



Surrogacy: An analysis based on the notions of autonomy, exploitation and objectification

Gestación por subrogación: Un análisis a partir de las nociones de autonomía, explotación y cosificación

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Abstract

This article argues that debates surrounding surrogacy can be organized around three notions: autonomy, exploitation, and the objectification of women. These are three topics that are frequently present in feminist debates about the forms and expressions of women's subordination and inequality in relation to men, particularly in the areas of sexuality and reproduction. It argues that the analysis of each of these concepts allows for two questions: first, to identify and recognize the various conceptions that each of these notions has, and second, how, from each understanding, it is possible to construct arguments that support a position taken in the debate over the legality and morality of surrogacy. The paper emphasizes the importance of moral discussion on the topic, especially because advocating for a particular understanding of these notions reveals a particular way of conceiving the power relations that impact the legal regulation of this practice.

Keywords: *Feminism; Surrogacy; Motherhood; Autonomy; Exploitation; Objectification.*

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Resumen

Este artículo sostiene que los debates en torno a la gestación subrogada pueden ordenarse en torno a tres nociones: autonomía, explotación y cosificación de las mujeres. Se trata de tres tópicos presentes en los debates feministas acerca de las formas de subordinación y desigualdad de las mujeres en relación con los hombres, particularmente en el ámbito de la sexualidad y reproducción. Se defiende que el análisis de estos conceptos permite dos cuestiones: identificar las diferentes concepciones que cada una de estas nociones tiene y cómo desde cada entendimiento es posible construir argumentos que avalan la toma de posición sobre la legalidad y moralidad de la gestación por subrogación. El trabajo enfatiza la importancia de la discusión moral sobre todo porque al abogar por una determinada comprensión de estas nociones se evidencia una forma particular de concebir las relaciones de poder que impactan en la forma de regular jurídicamente esta práctica.

Palabras clave: *Feminismo; Gestación por subrogación; Maternidad; Autonomía; Explotación; Cosificación.*

I. INTRODUCTION

Since 2009, infertility has been considered a health problem by the WHO. The rising rate has led to the development of Assisted Reproductive Technology (ART) to provide solutions for couples and individuals seeking to conceive. Indeed, in 2011, statistics and studies indicated that one in ten couples in the developing world were experiencing problems conceiving naturally and were turning to these techniques as a solution.¹

The development and research of recent years in the field of reproductive medicine has led to the development of a range of treatments for the infertile population: artificial insemination, *in vitro fertilization*, egg donation, and surrogacy, among the most relevant. In all of these, the sexual act is separated from conception and/or gestation, inviting us to explore new and different perspectives on motherhood and the impact of these techniques on gender equality. Surrogacy is one of the most ethically debated techniques, particularly due to its consequences. Therefore, it requires a revisiting of terminological and conceptual aspects unresolved by specialized scholarship and literature.² For example, to refer to the practice or the woman who carries it out, we speak of “surrogate motherhood”, “gestational surrogacy”, “rental womb”, or “replacement pregnancy”, and each of these terms carries with it a value-laden meaning that reinforces one position or another. The expression “surrogate motherhood” has been criticized by authors such as Beatriz Souto, since by including the concept of motherhood, “it encompasses a much broader reality than that referred to as gestation”.³ The concept of “rental womb”, on the other hand, is criticized because it reduces women to a biological process that evidently involves much more than a uterus. This concept

¹ TWINE (2011), p. ix.

² See for example NUÑO (2016).

³ SOUTO (2006), p. 182.

has been used by those who are against surrogacy, providing a stark image of what it really involves.⁴

For the purposes of this article, the term “surrogacy” will be used to refer to the “practice by which a woman gestates a human being through a pact or commitment by which she must concede all rights to the newborn onto another person or persons who will assume fatherhood and/or motherhood”.⁵ This practice is carried out through a contract whose purpose is to obtain a son or daughter through gestation by a woman who is obligated to deliver the object-subject fruit of her gestation.⁶ Generally, the agreement includes financial compensation for the surrogate mother, although in some cases a free contract is adopted, also known as an altruistic contract. This relationship often involves both legal agencies and assisted reproduction clinics, which mediate and manage the agreement between the surrogate mother and the applicant, although it is also possible for the agreement to be generated between private individuals without any mediation.

The practice of surrogacy is becoming increasingly widespread around the world. In fact, “people with more resources are opting for surrogacy as a method of starting a family, displacing adoption”.⁷ It is also a practice that has been characterized as transnational, which will eventually force States to take a stand on an unregulated trade or market that has not been critically addressed. This is relevant because each State has its own legal system, so prohibiting a certain practice in one country is not sufficient if it is possible to carry it out in another, or it could entail a potential incompatibility between regulations on determining parental relationships or the nationality of the newborn.

Along with the legal consequences, surrogacy has sparked a major political debate, becoming one of the pivotal and even rupture issues for the contemporary feminist movement internationally. Indeed, feminism, understood as a set of theories and practices that seek to understand and transform the reality of women’s subordination, is diverse in both its explanations of domination and its strategies for achieving gender equality. Surrogacy further emphasizes and deepens these differences. As a result, positions have emerged that bring into play complex concepts such as our understanding of motherhood, autonomy, and freedom, as well as the exploitation and objectification women suffer. Ultimately, the political and discursive differences arise from the role that each variant of feminism assigns to this practice in overcoming, or eventually exacerbating, gender inequality.

The debate surrounding this ART is, in many ways, comparable to the feminist debate on prostitution or the one generated around organ sales, both of which are morally and politically complex. Regarding surrogacy, there are, on the one hand, pro-surrogacy positions that typically argue based on women’s freedom and autonomy to decide about their own bodies. In this sense, surrogacy would have the transformative capacity to challenge gender roles by commodifying reproductive labor, which has been understood as a natural and imperative task for women. It would therefore be a tool that could transgress paradigms criticized by feminism, such as the public/private dichotomy. Furthermore, its transformative

⁴ EKMAN (2017), p. 118.

⁵ SOUTO (2006), p. 182.

⁶ BALAGUER (2017), p. 22.

⁷ ÁLVAREZ *et. al.* (2017), p. 8.

potential to challenge the conception of traditional families, opening the doors to new arrangements, is argued.⁸

From another perspective, those opposing it view surrogacy as a tool for exploiting women's bodies and an expression of an unequal system. It would constitute yet another form of domination over women's bodies that reproduces and perpetuates gender inequality. The relevant point is to identify the argumentative basis for each position: on the one hand, one could argue that it is about recognizing women's autonomy and, therefore, recognizing their decisions as agents who can subjugate and use their bodies as they wish. Or, on the other, one could assume that we are in a context of inequality that restricts or nullifies women's potential for autonomy.

One current of feminism has been particularly critical of the market's interference in women's bodies. For this perspective, the commodification offered by the liberal state should be limited to objects and commodities, excluding human bodies, particularly women's, from this sphere. It concerns a debate about the moral limits of the market initially presented by Debra Satz and Elizabeth Anderson.⁹

On the other hand, and echoing the ongoing discussion regarding prostitution, Kelly Oliver—one of the few who has directly analyzed surrogacy from a Marxist perspective—has pointed out the impossibility of considering this practice as work. This is because, unlike other morally and politically questionable forms of work, such as prostitution, surrogacy is considered a full-time job.¹⁰ It would constitute one of the ultimate expressions of contemporary labor alienation and exploitation. Far from achieving consensus within contemporary feminism, the question remains about the need to regulate or prohibit a practice that is carried out in various countries and that has undeniable legal, moral, and political consequences for the women involved and others.

Within the framework of this broad and complex discussion, this article will analyze three central concepts with which we hope to contribute to the theoretical and practical debate on surrogacy: namely, the notions of autonomy, exploitation, and objectification. The reason for this choice is that the way we understand these concepts positions us in one way or another in the debate. For example, what do we understand by autonomy? What role does this notion play in our arguments and position-taking? Or when we analyze a practice in light of a conception of exploitation or objectification, what are we really criticizing? We are interested in emphasizing the importance of political discussion on this topic, especially because advocating for certain positions with certain conceptions also reveals a way of conceiving the world, societies, and power relations. That said, the guiding question of this article is: What moral and philosophical thoughts should be considered when addressing the political and legal debate on surrogacy in order to inform its legislation? Our aim with this question is to highlight the essentials to consider when discussing its regulation or prohibition.

The treatment given to this topic is novel because academic research has focused primarily on matters pertaining to Civil Law in general and Family Law in particular.¹¹ In this sense, this article seeks to serve as input to legislative and political discussion, given that few

⁸ PURDY (1989), p. 185; LAMM (2013).

⁹ SATZ (2010); ANDERSON (1990).

¹⁰ OLIVER (1989), p. 8.

¹¹ See for example GÓMEZ DE LA TORRE (2020), LATHROP (2022), ESPEJO (2023).

countries in Latin America have clear regulations, and the debate over the types of permitted gestation, their requirements, and their certainty in identity and filiation processes continue to depend on the position taken on the concepts we will discuss below.¹² In the case of Chile, there is no regulatory framework for assisted reproduction techniques nor specifically for surrogacy. In fact, opinions are so disparate that the bills presented to Congress seek to penalize it, regulate its altruistic form, or resolve the challenges arising from determining parentage by protecting children.¹³

II. MORAL ISSUES RELATED TO SURROGACY

In this article, we argue that surrogacy generates debates that can be organized around three notions: autonomy, exploitation, and the objectification of women. These are three topics that are often present in feminist debates about the forms and expressions of women's subordination and inequality in relation to men, particularly in the areas of sexuality and reproduction. We argue that analyzing each of these notions allows for two questions: first, identifying and recognizing the different conceptions each of these notions holds; and second, how, based on each conception, it is possible to construct arguments that support one's position in the debate.

Starting with the notion of autonomy, we can ask ourselves how autonomous women are in a patriarchal society, a question that underlies debates about prostitution, motherhood, abortion, and pornography. In the case of surrogacy, the recurring questions are: What role does this reproductive technique play in strengthening or weakening autonomy? Does it contribute to women's emancipation, or, on the contrary, is it a mechanism that reproduces inequality? Surrogacy can be an expression of women's maximum autonomy in terms of their ability to dispose of their bodies and reproductive capacity, but it can also be understood as a device of oppression and guardianship over them.

Along the same lines, surrogacy in certain contexts can be understood as a mechanism for exploiting women, specifically, the exploitation of their reproductive capacities. In this sense, it is worth asking: what makes a practice to be considered exploitation? Is surrogacy really a form of exploitation? Given that commercial surrogacy could come to be understood as a new form of exploitation, it is necessary to evaluate the very concept of exploitation in this context.

Finally, the objectification of women and their bodies, understood as mere wombs or incubators, could be one of the social effects of this assisted reproduction technique. What does objectification mean in this context? Does this procedure turn women into things? Surrogacy can be understood as the reduction of women to mere wombs or, on the other hand,

¹² Regarding the regional situation, there are countries that expressly recognize this ART, such as Mexico in the states of Sinaloa and Tabasco, as well as Uruguay and Puerto Rico. Sinaloa and Tabasco expressly recognize surrogacy as a source of filiation, establishing the basis for entering into agreements in this area. The state of Tabasco also establishes requirements for being a surrogate mother, stating that the mother must give free consent after being provided with relevant information about the procedure and its effects. Meanwhile, the state of Sinaloa is the only one that expressly permits the commercial modality of surrogacy. Puerto Rico only expressly recognizes surrogacy, opening the door to this assisted reproduction technique but without expressly regulating the requirements for the agreement or its effects. In the case of Uruguay, Law 19,167 and Regulatory Decree 84/015 regulate surrogacy.

¹³ See Bulletin 6306-07, 11576-11, and 12106-07.

as the recognition of their status as subjects of rights who utilize their reproductive capacity. Below, we will carefully analyze each of these concepts within the debate on surrogacy.

2.1. Autonomy

According to Marilyn Friedman, feminist critique of classical notions of autonomy argues that said notions share an anti-woman bias.¹⁴ She particularly points out that these notions, like those of the Kantian tradition, have been largely uninhabitable for women because they are individualistic and conceive only men as protagonists in their practical application.¹⁵ Likewise, the classical conception promotes stereotypically masculine traits and attributes such as rationality or independence, as opposed to the emotionality and dependence traditionally assigned to women. This idea of autonomy as independence denies the relational nature of human beings and their need for others to develop themselves. Friedman asserts that all people depend on someone, and said someone is usually a woman. The reason for this lies in the division of gender roles that associates women with the care of others. Furthermore, the gender socialization of men has encouraged independence and public expression, which has allowed them greater access than women to opportunities to act and live autonomously.¹⁶ Therefore, Friedman raises the need to build a new conception of autonomy that avoids such biases.

Susan Dodds, in her article on autonomy in the field of bioethics, follows the same line of argument. She points out that the concept of autonomy has been atomistic, individualistic, and rationalistic. The proposed paradigm is that we are all equally rational and capable of facing complex decisions if adequately informed. However, this approach reproduces an individualistic conception that also ignores the social circumstances and power relations that affect the capacity to make decisions in this area.¹⁷ Ultimately, the concept of autonomy, according to these authors, has been constructed based on masculine ideals of independence and self-sufficiency. This has led to the search for a concept of autonomy that places social relations at the center and has women as protagonists in paradigmatically feminine situations.

These critiques of the classical concept of autonomy seek to challenge its masculine hegemony by including a relational and situated dimension in this concept.¹⁸ Indeed, for classical conceptions, a person would act autonomously if (1) they are aware of the reasons for their actions; (2) they can answer for these reasons and, therefore, (3) they are responsible for themselves.¹⁹ On the other hand, authors such as Axel Honneth have affirmed that autonomy should be understood rather as the real and effective capacity to develop one's own conception of what constitutes a life worthy of/worth living. Along these same lines, Friedman distinguishes between personal and moral autonomy. In this case, personal autonomy involves choosing and living according to standards or values that are one's own. A person must be able to reflect in their actions those values and standards that they have chosen as guides and that are the result of an internal and deliberative process of reflection. This reflection, however, must be relatively free of interferences that could impede the achievement of said autonomy. Thus, personal autonomy operates within a restrictive framework, which is the set of rules that the individual considers morally binding.

¹⁴ FRIEDMAN (2000), p. 38.

¹⁵ See for example KLEINGELD (2023).

¹⁶ FRIEDMAN (2000), p. 37.

¹⁷ DODDS (2000), p. 217.

¹⁸ ANDERSON & HONNETH (2009), p. 127. For an analysis of the notion of autonomy see FEINBERG (1989).

¹⁹ FORST (2009), p. 230.

On the other hand, moral autonomy involves choosing and living according to rules that one considers morally binding.²⁰ In this sense, full autonomy is achievable only under conditions of social support. According to relational theories of autonomy, these recognize the numerous social and contextual limitations and pressures that can be imposed on decisions and, at the same time, acknowledge the value of self-determination. These theories offer a vision of autonomous subjects who must necessarily be understood as situated in a social context and who relate to others, valuing these relationships as a central aspect of being. Within this framework, family relationships, friendships, communities, society, and our place within society are important for understanding autonomy, but also necessary as a basis for autonomous decisions. People are intrinsically relational agents, shaped and susceptible to modification by a network of interconnected relationships.

Feminist criticism also points to the abstraction and supposed neutrality of classical philosophical theories regarding autonomy. These theories decontextualize and universalize a particular model of autonomy that is essentially masculine. Discussing women and their autonomy therefore requires contextualizing it to understand that it unfolds in a space where women find themselves unequal and at a disadvantage compared to men. Since women historically and predominantly provide care, nurture, and interact, the need to uplift the central role of interpersonal relationships and caregiving is fundamental, as these social conditions can enhance or affect the development of autonomy within an oneself. Maximizing, enhancing, and fostering the autonomy of agents, understanding that people require social support and conditions to be able to make autonomous decisions and participate in deliberations both internally and externally, is the objective of relational perspectives on autonomy.²¹

A third feminist critique concerns the substantive standard of what would be considered a dignified life. In this sense, a conception of autonomy is sought that abandons its stereotypically masculine content. Thus, theories of procedural autonomy are another proposal and response to the lack of a concept that allows women to be autonomous. For this conception, autonomy develops through the reflexive process of internal coherence combined with the absence of external coercion or manipulation. Therefore, these theories are not concerned with a substantive dignified life, but rather with the capacity for procedural independence or independence of mind. In these conceptions, an agent's decision is autonomous if it satisfies a certain standard of critical reflection. Once a decision has passed this procedure, it will be autonomous regardless of the content of the preference. In this sense, procedural theories of autonomy have been understood to be content-neutral. This neutrality was initially considered a breakthrough because it did not impose a conception of a dignified life or a good life that exclusively reflected masculine values and attributes in paradigmatically masculine situations but rather allowed diverse agents to autonomously choose various forms of a good life. These theories include relationships of dependency and care within autonomous relationships, understanding that what truly allows a person to be autonomous is not isolation and independence, but rather the relationships that provide the necessary support for the development of autonomy.²² In this way, procedural theories of autonomy are a breakthrough and an alternative to classical conceptions in that they incorporate social relationships, dependency, and care at their core. These theories allow us to understand the internal reflective process in relation to the external conditions of socialization that people experience, respecting

²⁰ FRIEDMAN (2000), p. 37.

²¹ LAUFER-UKLES (2013), p. 1250.

²² STOLJAR (2000), p. 94.

the differences between agents and the diverse life plans and conceptions of the good that reflect each person's diverse social contexts.

Despite the improvements that the idea of procedural autonomy presents compared to the classical conception, authors such as Natalie Stoljar and Sonya Charles have been critical, pointing out the limits of procedural conceptions for an approach to autonomy that aims to respect and recognize the autonomy of women. Philosopher Natalie Stoljar argues that there are certain decisions that *a priori* would make us question their autonomy, but that from a procedural perspective should be considered autonomous. She has called this skepticism *the feminist intuition*, arguing there are preferences influenced by oppressive norms that should not be considered autonomous. Consequently, for her, it arises the need to revisit the discussion of autonomy and develop a new conception that can be sensitive to feminist intuition. According to this intuition, those preferences that are the result of harmful forms of socialization cannot be considered autonomous. While some refute this statement by pointing out that procedural theories might indeed be sensitive to harmful forms of socialization, Stoljar is particularly skeptical. Indeed, procedural theories rely on a subjective perspective on autonomy that does not allow for distinguishing or identifying harmful forms of socialization. Thus, decisions that are the result of internalized oppression should not count as autonomous.

Following Stoljar, Sonya Charles argues that a substantive, rather than merely procedural, feminist theory of autonomy that is sensitive to oppression can be constructed. Substantive theories include external criteria, such as specific contents or preferences, for a decision to be considered autonomous. Charles distinguishes between weak and strong substantive theories. The former adds requirements to procedural theories of autonomy but maintains the focus on the internal dimension of critical reflection, arguing that it is through this additional requirement that the procedure works. In contrast, the latter goes further and says that autonomy must include external criteria to be able to differentiate between benign and harmful forms of socialization.²³ According to her, feminism would need a strong substantive theory of autonomy capable of evaluating both the specific beliefs that influence a person's decisions and the relationship of those beliefs to the social context. False beliefs that reinforce subordination perpetuate an oppressive system. They are forms of internalized oppression that should therefore not be considered autonomous.

Stoljar represents the feminist intuition in the devoted wife who leaves everything for her husband, who does not express an opinion, who lives through her husband. She is a being for others whose autonomy is based on false beliefs she has internalized and that reproduce the oppression of women. Stoljar uses this example in contrast to the representation of a monk who decides to abandon his autonomy by handing control over to someone else. The difference for Charles would be that the wife's decisions reflect internalized oppressive social norms that devalue her value as a moral being. In contrast, no one could argue that the monk's decisions are motivated by oppressive norms. The key is to understand that, while the processes of socialization and social interaction cannot be avoided as part of people's lives, there are manifestations of these that are incompatible with people's autonomy. In this way, internalized oppression affects a person's self-esteem, making them part of their own oppression.

²³ CHARLES (2010), p. 411.

Something similar is pointed out by Catriona McKinnon on the example of the stepfords wives. This is a concept used to refer to submissive, docile, and accommodating wives who dedicate their lives to traditional household chores, which they perform perfectly. McKinnon questions these women's self-respect, as their actions as housewives are conditioned by a male who defines and evaluates them.²⁴ In this sense, we must understand internalized oppression in its relationship to other norms and how these position women in their social context. To do this, an external criterion is necessary to make the theory a substantive one.

However, there are those who interpret harmful forms of socialization, and therefore the context of oppression, as a factor that, in a sense, determines women's lack of agency. Ana de Miguel argues that gender oppression, and ultimately gender inequality, is no longer reproduced through explicit institutional coercion or the acceptance of the inferiority of the female gender, but rather through the supposedly free choice of what an unequal society has led us to.²⁵ The central argument is that women have been led to believe that they are making certain choices when, in reality, these choices have never been theirs to make and are completely determined by the prevailing gender inequality in our societies. Under this idea, women would always be conditioned and causally determined by the context of oppression. She exemplifies this through different cases such as piercing earrings in newborn girls, romantic relationships, prostitution, pornography, and it could perfectly well be extended to surrogacy.²⁶

Let us then apply what has just been stated to the discussion about surrogacy. Could we consider a woman, who decides to be a surrogate mother and offer her reproductive capacity to another person, to be an autonomous person? If we address feminist criticisms of classic conceptions of autonomy, we should understand surrogacy contextually, that is, in its relationship with elements external to the individual that influence her decision. In this case, we should understand women in a context of oppression and subordination expressed in forms of socialization that affect their preferences. It is naive to suggest that women are entirely free to choose to be surrogate mothers if we do not place them in a specific place, if we do not distinguish how forms of socialization act differently on men and women. From a relational approach, it is not just about understanding individuals in their relationships but also advocating for them to have sufficient social support to effectively exercise that autonomy. Elizabeth Anderson presents a conception of relational autonomy when she points out that treating a person with respect means doing so in accordance with principles consistent with their rational interests and the care of their own autonomy.²⁷ It has been argued that, under this idea, the ideological reconstruction of surrogacy provides a series of advantages for promoting women's autonomy. For example, economic independence for surrogates, valorization of women's reproductive capacities, and even the visibility of domestic work as productive labor.²⁸ For those who believe that surrogacy strengthens the autonomy of surrogates and women in general, it validates their right to interpret and control their reproductive capacities.

Contrary to the above, Suze Berkhout²⁹ points out that surrogacy limits women's autonomy in two ways. On the one hand, this assisted reproduction technique merely

²⁴ MCKINNON (1997), p. 325.

²⁵ DE MIGUEL (2015), p. 10.

²⁶ An additional argument to the previous one has been put forward by BACCINO (2022), pp. 315-316, focusing on the relevance of education for decision-making.

²⁷ ANDERSON (1990).

²⁸ LAMM (2013).

²⁹ BERKHOUT (2008).

reproduces the gender stereotypes of our society, and also involves a contract designed to materially limit the autonomy of surrogate mothers. Berkhout opposes Mary Gibson's argument, according to which surrogacy is a tool that allows infertile women to fulfill their biological destiny. On the contrary, surrogacy reproduces gender stereotypes that have affected women's individual autonomy. Ultimately, this author points out, the idea of surrogates as individuals who can or should freely enter into contracts is a misinterpretation of the social climate surrounding pregnancy contracts and is also reflected in the failure of women's reproductive autonomy in general.

Truth is that it seems that surrogacy, as well as a woman's decision to become a surrogate, awakens the feminist intuition that Stoljar pointed out. A procedural approach fails to address substantive issues and would not be sufficient to activate the feminist intuition, as it is limited to content neutrality and an emphasis on process without considering the context of oppression that surrounds and influences women's motivations and beliefs. This would leave us with a particularly broad theory of autonomy, which, by ignoring the feminist intuition that arises, for example, regarding surrogacy, eludes the debate about the impact that internalized oppression has on women's autonomy.

Unlike the previous approach, a substantive approach allows for nuanced considerations. It does not seek to establish external criteria or content requirements necessary for a particular style of a good life. Instead, it seeks to evaluate specific decisions that may be the result of internalized norms of oppression. In no case this approach claims that the individual or woman who makes that decision is not autonomous. The woman who decides to gestate in a given case may not be autonomous regarding that decision, but that in no case would mean the absolute denial of her agency. Indeed, it does not seem appropriate to assert that women are determined and conditioned by the context of oppression and inequality to the point of denying them any deliberative capacity. These are paternalistic positions justified primarily by the interest or intention of doing good to the women who participate as surrogates.

Finally, almost all the authors referenced above agree on one thing, namely, the importance that should be given to the social context of surrogates, their interpersonal relationships, and their position in society. The reason for this is that even if we maintain that surrogacy diminishes or affects women's autonomy, this does not mean that it should be prohibited in practice. In Charles's words, as a society, we constantly allow people to make harmful and self-destructive decisions.³⁰ Furthermore, it is necessary to create the conditions to optimize and strengthen the agent's deliberative capacity, assuming the need to move toward an autonomy that at least reduces the impact of the oppressive socialization norms that women internalize in their development. Thus, all regulations should ensure that they provide said conditions for women who are going to make the decision to become surrogates, thus strengthening their deliberative capacity. As María José Guerra stated, "the full exercise of women's autonomy is only possible under conditions of justice and equality".³¹

The latter relates to the range of decisions a person is allowed to make and, in this sense, to autonomy as a right.³² The possibility of participating in political and social systems, as well as being able to make decisions about one's own life, makes such autonomy a matter of justice for individuals, and specifically for women. As Michael Freeman rightly argues, we

³⁰ CHARLES (2010), p. 427.

³¹ GUERRA (2018), p. 39.

³² HILL (1989).

cannot prevent women from exercising their autonomy.³³ On the contrary, regardless of the arguments put forward or the moral stance we may take regarding surrogacy, the objective should be to strengthen, promote, and protect women's autonomy.

2.2. Exploitation

Surrogacy is a practice that involves crossing borders and international relations between citizens of developed and developing countries. As Laura Nuño pointed out, the context of a globalized world implies the risk of new forms of exploitation emerging.³⁴ In this sense, many of the arguments against this assisted reproduction technique appeal to exploitation as a determining factor in their opposition.

Regarding ARTs, feminists like Gerda Neyer and Laura Bernardi have pointed out that the decomposition or deconstruction of motherhood and women opens the possibility of new forms of exploitation among them.³⁵ Along the same lines, Michelle Stanworth argued that reproductive technologies have contributed to the deconstruction of motherhood. Mothers are broken down into "ovarian mothers" (those who provide the eggs), "uterine mothers" (those who carry out the pregnancy and give birth), and "social mothers" (those who raise the child).³⁶ This fragmentation of motherhood corresponds to what many feminists consider the ultimate goal of ART, namely, to disembodiment women and erase their integrity and sovereignty, rendering biological motherhood redundant. The aforementioned authors argue that this decomposition devalues motherhood and women, creating new and unprecedented exploitative divisions and hierarchies among women.

As a result, the question of equality between women who donate eggs or become surrogates and those who become mothers through their services would be called into question. Egg donors and surrogates often need money, but the payments they receive are far from adequate compensation for the intervention in their bodies or for a full pregnancy.³⁷ The above considerations highlight the importance of addressing the surrogacy debate in relation to the exploitation it can entail.

In *Bodies For Sale*, Stephen Wilkinson develops the philosophical concept of exploitation, showing several ways of understanding it. In a broad sense, exploitation implies using something and profiting from it. In general, this concept has a negative connotation, but the author makes distinctions that would allow the concept to be used without implying moral disapproval. When speaking of exploiting personal talents, an opportunity, or economic resources, the term would not carry a negative connotation. But what is of interest is precisely the moral use of the concept, which is commonly used with a negative evaluative connotation. It is in this field where exploitation would be referred to as a sufficient reason for not doing something.³⁸

A second distinction involves asking whether the use of a person is what characterizes exploitation in terms of negative valuation. That is, whether what we understand as negative exploitation is associated with the use of a person. However, the answer allows us to imagine

³³ FREEMAN (1999), p. 10.

³⁴ NUÑO (2016), p. 3.

³⁵ NEYER & BERNARDI (2011), p. 168.

³⁶ STANWORTH (1987).

³⁷ In 2002, the price paid for surrogacy in India was \$35,000, and the surrogate mother received \$4,000. See BACCINO (2022), p. 312.

³⁸ WILKINSON (2003), p. 15.

scenarios in which we use each other that are not negative, such as when students use their teachers to acquire knowledge. It would seem then that negative exploitation is something more specific than the mere use of other people and it could be argued to refer specifically to the misuse, incorrect use, or use without the consent of another person. However, not every incorrect use of a person is exploitation.³⁹ Consider, for example, a group of friends who invite X to watch a soccer game simply because X is a good cook. Some might argue that they are using or taking advantage of X incorrectly, but no one would argue that X is being exploited.

In view of the need to further define the concept, Wilkinson draws on John Harris's distinction between two distinct moral conceptions of exploitation. On the one hand, exploitation can be the misuse or incorrect use ("wrongful use") that exists when there is no financial or commercial relationship involved in the transaction. This conception would be understood as using people as mere means, which often results in their objectification. The second option involves understanding exploitation as something that involves a disparity in the value of the exchange. This conception would involve commercial relationships, and it is exemplified in the classic case of workers who receive very low wages for long hours that go beyond what was agreed upon and who clearly should either receive more money for their work or work less or in better conditions.

Of course, there are situations where both conceptions of exploitation are present. The author points to prostitution as an emblematic case, and this could also be extended to the debate on surrogacy. This is particularly evident when the relationships generated by surrogacy are mediated through a reproductive clinic or a third party who capitalizes most of the money paid by the person requesting it. But it could also be argued that, even if there were no payment problems in the sense posed by exploitation as a disparity of value, surrogacy is exploitation because it involves the misuse of women as mere means or "machines" of reproduction. Nonetheless, we agree with Wilkinson's argument for not using the latter conception, largely because it would be using the same categories and vocabulary to understand exploitation and objectification, leading to a confusion of concepts. In the case of pregnant women, leasing out their reproductive capacity would mean exploitation, and we would have a confusion between objectification and exploitation.⁴⁰ Introducing the idea of exploitation as something that occurs where a person's dignity is diminished helps to distinguish and clarify these concepts.

Wilkinson develops at length what is to be understood by exploitation in the sense of disparity of value to arrive at a distinction between incorrect or improper use ("wrongful use") and take advantage in an unfair way or in bad faith ("taking unfair advantage of"). This second option consists of two requirements. The first is that the exploited person obtains (or will obtain) an unfairly low level of benefit and/or suffers an unfairly high level of costs and damages. The second requirement involves defective or invalid consent on the part of the exploited person. Wilkinson's position is that for us to speak of exploitation, both requirements must be met. Indeed, if we understand that the verification of the first requirement is enough to constitute exploitation, then we would have to accept that if we correct the problem of the level of cost or benefits, there is no exploitation. In the case of surrogacy, if we were to address the issues of payment and gestation conditions, could we then say there is no exploitation? This is where Wilkinson's argument enriches the debate, because while the

³⁹ WOLFF (1999), p. 110.

⁴⁰ PANITCH (2013), p. 280.

former is a necessary condition, it is not a sufficient condition. For exploitation to occur, there must also be defective or invalid consent.

Regarding gestation and the requirement of unfair exploitation, this refers to the conditions under which the activity, which is susceptible to exploitation, is carried out. Arguments about the low pay received by surrogates are relevant here, not only because the amount of money may be low but also taking into consideration the position of the applicants. Consider, then, those applicants who deliberately go to countries like India to contract surrogacy, precisely to reduce costs. This is a common practice, as Laura Nuño points out: “The most requested genetic material and the egg usually purchased is that of a Caucasian woman. But surrogacy is made cheaper by using a Russian, Nigerian, Indian, or Vietnamese woman”.⁴¹ According to the author, we would be facing a biocolonialism that relocalizes production and guarantees that the child born through this practice will not have traits of the nationality of the person carrying it. The consequence of this is to allow lower costs and increased profits by using cheaper surrogates, who, by not providing genetic material, would have no way of claiming parental rights over the child.⁴² Arguments like these would argue that exploitation occurs only because of insufficient pay, where the surrogate mother should receive more for her reproductive work.

The first requirement of exploitation as unfair exploitation also considers the conditions surrounding this practice. In India, surrogates were housed in clinical facilities where their every action was monitored, from what they ate to their daily activities, day and night. They were unable to leave the health center until after they had gestated and delivered the product of surrogacy.⁴³ However, improving pay and its conditions is not a solution because raising it for surrogates in countries like India, or in those with profound economic inequality, would increase the pay gap between surrogacy and other forms of wage labor. This, paradoxically, could result in encouraging women to become surrogates. It is also often argued that no payment can be fair or equivalent to gestation, either because there is not enough money to buy a baby, or because gestation would have something special about it and should not be commodified.

The second requirement for exploitation relates directly to discussions about autonomy, an idea developed in the previous section. For a practice to constitute exploitation, not only must there be a very high level of harm or a very low level of gain, but also the woman’s consent must be defective or invalid. In other words, her capacity to decide and choose to be a surrogate mother must be impaired. In this regard, Wilkinson proposes three elements that constitute full consent: (1) information, (2) capacity or competence, and (3) voluntariness.

Regarding the first two requirements, it is easy to imagine how a lack of information or the ability to understand it can negatively affect the surrogate mother’s consent. It seems essential, then, that women be provided with mandatory information before undergoing procedures like these, just as is the case for risky medical procedures. It would also be possible to exclude, in a potential regulation, the participation of those who lack the educational conditions to understand the necessary information, as a way of protecting themselves from

⁴¹ NUÑO (2016), p. 10.

⁴² NUÑO (2020), p. 41.

⁴³ PANITCH (2013), p. 282. It should be noted that since 2016 this type of practice has been “legally” prohibited and only the altruistic modality is permitted for Indian couples.

exploitation.⁴⁴ This latter aspect seems especially pertinent in countries where socioeconomic inequality and ineffective educational systems are prevalent.⁴⁵

Regarding voluntariness, for valid consent to be formed, we would need to be faced with the absence of coercive or manipulative threats that could diminish or nullify the deliberative capacity of pregnant women. The contextualization of the pregnant woman becomes relevant again; whether we are talking about a woman in precarious conditions or if she is forced by her family to agree to gestate for another woman. However, it should be noted that in no case is this intended to advocate that consent should not be permitted. While we recognize that the consent of a woman in a situation of extreme poverty could be flawed, refusing her consent could further restrict her range of options. Therefore, the argument regarding valid consent aims to emphasize the need to protect the consent of the pregnant woman and the need to generate optimal social conditions for its exercise. Thus, the coercive conditions under which pregnant women or potential pregnant women operate are better understood when a woman's deliberative capacity is addressed in its context. However, the coercive conditions under which pregnant women operate are diverse, and we must ask ourselves, what is done then?

One option is to ban surrogacy because it constitutes exploitation even when surrogates can access better payments. But even under these conditions, we can find reasons not to prohibit its practice. Indeed, banning international surrogacy will in no way mean the cessation of the practice; rather, it would foster the development of an illegal market for the parties involved, increasing their vulnerability. In the case of surrogates, this vulnerability is even more serious, considering the risks to which they may be exposed and the lack of legal protection they face.⁴⁶ Criminal networks dedicated to human trafficking for sexual exploitation may expand their business to what, in these terms, would be considered reproductive exploitation. There is consensus around the risk of reproductive exploitation for women in situations of social and economic vulnerability with surrogacy. Therefore, prohibition would not be an option in favor of women's autonomy and deliberative capacity, nor a way to ultimately avoid exploitation. Rather, as has occurred in other areas, it means opening the door to transnational organized crime.⁴⁷

Surrogacy, in short, enables the exploitation of women, particularly considering the transnational nature of the phenomenon and the vulnerability of those who provide the gestational service. In this case, it would not only be a matter of exploitation as a disparity of value largely rooted in the commercial sphere, but it would also be relevant to consider the role that consent plays in exploitation, particularly when it is defective or invalid. Hence the importance of considering the social conditions required to ensure that this practice does not become exploitation.

2.3. Objectification

It is necessary to mention a third element that emerges from feminist debates around surrogacy, that ties coherently into discussions about autonomy and exploitation. It has been argued that surrogacy negatively objectifies the surrogate and women in general. Surrogates would be seen as mere vessels, incubators, or reproductive machines, rather than rational, deliberative

⁴⁴ BACCINO (2022), p. 316.

⁴⁵ WILKINSON (2016), p. 135.

⁴⁶ WILKINSON (2003), p. 139.

⁴⁷ OLAVARRÍA (2018), p. 23.

subjects. The contract that leads a woman to surrender control over her own body would turn her into an object, an incubator.⁴⁸

The word objectification means treating something that is not an object as an object. It has been a concept widely used and developed in philosophy and feminist thought. Its modern origin can be traced to the philosopher Kant's theory, according to which people should be treated as ends and never as mere means. In this sense, in her article "What is Objectification?" Lina Papadaki explains what she considers to be the two main notions of objectification: that of Kant, MacKinnon, and Dworkin on the one hand, and that of Nussbaum on the other.

The first conception would understand objectification as the treatment of a person as a mere tool, a mere means to an end, and, as a consequence, the reduction of that person to the status of an object. In this sense, objectification will always have a negative connotation and would seriously damage the humanity and dignity of that person.

The second conception of philosopher Martha Nussbaum involves accepting that there are negative and harmless forms of objectification. The negative form involves viewing or treating a person as an object in such a way that their humanity and autonomy are denied. In contrast, positive forms of objectification would involve accepting that certain forms of objectification can be combined with concepts such as equality, respect, and consent. It would then be a positive form of objectification when it has a neutral or beneficial effect on the humanity of the person being objectified.⁴⁹

In response to the criticisms faced by both notions, Papadaki has constructed a definition of objectification that draws on elements of both conceptions. For the author, "objectification is viewing or treating a person as an object, in such a way that their humanity and dignity are denied. This person's humanity and dignity are denied when they are ignored, unrecognized, or outright mistreated".⁵⁰

Returning to Nussbaum's proposal, the American philosopher has generated a framework for identifying whether an activity has the effect of objectification. She understands that objectification is a complex concept that can take multiple forms and that it is difficult to provide a definition that accounts for this complexity. Therefore, she identifies seven ways of treating something as an object, pointing out that the presence of only one of these forms does not mean that we are facing objectification; these notions are: instrumentalization, denial of autonomy, inertia, fungibility, violability, possession, denial of subjectivity.⁵¹ More than a framework for interpretation, already developed by Berkhout and Wilkinson, it is about facilitating the understanding of the concept and avoiding confusion between exploitation and objectification from the practice of surrogacy.⁵²

In order to differentiate objectification from exploitation and its connection to the concept of autonomy, it is worth focusing on the following three forms, as these are the ones that most clearly affect the surrogate mother. The first form is instrumentalization, that is, treating the person as a tool or a means to an end. The surrogate mother is used by those who request pregnancy, and she is the means to achieve the end, which is a genetically related child.

⁴⁸ PANITCH (2013), p. 279.

⁴⁹ PAPADAKI (2010), p. 26.

⁵⁰ PAPADAKI (2010), p. 32.

⁵¹ NUSSBAUM (1995), p. 257.

⁵² BERKHOUT (2008), p. 105.

A second form is the denial of autonomy, which consists of not recognizing or respecting it, in this case the surrogate mother, because her experience and feelings are not taken into account. But the surrogate mother is also objectified when, during pregnancy, her desires or experiences are subordinated to the desires of the requesters.

It is important to highlight the argument of objectification because it seriously undermines women's autonomy, as Berkhout points out: "The culture surrounding surrogacy translates into the objectification of surrogates, which diminishes women's autonomy, generating negative effects on their inner dimension".⁵³ This culture of surrogacy, to which the author alludes, refers to the conditions under which surrogacy is carried out and the parties involved in the process: applicants, agencies, specialized clinics, lawyers, among others.

On the other hand, Wilkinson uses the term *commodification*, which would be a form of objectification. Like exploitation, commodification has a moral and a non-moral use. In its non-moral use, it is a mere description that points out or highlights the commercial nature of a situation. But what interests us is its moral use, since it is used to argue against surrogacy. In its moral use, commodification is negative and would be used as an objection against the commercialization of bodies or their parts.⁵⁴ The possibility that someone could rent a woman's uterus represents her objectification. The fundamental point is that these practices would be harmful or negative since allowing them would encourage people to treat one another improperly, that is, it would promote treating each other as objects susceptible to commodification.

Therefore, when we talk about the commodification of surrogacy, we must distinguish between its commercial form and its altruistic form, the former being the one that sparks interest. One of the arguments against this type of surrogacy is that it involves the sale of something that should not be valued in monetary terms.⁵⁵ The commodification argument holds that there are certain things that should be excluded from the market because their sale distorts their inherent value or undermines the dignity of the seller. Furthermore, abolitionist positions regarding surrogacy point out that accepting the commercial form implies advocating for something similar to a right to be sold.⁵⁶ For authors like Panitch, it seems obvious that there are things that lose their value upon entering the market. These would be things that have so much personal value that their monetization is inconceivable for the individual. Therefore, surrogacy is the sale or rental of the uterus, but given that gestation itself has something special about it, its commodification seems intuitively incorrect. In this sense, if we accept the thesis that the sale of a human organ is offensive because it violates human dignity, then the sale or rental of the uterus would also be offensive because it equates the value of a rational agent with the value of its non-rational parts. It could be argued that when we assign a price to a part of the human body, we are assigning a price to the person as such.

Panitch's ideas have received several criticisms. The first is that surrogacy should not be understood as the sale of the uterus because this is neither accurate nor demonstrative of reality. She herself corrects this and maintains that she considers surrogacy to be the sale of a gestational service. This would be viewed negatively because it would entail the expansion of the market into the private sphere of sexuality and reproduction. On the other hand, authors—

⁵³ BERKHOUT (2008), p. 95.

⁵⁴ WILKINSON (2003), p. 45.

⁵⁵ PANITCH (2013), p. 278.

⁵⁶ See for example DEVILLERS & STOICEA-DERAM (2021). In a similar vein, CORRAL (2013).

such as Debra Satz—have refuted this last point concerning the moral viability of the commodification of surrogacy.⁵⁷ In her work, Satz addresses harmful markets and identifies what she calls the essentialist thesis. According to this thesis, reproductive work should not be treated like any other productive labor because it has a gestational component that differentiates it. The author argues that there is nothing “intrinsically” wrong with surrogacy and that the problems arise from certain external conditions under which the gestational service is sold, an argument similar to the one Nussbaum offered regarding prostitution.⁵⁸ One of these conditions is that surrogacy validates historical gender inequalities. These inequalities have always resulted in the subordination of women to male interests.

This has taken shape through male control over female bodies, as well as their sexual and reproductive rights. Along the same lines, Gonzalo Fernández points out that arguments about the objectification of women to reject surrogacy attempt to condemn a morally harmless practice.⁵⁹ It is not the practice itself that generates the objectification of women, but rather the external conditions or subsequent perversions to which it can give rise that generate this negative effect. What happens in certain parts of the world is no reason to label the practice itself as immoral and objectifying. Based on the above, it could be affirmed that what is negative is not the commodification itself, but the role this commercialization plays in a given context, validating historical forms of gender subordination and inequality and reproducing stereotypes and gender roles of women as mothers. Now, as in the debate on the sex trade, it is worth asking to what extent it is possible to differentiate, not only analytically, the practice of prostitution (or in this case, surrogacy) from its social conditions and contexts.

III. CONCLUSIONS

This paper critically explores the concepts of autonomy, exploitation, and objectification with the aim of demonstrating their relevance to the moral, political, and legal debate surrounding surrogacy. The paper has revealed how the different ways we interpret these concepts position us differently in the debate and are the basis for serious consideration of how surrogacy legislation should be formulated, all with the aim of guaranteeing the conditions of those who participate in this practice.

Regarding the different perspectives on the notion of autonomy, the study showed that most authors advocate for the creation of conditions to improve and strengthen the deliberative capacity of women who decide to carry children through surrogacy, thus moving toward a conception of autonomy whose goal is to reduce the incidence of oppressive socialization norms and improve access to the information necessary for decision-making.

Furthermore, the work revealed the importance of considering how surrogacy enables the exploitation of women, particularly emphasizing how the transnational context, as well as social conditions, determine their development. On this point, it is worth emphasizing that this is not just a question of exploitation as a disparity of value anchored in the commercial sphere but also considers the role that consent plays in exploitation, particularly when it is defective or invalid.

Along with the above, under the guidance of Nussbaum’s ideas, the work showed that it is possible to consider negative and other non-harmful forms of objectification. Regarding its

⁵⁷ SATZ (2010).

⁵⁸ NUSSBAUM (1998). For a discussion of this argument see AGUAYO & CALDERÓN (2020).

⁵⁹ FERNÁNDEZ (2019).

negative form, this would consist of treating a person solely as an object, denying them their humanity and dignity. This situation occurs when the wishes and interests of all parties, especially those of the woman carrying the child, are not heard or considered. It should be noted that, while it is possible to consider these notions separately, in practice—as well as in the development of arguments for their regulation—they appear interconnected. Thus, for example, underlying the discussion of objectification, we can find clear arguments about the impact on autonomy.

Everything stated here is relevant to the legislative and political debate because it means that these considerations, primarily the social context and its power relations, must be taken into account when legislating. Indeed, when a bill is introduced, it is not legislating for an ideal or abstract reality, but rather the real conditions of a society must be taken into account. Therefore, it is essential to emphasize the historical conditions of subordination and inequality in which women find themselves. Ultimately, it is about having a debate without absolutes, which allows for nuances based on women's specific practices and the impact that legislation can have on deepening or overcoming gender inequalities. In this sense, the work emphasized the need to consider relevant moral debates that precede, or at least should precede, the political and legislative debate surrounding the regulation of surrogacy.

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