

# Paid Surrogacy as a Relational Autonomy Reproductive Labour

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**Abstract.** This paper connects paid surrogacy to relational autonomy and reproductive labour, arguing that paid surrogacy requires a regulation that acknowledges and enhances its relational dimension, thus improving the quality of relationships established within surrogacy arrangements. In doing so, it discusses the feminist viewpoints on paid surrogacy. After shedding light on the gender-based potentialities and criticalities of the practice, the article focuses on the feminist debate on the authenticity of women's consent to engage in paid surrogacy, arguing for the need to prioritise the relational understanding of autonomy. Relational autonomy allows for the contextualisation of the surrogate's decision (without questioning it) in the light of the gendered, ethnic and economic asymmetries in which she is situated. Building on this perspective, the article explores relational autonomy as an interpretative framework for understanding paid surrogacy as reproductive labour. What is contended is that the stigma attached to the practice (and the resulting altruistic narratives), as well as the neoliberal and globalised dynamics underpinning surrogacy markets, are pivotally important elements to contextualise surrogates' decisions. This implies assessing the quality of the relationships between the surrogacy agreement parties and elaborating on solutions to improve them. The final part of the paper, indeed, offers some regulatory considerations that do not aim to provide definitive legal solutions, but rather to open a discussion on key aspects that legislators should take into account. Specifically, it is pointed out that the surrogate should enjoy the right to change her mind (since pregnancy is a care relationship that may generate a maternal bond), that multi-parenthood should be implemented (not to exclude intended parents from the reproductive process they had initiated), and that the surrogacy agreement parties should live nearby (in order to facilitate these relational dynamics).

**Keywords:** paid surrogacy, regulation, feminists, reproductive labour, relationships.

## Introduction

This paper aims to demonstrate that paid surrogacy constitutes a complex phenomenon connected to relational autonomy and reproductive labour, which requires regulation that acknowledges and enhances its relational dimension, thus improving the quality of relationships established within surrogacy arrangements. To achieve this, it is crucial to adopt the lens of the feminist theory. After defining paid surrogacy and briefly introducing the main issues surrounding it, the article examines the gender-based potentialities and criticalities of the practice, highlighted by feminist scholars. It then analyses the

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feminist debate on the authenticity of women's consent to engage in paid surrogacy, arguing for the need to prioritise autonomy as a concept that must be understood in relational terms. Relational autonomy allows for the contextualisation of the surrogate's decision – without questioning it – in the light of the gendered, ethnic and economic asymmetries in which she is situated. Building on this perspective, the article explores relational autonomy as an interpretative framework for understanding paid surrogacy as a form of reproductive labour. Particular attention is devoted to the lack of recognition of surrogates as workers, the stigma attached to the practice (and the resulting altruistic narratives), as well as the neoliberal and globalised dynamics underpinning surrogacy markets. Finally, the paper offers some regulatory considerations aimed at emphasising the relational dimension of surrogacy and enhancing the quality of relationships among the parties involved in the agreement. The purpose of this article is not to provide definitive legal solutions, but rather to open a discussion on key aspects that legislators should take into account: the surrogate's right to change her mind, the recognition of multi-parenthood and the geographical proximity between the intended parents<sup>1</sup> and the surrogate.

## 1. Feminist Reflections on Surrogacy

Surrogacy is a nowadays widely diffused phenomenon<sup>2</sup> which makes it possible to separate social motherhood<sup>3</sup> from the gestational experience and the genetic contribution. Surrogacy can be either traditional, if the surrogate's egg is artificially inseminated with the sperm of the intended father or of a donor, or gestational, if the surrogate does not contribute genetically: the egg of the intended mother or of a donor is *in vitro* fertilised with the male gamete. Plus, another surrogacy categorisation deals with money: it can be either altruistic or commercial. It should be noted, however, that monetary transactions are present in both forms of surrogacy: women in the so-called 'altruistic' arrangements often receive reimbursements that far exceed mere medical expenses (Olivito, 2017, p. 20–21). For instance, the compensation received by a Californian surrogate in a commercial surrogacy – which typically between 20,000 and 30,000 USD out of a total cost of 80,000 to 150,000 USD borne by the intended parents – is comparable to the reimbursement granted to a Canadian surrogate in an altruistic arrangement, which generally ranges from 18,000 to 25,000 CAD out of a total expenditure of 62,000 to 90,000 CAD. In the United Kingdom as well, the altruistic surrogacy reimbursements are substantial, usually amounting to 12,000–15,000 GBP out of a total cost of 40,000–60,000 GBP. By contrast, commercial surrogacies in Global South countries have been significantly less

<sup>1</sup> This paper adopts the term 'intended parents' for communicative reasons; however, it must be taken into account that some states open surrogacy to single persons, too.

<sup>2</sup> Surrogacy is legal in most Common Law states, while being forbidden in many Civil Law states (with the exception of Portugal, Greece and Israel) and is neither regulated nor illegal in many others (Gattuso, 2019, p. 6).

<sup>3</sup> This does not happen if the intended parents are a couple of males or the intended parent is a single man, since no intended mother is present.

expensive than their altruistic counterparts in the Global North. Prior to the national ban in India<sup>4</sup>, for example, a surrogacy arrangement would typically cost between 30,000 and 40,000 USD, of which, the surrogate herself received only 3,000 to 5,000 USD (Carone, 2021, p. 184). Differently, one state where surrogates are not given any money except for the medical expenses reimbursement is Portugal. Moreover, some jurisdictions that officially permit only altruistic surrogacy – such as the United Kingdom and Canada – do not prohibit the involvement of intermediary agencies, thereby blurring the distinction between altruistic and commercial practices. In the light of this, the paper adopts the expression ‘paid surrogacy’ to address all the surrogacies where money transactions other than the strict reimbursement of the medical expenses take place.

Since giving birth to other people’s children is a care activity that makes human reproduction possible, at the same time freeing women<sup>5</sup> from both the ‘barbaric’ experience of pregnancy (Firestone, 1971, p. 207) and the need to temporarily stop working, surrogacy is a reproductive labour activity<sup>6</sup> that presents both gender-based potentialities and criticalities. For this reason, it has largely been studied by feminist scholars since its origin. On the one hand, some feminists praise the application of technology to reproduction because it permits the abandonment of essentialist definitions of femininity and motherhood (Braidotti, 1996) and the detachment of filiation and parenthood from heterosexuality (Butler, 2002), thus queering descendancy. Indeed, the human being-technology hybridization leads toward cyborg subjectivities that may give rise to feminist epistemologies (Haraway, 1995). On the other hand, suspicious-toward-surrogacy feminists denounce that, in surrogacy, women are treated as reproductive ovens (Corea, 1985): surrogacy is seen as prioritising the male seed and degrading pregnancy to passive incubation (Muraro, 1991; Boccia & Zuffa, 1998).

Paid surrogacy, in particular, divides feminists. For some of them, it dismantles the capitalist society logic – studied by Fraser (2017, p. 23) – one that has tended to separate the field of economic production from the social reproduction domain. Indeed, being paid for one’s gestational services blurs the sexist public-private, market-family and production-reproduction separate spheres thesis (according to which, the public, the market and the production domains are male prerogatives, whereas the private, the family and the reproduction spheres are devalued and associated to the female) (Shalev, 1992, p. 16). For some other feminists, instead, surrogacy risks relegating women – albeit paid – where patriarchy has always ghettoised them: the field of reproductive labour (Satz, 1992). Thus, representing women in the social reproduction sector but not in oth-

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<sup>4</sup> In India, commercial surrogacy has been declared illegal since 2018, and all surrogacy types have been sanctioned since 2021. Before the ban, India was one of the main Global South ‘reproductive tourism’ states.

<sup>5</sup> This reasoning does not apply to gay couples resorting to surrogacy.

<sup>6</sup> Reproductive labour (or its synonym ‘social reproduction’) is manifested in those activities that ensure that the labour power is reproduced, both on a daily basis – through care work in the house – and inter-generationally – through pregnancy and childbirth (Nakano Glenn, 1992, p. 1). Since 1970s, this expression has mostly indicated the related-to-the-private sphere unpaid activities that make productive labour possible; nowadays, it has included domestic paid work, too (Duffy, 2007, p. 315, 316).

ers may influence the aspirations of the future generations of women, thus ‘influencing’ the particularly disadvantaged ones to work as surrogates even if not willing to do so.

This being considered, banning paid surrogacy for the just above-mentioned reasons would leave poor women who consider themselves as females empowered in surrogacy without any means of subsistence, while at the same time depriving not-poor women who love to be surrogates from this activity. Additionally, national surrogacy bans are not that effective, since new surrogacy markets in the Global South are open when a country outlaws the practice. As an example, when surrogacy was banned in India, the market moved to Nepal; then, when it was outlawed in Nepal, paid surrogacy started to be practiced in Cambodia and Laos (Vertommen & Barbagallo, 2021, p. 8). What should be done, as this paper tries to prove, is that surrogacy should be regulated while taking into account its reproductive-labour relational dimension. This represents a challenge whose outcome will depend on the legislators’ ability to craft a regulatory framework adequate to the complexity of the issue. As Williams and Zelizer point out, indeed, what must be pivotally considered is the quality of the relationship behind the economic transaction and which are the rights ensured to the parties (2005, p. 362–369). This implies that the quality of the relationships between the contract parties must be improved: as the jurist Schillaci proposes, surrogacy (no matter if altruistic or commercial) should follow ‘the relational paradigm’ (2018).

## 2. Toward a Relational Autonomy Understanding on Surrogacy

One of the most-debated issues within the feminist scholarship on the topic concerns the authenticity of the consent to offer a paid surrogacy. Given that every decision is taken within a specific context – in the sense that every human being is embodied and situated within particular social, cultural, and material conditions – can such consent truly be regarded as autonomously made? Does contextual embeddedness have the potential to challenge the very notion of autonomy?

Feminist scholars are deeply divided on whether women’s consent to surrogacy should be accepted or critically examined in the light of the social and economic constraints imposed by patriarchal and neoliberal structures. According to the feminists supporting the authentic consent thesis, the choice to become a surrogate falls within one’s reproductive autonomy, regardless of potential social or economic pressures (Di Martino, 2020, p. 53–55). Liberal feminists, in particular, regard paid surrogacy as a legitimate practice, since doing otherwise would mean allowing undue state interference in women’s bodily and reproductive choices and undermining women’s agency. As Shutz argues, everyone’s will is inevitably shaped by external influences; however, this fact alone is insufficient to deny individual autonomy in decision-making (1990, p. 353–355). This feminist strand emphasizes the importance of respecting individual decision-making, thereby reaffirming the centrality of autonomy. Indeed, many surrogates from the Global North as well as the Global South assert to be satisfied with their choice to sell gestational services. Questioning their consent authenticity is problematic, since it risks triggering a slippery

slope that could ultimately undermine the very possibility of recognizing any decision as genuinely autonomous. Furthermore, asserting that surrogates are not able to make autonomous choices could justify a complete prohibition of the practice, which, in turn, would deprive economically disadvantaged women of a source of income<sup>7</sup>.

Despite this, it must be noted that, as the feminists questioning the consent authenticity suggest, the individual notion of autonomy fails to adequately capture the structural conditions (such as poverty or lack of alternatives) that may influence women to become surrogates, as well as the few legal and medical guarantees given to them in many states and the capitalist, globalised and neoliberal values that privilege productivity and efficiency in reproduction. Given this, radical feminists question the authenticity of consent due to intersecting economic and social constraints (Dworkin, 1983). Ecofeminists contend that, in patriarchal societies, technology and science, largely controlled by men, are employed as instruments of domination over both nature and women (Mies, 1988)<sup>8</sup>. What the discussed-suspicious-to-surrogacy feminists underline is that autonomy must be understood in relational terms. Relational autonomy looks at human beings as embodied and socially embedded, considering the context where their decisions take place. This implies that “agents’ identities are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender, and ethnicity” (MacKenzie & Stoljar, 2000, p. 4). In doing so, relational autonomy deconstructs “the autonomy myth” (Fineman, 2005) and deems dependency on ‘the particular others’ and on the “webs of relations of which we are a part” (Nedelsky, 2011, p. 28) as the universal human condition. Relational autonomy, in other words, underlines the importance of various types of relationships (human, economic, social and so on) in contributing to shape one’s decisions both in positive and negative ways.

To sum up, in the opinion of the person who writes, the authenticity of the autonomy of those who argue to have freely chosen surrogacy does not have to be questioned. What should be done, instead, is *contextualising* the surrogates’ choice in the light of the intricate webs of relationships in which they are embedded. This makes it possible to assess the quality of the relationships between the surrogacy contract parties and to work in order to improve them through regulation. To be aware of the social and economic conditionings that inform paid surrogacy, an analysis of the application of relational autonomy to the main aspects of surrogacy as reproductive labour is needed.

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<sup>7</sup> This issue is in common with the feminist reflections on sex work. Due to the economic problems originated to those who sell sex and have no other earning alternatives, some contrary-to-sex-work scholars (Overall, 1992) are in favour of its ‘incomplete commodification’, namely, its decriminalisation, with the sanction of advertising and intermediaries. A regulation proposal of surrogacy could embrace this direction.

<sup>8</sup> Mies, in particular, challenges the liberal conception of autonomy in the reproductive sphere, by noting that women in the Global South have historically been subjected to state control through practices such as forced sterilization, one-child policies and genital mutilation, while women in the Global North often participate in new forms of exploitation of poorer women (Di Martino, 2020, p. 61–63).

### 3. Relational Autonomy in Surrogacy as Reproductive Labour

Relational autonomy can be used as the interpretation key of surrogacy as reproductive labour.

To start with, one of the main characteristics of paid reproductive labour is that society finds many difficulties in considering the people doing these activities as workers, this having an impact on the labourers' behaviour in this sector. This logic vehemently targets paid surrogacy: both the national and international employment data do not include surrogates, who cannot claim any economic rights (Danielowski, 2023). Indeed, they cannot unitarily bargain for better salaries – actually, what they earn is not given the name 'salary', but a fee or financial compensation (Vertommen & Barbagallo, p. 12). Surrogates are considered more as housewives than workers, being exposed to exploitation (Vora, 2012, p. 691). This aspect relationally shapes these women's behaviour. For example, the surrogates of the Indian clinics where Pande conducted her studies some years before the national surrogacy ban were, on the one hand, encouraged to behave as workers (being said to have the contractual duty to give the child, once born, to the intended parents), whereas, on the other hand, they were pushed toward taking care of the foetus as mothers (Pande, 2014, p. 64, 65). It is probably (also) for this reason that they believed to be passing something of themselves to the baby, although all surrogacies were gestational (Pande, 2009, p. 200).

The reason behind the devaluation of paid surrogacy as reproductive labour is that care is seen as a gift to the beloved ones. Indeed, people tend to think that the exchange of money corrupts the quality of relationships, commodifying them and leading toward lower forms of personhood (Radin, 1987). In other words, being given money for either domestic care work or gestational services is perceived as if payments devalued these linked-to-the-private-and-intimate-sphere activities (Rose, 2005, p. 418–421). For this reason, putting what is usually done to satisfy oneself and the partner's desires (such as gestation, but the same could be said about sexual services) on the market is considered wrong according to what Satz defines as 'the asymmetry thesis', which implies that some services and goods can be sold, whereas some others cannot (Satz, 1992). As a result, a high amount of stigma surrounds paid surrogacy, with its level varying according to the geographical zone where the activity takes place (Danielowski, 2023, p. 33). For instance, stigma was extremely high in the Indian society, where – due to ignorance – surrogacy was associated to illicit and extra-marital sex, this narration continuing to push this practice toward the private and non-working sphere (Majumbar, 2018). Surrogates' relational autonomy is influenced by this perception: one of the main strategies to resist stigma in all paid reproductive labour is the altruistic framework (that has always targeted women): when care services are paid, altruism is seen as the workers' driving force. Therefore, surrogates tend to adopt the gift and altruism-based rhetoric. Indeed, even if psychological studies and interviews show that most surrogates do not consider themselves as 'mothers' (Carone, 2021, p. 183; Ragoné, 1994, p. 8), these women often assert to have chosen surrogacy primarily for altruistic reasons, especially if working in

affluent countries (Ragoné, 1994). Indian surrogates partially derogated from this tendency (despite being still embedded in the presently-mentioned altruistic framework). Indeed, they reported financial gain as the primary reason to undergo a surrogacy (with altruism being the second most-cited reason) (Majumbar, 2018, p. 6), but, rather, they saw themselves more as ‘needy gift receivers’ than as other people’s helpers. From this perspective, it was the intended parents who helped them through their money, seen as a donation or a charitable act (Pande, 2014, p. 102, 103). Plus, surrogates’ altruistic rhetoric is demonstrated by the fact that both the Indian surrogates interviewed by Pande (2014) and the US ones interviewed by Ragoné (1994, p. 55–61) reported to have spent the earned money not for themselves, but rather for their families, to pay them back for their sacrifices during pregnancy<sup>9</sup>. An exception to this altruistic framework is epitomised by the Russian surrogates, who consider themselves as workers and (maybe also for this reason) are socially perceived not only as greedy women, but also as bad wives and mothers<sup>10</sup> (Yeshua-Katz & Khvorostianov, 2021). Another widely diffused stigma-resisting strategy, additionally, is hiding pregnancies, as many Georgia surrogates do (Vertommen & Barbagallo, 2021).

Plus, paid reproductive labour activities are constitutively embedded in the nowadays-neoliberal and globalised world, consequently replicating the existing intersectional systems of oppression that relational autonomy aims to uncover. These oppression systems relationally influence both the surrogates and the intended parents’ decisions. Indeed, paid reproductive labour is fostered by the neoliberal perfect family-work balance which conveys the message that the only way for Western women to pursue a working career and at the same time have a family is hiring a person to perform care tasks<sup>11</sup>. The other side of the coin is that Western women who are willing to have children are induced to postpone this choice to the achievement of economic and working stability, which often arrives late, when procreating biologically becomes difficult. For this reason, some couples resort to reproductive technologies and, in some cases, to surrogacy<sup>12</sup>.

To continue, a big part of the workers of both paid care work and paid surrogacy is provided by globalisation. This phenomenon divides people in two groups: goods and services sellers and buyers. Paid reproductive labour, in fact, is mostly performed by non-white (often recently migrated) people, and therefore an intersection between race and gender takes place (Nakano Glenn, 1992). Moreover, the payment offered for surrogacies serves as an incentive for the Global South women, while remaining less expen-

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<sup>9</sup> In particular, the husband’s abstention from sexual intercourses in the pregnancy confirmation period and the more equitable division of care tasks in the family.

<sup>10</sup> Beyond that, the Russian society tends to be judgemental in the regards of the surrogate’s partner too, who is seen in a bad light because he allows his wife to work in such a sector without working harder to maintain her. For this reason, some Russian men accept that their wives undergo a surrogacy only if it is kept secret.

<sup>11</sup> This is almost a forced choice given the growth of the population’s life expectancy, since many Western states do not provide families with efficient children and seniors’ assistance services.

<sup>12</sup> In many cases, there is a link between aging and surrogacy, while, in others, people resort to surrogacy for independent-from-age infertilities.

sive than what the Global North intended parents would have spent in their own countries (if the practice was legal there), or in nearby states, as surrogacy costs tend to reflect the local cost of living (Vora, 2012, p. 687). At the same time, it must be noted that those employed in the reproductive labour market are potentially in a vulnerable condition, being usually much less wealthy than their employers. Hence, the adoption of the intersectional framework, theorised by Crenshaw (1991), is necessary. According to Pozzolo, paid surrogacy is an instrument not of female empowerment, but rather of economic outsourcing: when commissioned by Global North couples to Global South surrogates, wealthy women are freed at the expenses of poor people (2016, p. 99). Indeed, although Global South surrogates are often emancipated women who go against their family and society, their relational autonomy pushes them to conform to the imperative not to reproduce the population of their own country, while prioritising the reproduction of Western kinships (Pande, 2014, p. 114)<sup>13</sup>. This logic does not only apply internationally, but also at the Global North national level: according to Dworkin, the state controls women's reproductive power, encouraging white and middle-class women to have children while nudging non-white and poor women not to do so (1983, p. 149, 150)<sup>14</sup>. As a proof, in affluent countries legalising surrogacy, surrogates are of a lower class than the intended parents (Stuvoy, 2018, p. 36). In this context, both paid care work and paid surrogacy are exemplificative of what Colen defines as 'stratified reproduction'. In her words, "physical and social reproductive tasks are accomplished differentially according to inequalities that are based on hierarchies of class, race, ethnicity, gender, place in a global economy, and migration status and that are structured by social, economic and political forces" (1995, p. 78). The intersection of all the presently-mentioned inequality axes, as previously discussed, plays a role in the surrogates' and intended parents' decisions.

Moreover, a globalisation-related aspect of paid reproductive labour that manifests in a particularly distinctive way in surrogacy concerns the creation of global care chains. These chains arise from the fact that migrant care workers who look after Western elderly people or children are unable to care for their own loved ones due to geographical distance. As a result, their family members are entrusted to the care of (usually female) relatives or friends (Ambrosini, 2005). Similarly, surrogates from the Global South who carry a child for intended parents from the Global North cease to care for the baby they have given birth to, and often do not know whether they will ever see him or her again. One might argue that, unlike paid care workers, surrogates do not wish to maintain a relationship with the child; however, this is true only when they are granted the right to confirm (or refuse) their renunciation of parental rights at birth, and when financial necessity does not constrain their decision. Since reproductive labour activities are essentially relational, an emotional involvement between the worker and the person who

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<sup>13</sup> Surrogates sometimes prioritise surrogacy to their maternity desire. For instance, some Indian surrogates interviewed by Pande said they wanted to have children and discovered to be pregnant before the surrogacy treatment start. Despite this, they decided to abort to carry the other people's child (2014, p. 114).

<sup>14</sup> Dworkin argues that, in the US, poor women (especially if black and Hispanic) are induced toward choosing sterilisation, also in the light of the abortion restrictions or ban in some states.

is taken care may arise. The proof of this is that both paid care work and paid surrogacy are ‘bioworks’, namely, jobs in which the worker’s body produces a surplus value that is not detachable from his/her life (Balzano, 2015, p. 11; Cooper & Waldby, 2015). In surrogacy, the relational dimension is uniquely strong, since the surrogate takes care of the foetus 24 hours a day for nine months, without any pauses or vacations (Balaguer Callejón, 2017, p. 190, 191). The surrogate relational autonomy may bring her to ‘change her mind’ during pregnancy and desire to look after the baby, once born. To depotentiate this possible maternal bond, there is the tendency to ask for a gestational, rather than traditional, surrogacy (Muraro, 2016, p. 25).

#### **4. Toward a Relational Regulation of Paid Surrogacy as a Reproductive Labour**

Since banning paid surrogacy would leave poor women without means of subsistence, while at the same time depriving the women who love to be surrogates from this activity, a regulatory framework is needed. This represents a challenge whose outcome will depend on the legislators’ ability to craft a regulatory framework adequate to the complexity of the issue. What is sure is that regulation should adequately consider the principle of relational autonomy within reproductive labour. As already pointed out, it is not the intention of the person who writes to propose definitive regulatory solutions, but rather to open a discussion on some aspects that the legislator should take into account. These last ones are the surrogate’s right to change her mind, multi-parenthood and geographical proximity between the intended parents and the surrogate. Although these elements may appear to conflict with paying for a surrogacy, they are consistent with the relational autonomy sphere characterising reproductive labour. This regulation, indeed, would aim at improving the quality of relationships between the surrogacy agreement parties.

To start with, a surrogacy regulation should grant the surrogate a right to confirm her willingness to give the child to the intended parents, or to become one of his/her parental figures at birth. Before starting to deal with the issue, it must be reported that cases of surrogates changing their mind are extremely rare, even in the contexts where this is enshrined a right (Gattuso, 2019, p. 78). However, this topic keeps being relevant, since extremely poor women do not often have the means to contest the attribution of the parental rights (only) to the intended parents. The reason behind the surrogate’s right to change her mind is that pregnancy is a care relationship that may give birth not only to the child, but to his/her mother, too. This does not uphold what liberal feminists (Shalev, 1992) consider the sexist stereotypes according to which women are *naturally* emotional, and therefore cannot bind themselves to a contract. Actually, as the suspicious-to-surrogacy feminists assert, pregnancy is a relational experience whose consequences can be unexpected but neither paradoxical nor irrational (Pitch, 1998, p. 42, 43)<sup>15</sup>. Moreover,

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<sup>15</sup> Pitch draws a parallel between the binding baby-delivery contract clause and the *Ulysses and the sirens* dilemma, since both deal with the issue of which opinion to respect between the one given in the past by an abstract individual (who had not experienced a particular situation) and the one given in the present (1998, p. 41, 42).

the contract binding delivery clause does not photograph the relational dimension of autonomy, since the ideal subject of the surrogacy contract is the disembodied individual, abstracted from the power-asymmetries relational context where he/she is embedded and detached by human emotions. Its neutrality hides the image of a white, heterosexual, able-bodied and middle-class man, as many feminists assert (Pitch, 1998, p. 29–32; Pateman, 1997). The asymmetry of economic power, moreover, is a determinant even if the surrogate changes her mind and the court recognises her as the baby's mother, since the custody rights are often given to the wealthier intended parents, as in the *Baby M.* case (New Jersey Supreme Court, 1988)<sup>16</sup>.

Additionally, relational autonomy also deconstructs the argument – upheld by liberal feminists (Shalev, 1992, p. 125–128)<sup>17</sup> – according to which if the sperm donor cannot claim any parental rights on the child, the surrogate cannot be recognised the right to change her mind. This parallel does not consider the relational autonomy and reproductive labour dimension of surrogacy: treating surrogacy and sperm donation differently does reside in women's peculiar role in procreation (Irigaray, 1974; Muraro, 1991). In fact, women's contribution to reproduction is both genetical and gestational, whereas men do it only through their gametes<sup>18</sup>. The result of this is that biological asymmetries justify gender-specific measures (Gianformaggio, 2005, p. 216, 217).

The surrogate's right to change her mind is not problematic in authentically altruistic surrogacy, e.g., in Portugal<sup>19</sup>, but creates problems to paid surrogacy as paid reproductive labour. Indeed, who would pay for a service that does not *always* and *certainly* end in delivering the desired child?

When addressing this question, however, what should be remembered is that paying for a surrogacy means paying for gestational services, and not for a baby; so, it should

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<sup>16</sup> The *Baby M.* case regarded the surrogate Mrs. Whitehead's decision to change her mind, in violation of the surrogacy contract stipulated with Mr. and Mrs. Stern. Although the court declared the contract in violation of the national law, and Whitehead was recognised as the child's mother, the baby's custody was assigned to the Sterns, given their wealthy lifestyle (New Jersey Supreme Court, 1988).

<sup>17</sup> To support her thesis, Shalev also proposes another parallel, this time not based on gender: she compares the surrogate who binds herself to the baby's delivery to the 'inspiration-pregnant' artist who is commissioned an artwork: both must respect the contract terms, even if they end in wanting for themselves what they 'produced' (1992, p. 193).

<sup>18</sup> The different procedures required by sperm donation and surrogacy also give rise to different gender-based health risks: the former is not bodily-invasive and dangerous, whereas the latter presents the health risks associated with pregnancy and is highly invasive (especially if surrogacies are gestational). In this last case, due to the need to synchronise the surrogate and the egg donor's cycles, both subjects undergo strong hormonal treatments (Corradi, 2019), with the possibility for the donor to develop the hyper-stimulation syndrome that can be fatal in its (extremely rare) severe forms (Human Fertilisation & Embryology Authority, 2024).

<sup>19</sup> The Portuguese surrogacy law establishes the surrogate's right to change her mind. This has been possible thanks to the Constitutional Court judgment 225/2018 that has declared unconstitutional the previous surrogacy law part not foreseeing the surrogate's consent revocability. This judgment asserts that the surrogate's will to help a couple to have children can change during pregnancy due to biological peculiarities of this care relationship. Indeed, the DNA exchanges between the pregnant person and the foetus influence the latter genetic expression, while at the same time leaving in the former a track of the embryo DNA (Tribunal Constitucional, 2018, para. 43). However, the judgement argues that the surrogate's dignity is respected only in case of authentically altruistic surrogacies (Tribunal Constitucional, 2018, para. 29).

happen the same as in artificial insemination or *in vitro* fertilisation, where money is spent even if these processes do not end in pregnancies, or if pregnancies do not end in giving birth to children. Moreover, since, in surrogacy, the intended parents need the work of another human being to procreate, the surrogate's relational autonomy must always be respected: parenthood cannot be an absolute right; otherwise, practices such as children trafficking would be acceptable, too. Plus, given that, nowadays, the number of surrogates exercising their right to change their mind (in the jurisdictions where it is legal) is extremely low, and few legal lawsuits have so far been initiated by surrogates in the states that do not foresee this possibility, it is likely that almost all surrogates will continue to deliver the children to the intended parents.

Moreover, since relational autonomy highlights the vulnerability of the intended parents, too (Shalev, 1992, p. 132, 133), if the surrogate changed her mind they should not be deprived of parenthood. This partially happens even now in the states granting the surrogate's right to change her mind: the intended father is recognised as such, if he had genetically contributed to conception. This model could be improved by extending parenthood to the other intended parent, too, since he/she has initiated, together with the child's genetic father, the reproductive process. If none of the intended parents has contributed genetically, parenthood should be attributed not only to the surrogate, but to both of them, too, in the light of their intention to create a family. To sum up, state legislators should disanchor parenthood from the necessity of two figures (Payne, 2018, p. 74), even though it inevitably entails several critical issues. These include, among others, the possibility that the surrogate might decide to keep the child, since obtaining custody would entitle her to maintenance from the intended parents, as well as the risk that the child could face discrimination due to his or her multi-parental status. How such challenges could be addressed falls beyond the scope of this paper and may offer some food for thought for further research.

Last but not least, multi-parenthood requires that both the surrogate and the intended parents live nearby and are aware of the possibility to raise a child together. In the light of this, the surrogate and the couple should choose one another while paying particular attention to their life and education values, and so on<sup>20</sup>. Although this would be disadvantageous for the intended parents living in states that do not allow surrogacy, geographical proximity would be respectful of the surrogate's dignity.

## Conclusion

This paper has shed light on the importance of adopting a relational paradigm when addressing the issue of paid surrogacy, thereby moving beyond the difficulties commonly

<sup>20</sup> An aspect linked to the efficacy of the intended parents-surrogate match is that both parties must share the same vision on abortion. This standpoints discrepancy has led to the *Cook v. Harding* legal case. When the surrogate (Ms. Cook) got pregnant with three foetuses, the intended father (Mr. C.M.) asked her to abort some of them. Ms. Cook did not accept, due to her pro-life positions, proposing to keep with her one of the babies. After the children's birth, the *US District Court Central District of California* did not recognise Cook as the mother of one of them (2018). What is more relevant is that the two contract parties were matched by a surrogacy agency and never met.

associated with linking relationality to market-oriented reproductive labour. As feminist scholarship has shown, paid surrogacy embodies both gender-based criticalities and potentialities. In particular, feminist perspectives diverge on whether a surrogate's consent to the practice can be regarded as fully authentic. Rather than questioning the surrogate's autonomy, the paper has argued for the contextualisation of her choice within the complex web of social, economic and gendered relationships in which she is situated. Such a relational understanding of autonomy allows for an evaluation of the quality of relationships among the parties involved in the surrogacy agreement and highlights the potential for improving these relationships through regulation. Furthermore, the analysis has explored the traits of relational autonomy characterising paid surrogacy understood as reproductive labour. This discussion has highlighted the influenced-by-social-stigma surrogates' narratives of altruism as well as the neoliberal and globalised dynamics that divide individuals into those who can sell and those who can purchase reproductive services. In the light of these findings, and with the aim of enhancing the relational dimension of surrogacy, the paper has tried to propose some regulatory considerations that are not exhaustive solutions, but rather to outline points for further discussion. Specifically, it is contended that the surrogate should enjoy the right to change her mind (since pregnancy is a care relationship that may generate a maternal bond), that multi-parenthood should be implemented (not to exclude intended parents from the reproductive process they had started), and that the surrogacy agreement parties should live nearby (so that to facilitate these relational dynamics). As Stuvoy argues, "Surrogacy framed as a relational being-together could, I suggest, counteract the troubles of surrogacy, such as commodification and exploitation, as it implies reciprocity beyond the market exchange" (2018, p. 40).

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