle à découper les corps et pour cela doit ouvrir les cadavres et violer l'interdit religieux.

Aujourd'hui, les corps ne sont plus seulement ouverts, ils ont été vidés de leurs organes, éviscérés pour les progrès de la science, mais aussi pour toujours plus de main-mise sur les processus biologiques qui sont devenus « autonomes ». Quid du corps ?

Il n'existe plus puisqu'au corps sont préférés les « processus biologiques » dont la vitalité doit être captée à l'attention des firmes pharmaceutiques ou des laboratoires de médecine régénératrice.

Ainsi il s'agit « d'analyser et de comprendre comment « la vie en elle-même » c'est-à-dire l'ensemble des processus biologiques propres à l'existence corporelle est désormais au cœur d'une nouvelle phase de la globalisation.

A la fois, matière première et force productive, le monde-vivant dans son ensemble est considéré comme une mine à exploiter. La mise en valeur économique du vivant se sert du corps humain comme une matière organique à disposition des firmes ou des laboratoires. Décomposé en une série d'éléments (gènes, cellules, organes, tissus), le corps est à l'origine d'un immense marché. Tout devient exploitable et brevetable. La distinction kantienne entre une chose et une personne ne tient plus. La vie a bien un prix, et les corps sont les objets manufacturés du biocapital.

Les pratiques à l'œuvre dans le biomarché vont du trafic/ don d'organes, à la production de « cellules souches », aux gestations pour autrui, à la production d'embryons surnuméraires, aux dons d'ovocytes, aux lignées cellulaires de cellules cancéreuses... Tout est vendable.

Mais tous les corps n'ont pas la même valeur, et les inégalités de sexe, classe, ethnicité se retrouvent accentuées dans le biomarché. Au cœur de la bioéconomie, le corps des femmes est utilisé pour ne pas dire « pillé », car ici l'accent est mis sur la régénération et non plus la gestation. Corps-machine, corps-usine, les ovules des femmes deviennent la paille d'or filée par le nain Tracassin du conte allemand des frères Grimm. Le nain file de la paille d'or pour la fille d'un paysan vantard mais en échange de quoi, il attend qu'elle lui remette son premier enfant.

Les biotechnologies procréatives reposent sans grande surprise sur l'exploitation du corps féminin, il s'agit d'extraire les précieux ovocytes du corps des femmes, ou d'exploiter leur utérus pour mettre au monde des enfants pour des couples consommateurs. Néanmoins, Céline Lafontaine se concentre plus sur les cellules reproductrices et les processus biologiques dans leur rapport économiques qu'aux pratiques telles que la gestation pour autrui.

La force du néolibéralisme propre à la bioéconomie est de faire passer pour un progrès « l'usage humain des êtres humains », ce qui était, rappelons-le, une des pratiques du nazisme.

Il devient urgent, après cet essai, de s'interroger maintenant sur l'origine et les raisons métaphysiques d'un tel besoin d'appropriation du vivant, et une telle « Envie » du corps féminin reproducteur qui a pour revers la haine de l'altérité et la haine des limites humaines devant la toute puissance mathématique et financière du biocapital.

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