

## Desires and rights. Surrogacy at the crossroads of new ethical dilemmas? Round table about GPA, second round

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### Introduction

We started reflecting on the gestation for other (GPA) with a Round Table published in AG vol. 5, 10, 2016, moved by the desire to better understand the spread of the practice of GPA and worry about how we speak too little of the women involved into the practice. The contemporary debate about GPA in fact is concentrated on some legal cases, mainly on the so-called best interest of the child. So, even considering the best intentions of the courts, legal practitioners and scholars, the debate end to focus on, shall we say, the *after*. At best, it tries to remedy to something that has already happened. However, the point is that this method does not pay any attention to which elements of ours societies push in that direction, on what moves people toward that choice, nor does it reflect on the values involved and the possible implications on women *as women*.

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Therefore, beyond the purely legal issue, which was partly devoted the round table that has already published, we would like to deepen the *ethical* and *feminist perspectives*. Considering the different kinds of possible genetic relationships between mothers and embryo, we would like focus on *gestational surrogacy as a social practice* and try to shed light on what values are conveyed from that.

The RoundTable here presented is composed by the contributions of three scholars and professionals that coming from three continents, with different culture and law: Italy, California (USA) and Argentina. We wanted to choose three different contexts – and three different point of view – to highlight the complexity and variety of aspects that the GPA encloses. To fully understand the differences of the author's theoretical approaches, we think it might be useful to make a brief note of the diversity of the normative contexts. While about the Italian law as well as other European's legal order the previous Round Table (RT) offer many information. Very briefly, we could recall that, after a recent debate on the issue, the Argentinian's law establishes that the legal mother corresponds to the birth mother whereas, although in USA the legislation is different from state to state, in California the law regulates the surrogacy as a contract of service.

Many are the issues that emerge from the surrogacy practice, the readers will be conscious of that observing the different answers offered in our RT. Differences also emerge on the same key words of the question as 'patriarchy', 'autonomy', 'freedom', 'rights', 'subjectivity'. The distinct meanings' terms attributed by the authors is evidently influenced both by the variant ethical framework of them and by the different theoretical approach – or even by divergent feeling or sensitiveness –, but we consider this diversity a treasure: although not always, of course, differences could be very important to develop in-depth reflection.

It is undoubted the strong influence of the body's technologies on our behavior, even the most intimate of that. Moreover, this fact underlines or highlights how it is so important to reflect on *how* they affect us, to become aware of our choices about the humans' future. Technology make possible not only to believe in the splitting body-mind, but even to split the unique body in parts. Our time is the first where the technology's change is so quickly

to overwhelm us, someone could say on ours “essential”. Maybe it is the first step of an upper level of humanity.

The Assisted Reproductive Technology is based on human health studies, but its implications extend to many aspects of individual and social life. Firstly, it arises from new possibilities introduced by technology the claim, maybe the need, to regulate and normalize them. Secondly, this means that the debate is ought to be opened to many ethics issues. Third, unfortunately, the rules enacted, for the moment at least, do not run out the contradictions and the disagreements at stake. The opening of the possibility for intentional parents to access at a genetic parenthood even when (for various reasons) they cannot tread the natural path, combined with the way in which this is obtained, has moved the boundaries of subjective practices as well as the reflection – and so the praxis – *from* the desire *to* the claim, even the right, *from* the willingness *to* the capability to do it.

This shift poses many problems, primarily in terms of the obligations, since a right always sees an obligor. Observing the side of the potentially surrogate mothers, the widening of what is technically feasible on women's bodies poses feminine subjectivity in the middle of a crossroads.

That intersection potentially covers a large field, going from the opening of a new scope of exploitation to the recognition of a women's new space of autonomy up to the idea of a *demiurgical* power generator (by choosing who the most suitable parents are). Anyway, it is imperative to reflect on ours societies, on our ethical troubles occasioned or increased by new practices or by transformation of the old ones, and, of course, on our subjectivity. It is so fundamental try to clear which values are involved in our practices, how they move on and toward where they go.

**1. The reasons that lead to the choice of the surrogacy can be individually different, of course; but, in your opinion, how is its role and effect in relation to the issue of women's emancipation *versus* the reproduction of patriarchal values?**

**Zsuzsa Berend**<sup>2</sup> (University of California, Los Angeles) – From my data on surrogates on the largest surrogacy support and info site, [www.surromoms.com](http://www.surromoms.com) (SMO), it seems that surrogates on the site think of themselves as independent, smart, resourceful, generous women. Over the years (I did research between around 2002-2013), women have become more vocal and insistent about the necessity for surrogates to educate themselves on the medical, legal, and social aspect of surrogacy and be prepared for the “journey”. They do not talk about ‘emancipation’ but certainly advise others in ways that show knowledge and pride in that knowledge. «I know my body better than the doctors» is also a frequent theme, and surrogates often invoke embodied knowledge as relevant and important; they also want to marshal all this knowledge to help their intended parents (IPs) have a successful pregnancy – they tend to understand the pregnancy as their IPs’ pregnancy, no matter whether they are traditional or gestational surrogates, although GS (Gestational surrogacy) is a lot more common these days. SMO surrogates are mostly married women, and think of the relationship with their IPs’ as between two families; however, the surrogate – IM (Intended mothers) bond is usually central.

I really do not think that “patriarchal values” is a relevant idea here. True, surrogates are intent on creating nuclear families, and so are couples, but these are generally middle-class, equalitarian families. Women frequently discussed intended fathers’ reluctance to move forward with surrogacy, more in TS (Traditional surrogacy) than in GS. IMs usually take it on themselves to try and convince husbands. Over the decade of research, I have not read any thread in which IMs or GSs reported pressure from men in their lives. I have a lot data on surrogates showing how they advise one another and how they describe negotiations with their husbands. Let me quote from my book:

Women [surrogates] discuss marital decision-making in various threads and overwhelmingly describe their marriages as “partnership” where they make “joint decisions.” Annabel’s post represents a typical formulation: “We work together on big

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<sup>2</sup> Zsuzsa Berend teaches *sociology* at the University of California. On this subject she wrote, *The Online World of Surrogacy*, was published by Berghahn books in 2016.

decisions and always come to an agreement together. ...when we're at an impasse we work it out. If it is something that is very important to him I may relent but he reciprocates.” The language surrogates use to discuss their husbands is not the language of “empowerment” but of companionship and shared goals....“At first my dh [Darling husband] was unsure. ...He was right there with me, doing research, reading, learning. As all things in our marriage it was a joint decision<sup>3</sup>.

**Laura Cantore** (University of Cordoba - AR<sup>4</sup>) – Surrogate motherhood appears as a consequence of the development of Assisted Reproductive Technology, (ART). One of these techniques consist of one woman (pregnant mother) rents her uterus to another woman (intentional mother) as that she can have a baby, with or without biological link<sup>5</sup>. This situation can occur in multiple contexts, homo-parental families or traditional families, usually, in which the woman cannot procreate; single women, and men that cannot procreate, etc. The expression “subrogate maternity” or “uterus hiring” is an expression that refers popularly, as a real practice. The axis of the expression “surrogate maternity” means the gestation of a pregnant woman related to some commercial logic dimension. Laws want to prevent women from rental and prefers to speak about surrogate gestation<sup>6</sup> where economical compensation is used to pay for pregnancy expenses. But, in practice, this is not a simple issue.

I think, that is interesting, before talking about emancipation and patriarchy, to distinguish at least three types of pregnant women, considering this technique. The *altruist*, the pregnant mother has a family tie with the intentional mother and she will have it in the

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<sup>3</sup> Op. cit., p. 60.

<sup>4</sup> She is lawyer, PhD in Law and Social Sciences, Professor of Philosophy of Law and Introduction to Law. Researcher on *sexual diversity* at the National University of Cordoba, Argentina.

<sup>5</sup> The absence of biological link is legally substituted by the notion of *gestational will* or *will for procreation*.

<sup>6</sup> There are several words to denominate this reality, the most common are: surrogate maternity substitute gestation, uterus rental, supply mother, bearer mother, womb hiring, temporary womb donation, gestation by other surrogate gestation, substituted maternity, rental/hiring maternity expecting/ pregnant mothers. Cfr. E. Lamm, *Gestación por sustitución. Realidad y derecho*, in *InDret*, 3, 2012, available at: <http://www.indret.com/pdf/909 es.pdf> (consulted 24.02.17).

future<sup>7</sup> – she acts with personal autonomy. The *autonomous*, the surrogate lives this experience voluntarily<sup>8</sup> and she will not keep in touch with the IM<sup>9</sup> nor the child; *vulnerable*, a pregnant mother in a fragile personal situation, due to economic, social, or emotional reasons and keeps the reproductive role for a patriarchal order<sup>10</sup>.

I am deeply concerned with vulnerable woman who is an easy target for agencies, which make profit with her, taking advantages over suffering infertile fathers or mothers. There is tension about lack of legislation regarding this issue, and it generates more vulnerability, as the practice is set up. It is frequent that those women become “pregnant containers”. Feminism is most concerned fundamentally with this group of women, because they reproduce an abusive patriarchal model in which repentant pregnant women have no voice at all. Their bodies are treated as objects in an unequal society. A different situation is an independent woman who chose to become a mother for another woman, in an altruistic way.

Nowadays, pregnancy generates costs, in that sense it is related to economics. Uterus rental (a commercial concept) o surrogate motherhood can be or not patriarchal, according

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<sup>7</sup> In the case of M.R. and D.R., the surrogate mother was the sister of the contracting party, and she was happy when the children were registered with her sister’s name, see M.R. and D.R. (suing by their father and next friend O.R.) & ors -v- An t-Ard-Chláraitheoir & ors, [2014] IESC 60 (7.11.2014), APPEAL N° 263/2013, available at: <https://adam1cor.files.wordpress.com/2014/11/m-r-and-d-r.pdf> (consulted 01.03.17).

<sup>8</sup> As regards *Asociación de familias por la gestación subrogada* (Family Association for surrogate motherhood), pregnant women give their help willingly, as an organ donor. They are mostly of good socioeconomic level, stable life and with children of their own. If they do not apply for these requirements agencies do not accept them. During the matching process with pregnant mother with future parents both parts interchange their profiles and know each other to decide about continuing the process with all the information about both parts. Pregnant mothers are proud to help they give and talk naturally about this issue. There is an anecdote that occurs frequently, when women show their baby bumps and people congrats them on the street, they say “thanks, but it is not mine”. We cannot consider this as “exploitation” something that is carried with so much pride. Available on <http://sonnuestroshijos.blogspot.com.ar/2010/11/argumentario-en-defensa-de-la-gestacion.html> (consulted 01.03.17).

<sup>9</sup> L. Pluym, *Mennesson v. France and Labasse v. France. Surrogate motherhood across borders*, available on <https://strasbourgobservers.com/2014/07/16/mennesson-v-france-and-labasse-v-france-surrogate-motherhood-across-borders/> (consulted on 24.02.17).

<sup>10</sup> The absence of the voice of vulnerable pregnant women is notorious. That means they do not regret or terminate pregnancy, they are absolutely treated as *objects*.

with the context<sup>11</sup>. According to circumstances, patriarchy or emancipation are reinforced or reproduced in each case of surrogate motherhood. Making invisible, women rights is a relevant sign to observe the strengthening of patriarchy in each context. In the case of the altruistic mother and the independent woman is highly probable that surrogate motherhood reinforces her emancipation. In the case of vulnerable woman, is inevitably abusive power conditions, exclusion and oppression when she gets pregnant. Her consent will be always tainted and its existence reinforces the patriarchal model.

**Daniela Danna**<sup>12</sup> (University of Milan) – First of all, surrogacy is a legal institution, not a technique. This is the basic concept needed to fully understand the practice from an ethical and feminist point of view. This legal institution, affirming that a woman who gives birth is not the mother of her newborn, dismantles the legal principle *mater semper certa est* (the legal mother is the one who gives birth), that from Roman law has been diffused all around the globe with the expansion of the capitalist world-economy since the “long 16<sup>th</sup> century”. The new legal institution, approved in the US with the California Supreme Court verdict *Jonson v Calvert* in 1993, makes exceptions to this principle, in order to legally define as ‘parents’ people who have put the mother (consequently degraded as “carrier”) under contract. Different countries have configured this new legal institution with varying degrees of freedom for the mother, but over time, they converge on treating her as a worker with no rights over the “product” of her work, exchanged for payment, as the examples of Great Britain and some provinces in Canada clearly show.

The social message of this legal institution is that a woman can be a container for somebody else’s child. Surrogacy is the quintessential restating of patriarchal values with

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<sup>11</sup> With the expression 'patriarchy' I refer to the abusive and androcentric asymmetric exercise of power, in a context of rigid domination, which can be exercised by men or women where equity, equality and personal autonomy are not incorporated.

<sup>12</sup> Daniela Danna teach *sociology* at the Department of Social and Political Science of the University of Milan. On this subject she wrote *Contract Children. Questioning surrogacy* (Stuttgart, Ibidem 2015), *Fare figli per altri è un dono... Falso!* (Roma-Bari, Laterza, 2017) and is currently preparing another book: *Maternità. Cosa cambia quando è surrogata* (Trieste, Asterios).

an emancipatory twist: it is not just the father that will appropriate the offspring generated by the “carrier”, but another woman can do it, too, provided that she is rich enough to afford using another woman to have “her” baby. Women can fully occupy the biological position of the father if their oocyte is used for embryo transfer. So – but this is not new in history – women belonging to the upper class can use their power to be socially treated as males. Women belonging to the lower classes enter into the surrogacy contract purely as workers whose reproductive capacity is put on the labour market.

Starting from the premise – it can be subjectively shared but it is objectively imposed by this legal institution, which decides in cases of subsequent disagreement – that a pregnancy is not a woman’s own, ethnographies show us how many women act and negotiate and are even happy with the experience. What about those who are not happy to depart from their children, those who are suing to keep them and even for these laws to be declared unconstitutional? Generosity can be expressed in many ways, even making babies for others to grow up by relinquishing them to their natural father. That, as a choice based on relationships, not by entering a legal institution that is based on the inhumane notion that a woman who gives birth is not a mother, that her baby must have no ties to her.

**2. Focusing on the presence or not of genetic relationship between embryo and intentional mother, can you think of other ways in which values involved in this social practice could change? Would something change in the surrogacy vehiculated values, for example, if the pregnant mother was recognized as beneficiary of one part of the hereditament (or other form of legal link)?**

**Zsuzsa Berend** – I am still not completely sure what values we should be thinking about. SMO surrogates see babies and families as centrally important and valuable. The value of generosity, helping, etc. is also important to them, as is the value of planning for parenthood, of caring and nurturing. Genetic relatedness, while sometimes important to IPs and maybe to some surrogates, is usually discussed as ‘supporting evidence’ of IPs’ parenthood, but desire to be parents, and willingness to care and nurture and parent the



baby is more important. Genetics is morally neutral, love and care are morally positive values. As surrogates say, “Almost anyone can use their DNA to produce a child [...] not everyone can be a true guardian, friend, or care giver to a child”. Surrogated on SMO do NOT consider themselves the mother of the baby – the baby always belongs to the IPs – “this baby would not be here had it not been for my IPs’ love and desire for it”. SMO surrogates want to give “deserving” IPs babies and wish to get some updates from time to time, not because they are attached to the baby but because they love to see the “results” of their sacrifice and generosity that went into the surrogate pregnancy and birth.

**Laura Cantore** – The biological bond is a rooted necessity in vast places of occidental and Christian world. For these places, a mother is just the woman who has a biological and genetic bond with the child. There is a feeling of appropriation or continuation of her own lineage that it seems to be satisfied if there is a genetic or biological bond. The first issue is that in surrogate motherhood not always exists a genetic bond.

In Argentina, there are situations in which filiation link is between more than two people. That is why another values involved in this social practice can change. It can emerge new ways and bonds that transcend the binary hetero couple. Slowly, it can be discerned the possibility of infants can be under the custody of one or more mothers or fathers. We can think, for instance, if a pregnant mother wants to exert her motherhood, also an IM with the same desire and the father, a sperm donor, who wants to exert the role of father for emotional reasons, without having sexual intercourse without the women.

It is interesting the case of the Argentinian journalist, Marta Dillon, her female partner, filmmaker Albertina Carri and the designer Alejandro Ros, who received from the Civil Registration office of Buenos Aires a birth certificate of their son, Furio<sup>13</sup>. As *strictu sensu*, this is not a case of uterus rental, nor surrogate maternity. It is valid to consider this case, as it happened a triple filiation where there was not a natural traditional reproduction and all the actors involved biologically or emotionally decided to assume motherhood and

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<sup>13</sup> C. Rodríguez, *El derecho de un niño a ser lo que realmente es*, available at <https://www.pagina12.com.ar/diario/sociedad/3-277027-2015-07-14.html> (consulted 24.02.17).

fatherhood of Furio, extending the traditional notion of family from the binary concept. Cari and Ros have a biological bond with the child, while Dillon has breeding will. In this case, they conform a triple emotional filiation. This real situation moves away from commercialization of women body that is the main obstacle to foster surrogate motherhood, in spite of this practice also generates economical expenses, but do not promote the objectification of bodies.

Other way to change values involved in genetic relationships has to do with the expression “pregnancy willingness” that refers to the possibility a couple reproduce with independence from biological bond<sup>14</sup>. Since this expression, we can see in another perspective, known as the reproductive desire independently from those bonds. As I see, the hereditary calling of the pregnant mother just has sense when it belongs to some dimension of family affective experience in the initial pregnancy contract. The assumption is that the pregnant mother is included in the family dynamic because she is going to participate in children upbringing. On my classification, this case coincides with the assumption that the altruistic woman hetero or homosexual parent. It does not make sense to think about inherited vocation, in the assumption of independent and the vulnerable woman, as they do not participate in the assumed family project. Look at Mennesson and Labasse.

As regards the impact of the recognition of the mother as beneficiary of the inheritance, I do think that would be extremely positive in the case of altruistic mothers in homosexual families. In fact, when we talk about “coming families”, Roudinesco<sup>15</sup>, explain that the homosexuals break with the mandate of natural reproduction in order to have a family. The

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<sup>14</sup> The case, for instance, *Paradiso y Campanelli vs Italy* (25358/12) shows Mr Paradiso and Mr Campanelli were not biological parents nor relatives of the child and they remove the child from them. For Italian Court, those people cannot be considered parents as they do not have any biological bond with the child. Italy was strongly questioned for this case for the TEDH. Who dictated a sentence, in early 2015, alleging that Italian authorities had infringed some aspects of the European convention of Human Rights. The Court wrote, they have not taking into account the “supreme interest of the child”, they have not valued the previous family relationship and they have accented the vulnerability that identity absence that the child has been exposed from two years.

<sup>15</sup> E. Roudinesco, *La familia en desorden*, Fondo de Cultura Económica, Buenos Aires, Argentina, 2003, pp. 195ss.

fact that a man do not want sexual intercourse with a woman to procreate and a woman just desire a man for his sperm to procreate means a real transgression and a new way of exert the role of parenthood. When gay people of California between the years 1965 and 1970 wanted to procreate in one side invented a family culture that perpetuated the existent model and in spite of the normative wish, the reproduction on that terms it was received as a wound on the symbolic order that is changing nowadays.

**Daniela Danna** – This social practice rests on a legal institution, at least in countries with rule of law. And, once approved in various forms with various limitations, via antidiscrimination lawsuits it will open up to all kind of subjects as intentional parents, with the bottom line of their simple purchase of genetic material as minimum requirement to start the surrogacy pregnancy in a hired woman. What is at stake is the expansion of the capitalist market, which always needs to expand, into a new realm: procreation. The only case where the social practice safeguards the rights of the mother is the Dutch one, where in fact there is no legal institution, that is, surrogacy is not instituted by laws, but it happens that individual cases can be approved by doctors following the midwives and gynecologists' guidelines. They limit access to couples with their own fertile gametes (and the woman must not be above 40 years old) who bring a friend for their embryo-transfer. If it succeeds, the friend will be the legal mother of the child until adoption procedures are completed. The expenses that can be paid to her are only reimbursement for maternity clothes and other items strictly necessary for carrying the pregnancy to term, with no “reimbursement for loss of earnings” as the salary for pregnancy is hypocritically called in “altruistic surrogacy” (an inexistent oxymoron veiling the hiring of the woman in some English-speaking countries). But, due to the globalized race to the bottom, these rules are not effective, as the Netherlands recognized birth certificates from countries that have abolished *mater semper certa est*. In most of the families founded on a mother giving up her child the children were born abroad.

In sum, I believe it is impossible that after the introduction of the institution of surrogacy (also called “pregnancy for others” in French and Italian) any rule effectively can let the

birth mother maintain any legal tie to her newborn if she wants to (a feminist preoccupation), because this right would oppose the very core of surrogacy, establishing that she is not the mother of her child, that she is a legal stranger. This is what the clients want and, because they signed a contract and paid good money, they feel entitled to it. Even in countries with regulations many couples go abroad where they have more guarantees as purchasers. The globalized market will flush away all rights that might initially be given to workers in the current race to the bottom among States, in this realm as in others.

There is clearly a slippery slope in the concept of a “surrogate mother”. If it is introduced in law, this concept will eventually strip her of all possible rights in relation to the fetus and to her body, her freedom, her capacities to make decisions in health, movement, work and so on. Great Britain clearly shows the consequences of the introduction in 1985 of a very “soft” concept of “surrogate motherhood”: the mother had the unconditioned right to keep her child, no compensation should be paid that could amount to a selling of the child (the English parliament called therefore this form of surrogacy “altruistic”), no third parties should mediate the agreement having an economic interest in brokering children. This is what feminists in favour of regulation aspire to. After 30 years, not only a market in babies has sprung up and everyone is entitled to commission and buy babies (soon even with no genetic tie to them: “double donation”!), but surrogates are losing all possible guarantees, while they do get paid whatever amount is negotiated: the courts are always approving. Since 2010 if the birth/first/natural mother claims a newborn she is subject to the judgment of what would be “the best interest of the child:” in the eyes of the tribunals certainly not to be with a poorer woman who intended to sell it. But soon they won’t have any legal claim anymore. In the face of Rosanna, whom a High Court Judge ordered to be separated from her 15-months-old child that she should have delivered at birth to a gay couple (newspapers of 5<sup>th</sup> May 2015), a Baroness in the House of Lords declared that “in reality, the protection that the law gives to birth mothers is almost never wanted by surrogates,” so the Parliament should strip them of this protection (Hansard Parliamentary debates, 14 December 2016). Some ex surrogate mothers themselves that are now organizing the agreements, are advocating for this diminution of

rights: they have taken up the role of *maitresses* and scout for others, and of course they want to get their share. Flimsy excuses, like the uncertainty of filiation, are used to obtain this cancellation of the “surrogate” mother as a person to reduce her to a fetal container that gets paid, to a pregnancy worker.

**3. In your opinion, what is the source of the desire of maternity that push for surrogacy? Which kind of relationships do you think are established between the desire of maternity by surrogacy and the subjectivities involved?**

**Zsuzsa Berend** – Being an interactionist, I think desires are not so much “in” people as in interactions between people and the context-specific cultural ideas they draw from to make meanings. On SMO, surrogates and some participating IMs together, over time, defined “deserving parents” as middle-class, usually well-educated people in stable relationships, established in stable careers, who very much want to have children and have gone through failed attempts and suffered because of this. To be sure, this is not always the case – couples break up and divorce, some IPs have children but want more, some are in second marriages, older, with children from previous relationships, etc. Not everyone “suffered” or “did everything” to have a child, etc. But surrogates and IMs on SMO established a consensus that infertility is broadly defined, including people who are older or people whose infertility issues manifested after they had children but feel they are “not done with their family”. Such collective definitions are powerful and guide action; surrogates often say that they cannot judge how many children are “enough”, or at what stage in their lives people should be “done”. On SMO, pretty much all IMs find support for their desire for children, as long as they write somewhat respectfully about surrogates. All participants draw from cultural ideas about the “sanctity of life and of family”, the “preciousness of children”, and the social value of generosity and altruism.

**Laura Cantore** – The wish for maternity is always contextual and depends on each woman. We can think about at least, three sources of wish of pregnant mother: to feel giving life, perpetuate the species and/ or to use reproduction as a profit. Certainly, surrogate maternity is associated with a wish of biological continuity, of lineage. This wish is atavistic and immemorial, and it is probably related to the idea of it is the only way to perpetuate the species. Also, with the desire to complete in the figure of biological descendants. Surrogate maternity shows us the paradox of scientific advance and the need for satisfying a primary human wish for reproduction. The use of these techniques make possible new ways of motherhood and fatherhood without sexual intercourse.

**Daniela Danna** – We still live in a pronatalist world, where messages from “core” (in world-systems analysis terminology) States and from religions push their “constituencies” to multiply to win supremacy over other national or religious groups. I find it difficult to separate these powerful messages, conveying that a true man and a true woman must have offspring to raise, from a conscious, individual, authentic, inner desire to dedicate such a big part of one’s life to have and raise children. Maternity is mystified in hiding its difficulties and hard work, and today it is still a social obligation for women. Paternity is subject to an equivalent push for men, which are socially spared from many of its responsibilities. This is the general picture.

I find it interesting and revealing that many couples seek surrogacy because the woman is re-married and already has kids fathered by another man, while their stepfather wants children of his own while the woman has become too old to bear them.

#### **4. How do you think it is socially represented the role of the intentional mother compared to adoptive mother?**

**Zsuzsa Berend** – Surrogates and IMs on SMO tend to agree that surrogacy is *the opposite* of adoption. They maintain that in adoption, the birthmother gives up her child, while in surrogacy, the parties all want and plan the child as the IPs’ baby – intentionality, planning,

persistence, desire, etc. are all aligned toward the common goal of creating babies and families. Whether the IM is the genetic mother or not, it is her child because she wanted it and did everything to achieve this goal. The much-desired baby was conceived in the IPs' mind and heart first, surrogates say; it is their desire that set things in motion. "I'm not giving up this baby; I'm giving it back to its parents" is a common way surrogates express this idea.

**Laura Cantore** – The figure of “intentional mother” in surrogate maternity brings tension over two issues: first, the desire for a biological motherhood, as much as possible, the possibility that vulnerable women were subdued to profitable pregnancies. The first situation is associated with equal rights: why do we prevent a person from having a biological child? The second situation demands specific actions towards equity and do not facilitate the patriarchal oppression related to vulnerable women bodies.

The figure of the adopter mother has been praised fundamentally by Catholic Church to avoid abortion and, for that reason, generally this woman is seen as a generous and magnanimous person. But, especially in underdeveloped countries, we know that adoption is a profitable business and children have an international monetary value. The adopter mother is surrounded by an altruistic halo, which intentional mother is not. In the imagination, adopter mother contributes to help pregnant woman who does not want to take care about her child, because of personal or economic reasons. What is more, there is not a commercial interchange in adoption. Since this perspective, the role of the intentional mother is more “selfish” than the role of adopter mother, who is mainly “generous”. However, I cannot be ingenuous with the situation of adopter mothers related to intentional mothers, at least in Latin America, as in here, there are truly shopping circuits of children for people searching for adoption. In that point, adopter mother and those that give their children in adoption, both can be victims of patriarchal system.

One more time, it is necessary to seek for visualization of women rights to corroborate if there are obeyed or not.

**Daniela Danna** – There is in Italy a lot of rhetoric on the generosity of the birth/first/natural mothers in surrogacy, spread by the gay couples who are the only ones going public with their use of surrogacy abroad – as this institution does not exist in Italy where legal filiation is established either by *mater semper certa* or by adoption. The intentional mother is still a covered-up figure. Last year, at a Radical (liberal) party gathering, a woman without the womb went public with her quest for a “generous woman who will give bear my children”. The case can arouse sympathy in the public. Through this feeling, through leniency towards gays who want to have babies (or fear of being labeled “homophobe”), through relentless publicity in the media of the “happy carriers”, the case for the introduction of surrogacy in Italy may gather supporters, unaware of its being a legal institution detrimental to the status and lives of women. In Greece more than half of the hired mothers are migrants, now exploited even in their wombs. Their children are sold.

### **5. What is in your opinion the link among the right to parenthood, desire for maternity/paternity and the SM's rights' guarantee?**

**Zsuzsa Berend** – People have a right to have kids and form families; however, I’m not convinced that people are *entitled* to have kids. Thus, there should be *legal protections* to guarantee equal rights to have a family, marry or cohabit, and raise children, but there are *no legal guarantees* that everyone would be able to do so (e.g., a childless couple cannot demand to receive a child). There are many reasons people may want to have children, but as anthropologists like Sarah Franklin remind us, the desire for children is also fueled by the new reproductive technologies that promise success, as well as other technologies that make it seem possible to delay childbearing until there is a “good time” to have kids. In the West and the US, middle and upper-middle-class people value having choices in all domains of life and consider overcoming obstacles a moral achievement; under these conditions people have a harder time accepting some givens, such as infertility. If, however, people use reproductive technologies to have a child, it should be legally regulated. Women who decide to become surrogates within a legal system that allows



surrogacy should be protected from abuse and should have legally enforceable contracts. This does not mean they should be considered the baby's mother based on the fact that they gestated and birthed them, unless they wish to be so considered. According to years of empirical research, I did not find that American surrogates wanted motherhood rights and they vehemently rejected the notion that they gave away their baby. They were very upset when people called them the mother of the surrogate baby. They were very happy with pre-birth orders that many states issue in which the intended parents are indicated as the parents on the birth certificate.

**Laura Cantore** – Human Rights Treaties consider that having children is a right and from this point of view Nation must guarantee this practice. This right as someone else has the limit of reasonableness and the possibility of exercise it, or not. A limit on reasonableness is that the right of having children cannot be accomplished under any circumstance.

A woman cannot be obliged to have a baby for someone else if she does not want to do it. So, the problem is if personal autonomy of a surrogate mother is stale or not. And if we consider that Patriarchy impedes freedom of choice for the women, I do not think possible to affirm that all SM do it with their will stale.

The main point in this round table is the right to have a biological child by means of surrogate maternity. There are many counter arguments about the exercise of this right. An argument in favor of the right of having children by means of surrogacy it that couples that cannot have babies by means of sexual intercourse can have them by this method. That keep them in an equality plan as those who can do it by sexual intercourse. Against this opinion, many people think that surrogate maternity is a new disposition of female body in exchange of money.

On the first round of questions, I established three types of surrogate mothers: "altruistic", "autonomous", "vulnerable women". Since my point of view, having a child is a right, and using SM as a means is a possibility since personal autonomy and personal consent can be guaranteed. Vulnerable SM can be only included as pregnant mothers if they willingly consent to become pregnant and their rights are not violated.

As for the desire for paternity, one can distinguish between the desire or need of a child destined to satisfy a personal void that a sterile adult of desire may feel as an aspect of parental self-consciousness that aims to accompany a child in its development, accepting the differences, that may appear. The second assumption seems to be auspicious in terms of love relationships and desirable at the time of the surrogate gestation.

However, there is insufficient empirical evidence to rigorously and credibly analyze the cognitive processes of women by referring to these conceptions without sexual intercourse. Surrogate gestation is a fashion? A new business of medicine? What kind of desire circulates in the mind of the intentional mother? Does it satisfy a personal emptiness or do you want to accompany a creature in its development by accepting the differences that may appear? The women involved are victims of a fashion business that serves to compensate for an existential vacuum?

With respect to the rights of the surrogate mothers, the first complaints about the name of the science are already being allowed to use female bodies as areas of experimentation. The bodies are already being used taking advantage of the situation of vulnerability of many women. And beyond my personal opinion on the benefits or not of the technique, I believe that these bodies must be protected from the law, observing respect for personal autonomy and informed consent.

**Daniela Danna** – There is no right to parenthood. A right is effective when there is a corresponding duty by someone, or by the State, to fulfil its content. If I am not physically able to have a child as a woman, if I am not fertile as a man, who should have the duty to bear children for me? Nobody, of course.

I wish to repeat it: the desire to be parents is not only a personal desire, but it is fostered by capitalism in need of perpetual expansion (and there are many provisions in welfare States with the declared aim to persuade people to have more children) and by religious leaders wanting to multiply their followers. In the current context of the destruction by our species organized by capitalism of the environment that sustains our existence, this encouragement that becomes a social obligation should stop. When society will be

indifferent whether one has children or not, we will verify how much of this desire to have them is socially constructed rather than a personal need.

**6. Do you think the law should regulate the matter? Moreover, if it were the case, how it would be possible to find a balance among the different instances?**

**Zsuzsa Berend** – It seems from the evidence that enforceable legal contracts are necessary to regulate matters. Surrogates have their own lawyers, paid by the intended parents, and couples also have their own lawyers. The parties have legal advice and they can also do their own research, as many surrogates do in the US. Informed parties negotiate the contract. For example, in the US, surrogates increasingly do not want to carry for couples who want to transfer multiple embryos and possibly have selective reduction in case of multiples. Most surrogates do not want to abort healthy fetuses, thus do not agree to carry for couples who consider selective reduction. Over the years, surrogates often discussed these issues and concluded that it is best to “be on the same page”, i.e. make sure the parties agree about all the details before they sign the contract. This, of course, does not mean there cannot be problems. Yet, enforceable contracts based on legal advice are better than no informed agreements. It seems to me that surrogates should be protected from abuse and exploitation they may suffer if couples manipulate them or do not pay what they promised and couples should be protected from potential scams as well. Surrogates should not be considered the mother of the surrogate baby against their will, just as they should not be forced to undergo selective reduction or carry multiples against their will.

**Laura Cantore** – I believe that the SG must be regulated, given that, without a legal framework, the human rights of women continue to be violated. The prohibition does not prevent practice. It makes her more contentious and leaves the vulnerable woman in a place of greater vulnerability. Regulation does not ensure that abuse is avoided, but it brings

pregnant women vulnerable to some form of legal protection that includes complaints and reparation, which they would otherwise not have.

**Daniela Danna** – Regulation does not stop exploitation, it intensifies it as it becomes normal to hire a woman to buy a baby from her: English couples go abroad because it is cheaper and “safer”, that is, Indian, Mexican, Thai women are (or were, because some poor countries have closed their borders to this commerce) not in the position to have their right to keep their babies upheld – surprising as it may be, Indian women do have the right to consent, or not, to the detachment only after the birth has happened, but in the context of the enormous power differences in India this is just on paper. American, Canadian, Australian couples do the same, as they do not want to obey the regulations in their countries. A regulation would just foster the market. How to get effective what is not a prohibition, but an abolition of this legal institution making exceptions to *mater semper certa*? I believe an international agreement by the UN is necessary. It would just continue on the path traced by the Cedaw – as separating by force a mother and her baby is an act of violence and cruelty – and by the Stockholm Child Convention and the European charters of human rights protecting the right to the continuity of family life.

There is no instance that can go over the right to keep her child by a mother, that is the woman who has been pregnant and given birth, while the source of the oocyte is in the position of the father (Fivet technology has created female fathers, not multiple mothers). So there cannot be a legal concept that makes exceptions to this basically human principle. No matter how many women are willing to take up the job, pregnancy cannot be a job.

In California – the source of it all with the Johnson v Calvert case – Melissa Cook asked for the unconstitutionality of surrogate motherhood to be recognized: she was forcibly separated from her babies that were delivered to the committer just because she signed a contract. It is not a matter a will to become a birth/first/natural mother, but a matter of facts and experience. What the willing surrogates can refuse to become is a social mother, but without a natural mother there cannot be any social one. In addition, all this terminology of “surrogacy,” so distant from reality, is completely disregarding the children! Ask a

newborn who is crawling to reach the nipple of the woman giving birth, the only body who he or she knows, and so intimately, who is his or her mother! There are no doubts.