Womb for rent

A normative study of the ethical issues in commercial surrogacy

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ABSTRACT
This thesis intends to demonstrate why commercial surrogacy is not morally justifiable. In order to display the implication of the aim, a normative argumentative method is applied. In the analysis, arguments, and possible counter-arguments of ethical issues of exploitation, commodification, individual freedom and estranged labor in context to surrogacy arrangements is outlined. To strengthen the content of the arguments presented the concept of exploitation, commodification together with the harm principle and the Marxian framework of estranged labor will act as the theoretical framework of the thesis. In the analysis, it is shown that global economic inequalities, and social structures of class and gender make the practice of surrogacy exploitative per se and that the surrogate becomes objectified as she as a person and her body is treated as a commodity. Based on these factors, it is concluded that surrogacy cannot be morally justified.

KEYWORDS
Commercial surrogacy, exploitation, commodification, individual freedom

WORDCOUNT
14000
LIST OF ABBREVIATIONS

IVF - In Vitro Fertilization
ART - Assisted Reproductive Technology
CEDAW - The Convention on the Elimination of All Forms of Discrimination Against Women
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1. INTRODUCTION

In contemporary times surrogacy arrangements have become a popular option to create a family. The most common motive for choosing surrogacy is infertility, which is a condition that approximately 10 to 15 percent of all heterosexual couples in fertile age are affected by. In this case, surrogacy becomes a possibility to receive a child carrying one’s genes without undergoing a pregnancy (Jönsson, 2003: 13). Another reason to choose surrogacy can be on practical grounds for groups within society that before has been deprived the opportunity from the opportunity to get a child, surrogacy has become a chance to create a family, e.g., people in same-sex relationships, trans persons and people without a partner (Jönsson, 2003: 20-21). The individual or couple entering a commercial contract and commissions the pregnancy to create a family is commonly called the commissioning parents and are understood to be both the legal and social parents of the child once it is born (Twine, 2015: 14).

The motives of the surrogate mother, hereinafter referred to as the surrogate, are either altruistic or commercial. Altruistic surrogacy refers to the type of arrangement where no commercial transaction or third-party payment is involved. Instead, the surrogate woman agrees to help the individual or couple to become parents. In an altruistic surrogacy contract, the surrogate is not engaged in a commercial surrogate contract and is therefore not expected to receive any forms of financial means except for pregnancy-related expenses (Twine, 2015: 13). Commercial motives primarily base itself on economic profit purposes. In other words, commercial surrogacy refers to arrangements where the surrogate receives compensation for her services. The most common form of commercial surrogacy performed today is gestational surrogacy, also referred to full surrogacy, where the child is not biologically related to the surrogate mother. Instead, the eggs and sperm from the commissioning parents or donors are used to create an embryo via IVF, which is after that transferred to the uterus of the surrogate. The surrogate is here paid for her services and works under a pregnancy labor contract, where a surrogate agency operates as a third party (Twine, 2015: 14).

Kajsa Ekis Ekman outlines that the surrogacy market can be described as two sides, where one side is rich people living in the west longing for a child and the other side is women living in the global south, eastern Europe or vulnerable women in the west that only have their bodies and fertility (Ekman, 2010: 153). Surrogacy has become a modern way of creating a family where the commissioning parents urge, and sometimes argued right, to get a child gets overruled by how the practice affects the surrogate. Although surrogacy has become a popular
and relatively common option on the market today, it has also become heavily criticized for exploiting the surrogate and commodifying the female body. In this thesis, the idea of viewing commercial surrogacy as a morally justified practice will be critically questioned and problematized. By focusing on arguments of exploitation and commodification, this thesis intends to demonstrate how commercial surrogacy, raises ethical concerns and violates certain rights of the surrogate, which will be describe later in the thesis.

1.2. Aim

This thesis aims to do a critical, argumentative study to demonstrate why surrogacy is not morally justified. As this thesis is of a normative kind, the argumentation presented will base itself in ethical concerns of exploitation and commodification. To achieve this, previous research where questions of exploitation, commodification, value, labor, and social structures in relation to surrogacy will be used. As the opinions in the debate over the justification of surrogacy are divided, Kutte Jönsson’s and Stephen Wilkinson’s philosophical arguments on the justification of surrogacy will be used to demonstrate and repudiate possible counterarguments. Also, John Stewart Mill’s Harm Principle together with the Marxian framework of estranged labor will be applied to provide a critical position and show a mere theoretical perspective of the thesis.

As this thesis is of a normative kind intending to demonstrate why surrogacy is not morally justified, a research question will not be articulated. Instead, the critical, argumentative analysis will act as assumptions of the research aim.

1.4. Background

The first known surrogacy arrangements took place during the 1970s in the USA through advertisements in American newspapers, where the men whose wives were infertile searched for women who were willing to carry and give birth to a child for compensation. The lawyer Noel Keane saw the business opportunity and shortly after that started an agency where childless couples were matched with surrogate women. Keane quickly realized that couples would pay a significant amount of money in exchange for a child genetically related to the father. At the end of the 70’s several agencies operated throughout the country (Ekman, 2010: 128).

In 1986, the first public custody dispute of a surrogate child, known as the Baby M case, took place. A surrogate named Mary Beth Whitehead gave birth to a daughter through
one of Keane's agency clinics. The newborn was the biological child of Mrs. Whitehead and the commissioning father, Mr. William Stern. Mrs. Whitehead had signed a surrogacy contract, where she resigned her rights as the mother of the child and agreed to adopt the child to Mrs. Stern for 10,000 American dollars. After the child was born, Mrs. Whitehead changed her mind, refused to sign the adoption papers, and fought for custody in court. In 1987, the New Jersey Court ruled that surrogacy contracts are unenforceable and gave custody to Mr. and Mrs. Stern. The Baby M case raised several bioethical issues connected to surrogacy arrangements, parental rights, and contract law which resulted in a ban of commercial surrogacy in several US states (Twine, 2015: 7-8).

At the beginning of the 1990s, the development of Assisted Reproductive Technology (ART) made it possible to practice IVF, which resulted in the surrogate being able to carry a child without any genetic or relative connection. The innovations of ART created the opportunity to choose a surrogate from, eg., India, and still get a white child genetically connected to both the commissioning parents. The new technologies were the start of the global surrogate industry, which before was an expensive practice only available in the west now becoming available in states located in the global south for a fraction of the price (Ekman, 2010: 130). Commercial surrogacy is today a billion-dollar market industry, where India for a long time has been the leading supplier of the surrogate industry with a revenue of over two billion dollars each year (Pande, 2016: 244-46). However, in December 2018 the Surrogacy Regulation Bill officially banned commercial surrogacy in India and today only allows altruistic surrogacy arrangements within the close family of the commissioning parents. The decision of the ban itself is based on concerns of exploitation of the surrogate mother and the child (The Surrogacy (Regulation) Bill, 2018).

Today, most industrialized states ban or regulates commercial surrogacy. However, there are still states where both altruistic and commercial surrogacy is allowed¹. Despite this, there is no unified policy from either the United States nor the European Union to regulate surrogacy across their member states, instead a patchwork of diverse and complicated laws can be found. The lack of a unified policy creates a flow of commissioning parents and individuals who travels to areas where surrogacy is legal to avoid local restrictions (Twine, 2015: 4).

Within the European Union, either altruistic or commercial surrogacy is legal in 12 of 28 member states (Statens medicinetiska råd, 2013: 161). Although the European Parliament

¹ The exceptions are; The United States (California, Illinois, Massachusetts, Florida, Arkansas), Romania, Russia, South Africa, Ukraine (Twine, 2015: 4), Georgia, and Albania (Tammuz Family, Website) where commercial surrogacy is still legal.
have no policies regulating surrogacy, the parliament has issued two resolutions where the concerns of surrogacy arrangements are brought up. In the first one, the European Parliament “Asks Member States to acknowledge the serious problem of surrogacy which constitutes an exploitation of the female body and her reproductive organs (...) Emphasises that women and children are subject to the same forms of exploitation and both can be regarded as commodities on the international reproductive market, and that these new reproductive arrangements, such as surrogacy, augment the trafficking of women and children and illegal adoption across national borders” (Council of Ministers and the European Commission, 2011).

In the second resolution, which is a part of the yearly rapport of human rights and democracy of the world the parliament “condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments” (Council of Ministers and the European Commission, 2015).

1.5. Relevance to human rights

The two leading human rights issues raised related to surrogacy arrangements are concerning the surrogate woman and the child. However, as this thesis focus on the surrogate, human right issues connected to the child will not be further reviewed. In the following sections, some of the breaches of CEDAW in connection to surrogacy contracts will be outlined, along with other concerns related to surrogacy and human rights issues.

1.5.1. Women's Rights

One issue raised is that the surrogate can be compared to machinery where the child becomes the goods produced or an object of the contract. Here, the question of human dignity is raised as the surrogates reproductive capabilities are treated as means to achieve the desired end (La Hougue and Roux, 2015: 4-5).

The consequences of the health of the surrogate is another factor that raises concerns connected to both women and human rights. Pregnancy is always a risk taking that will affect the pregnant woman both physically and mentally. In surrogacy arrangements, the surrogate has to deal with the physical stress and risk as any other pregnancy, which can cause immediate risk for the health and life for the surrogate (La Hougue and Roux, 2015: 9). The issue of health
of the surrogate can be connected to article 11(f) in CEDAW (1979) stating that all women have “The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”. Article 6 of CEDAW (1979) states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”. In the case of surrogacy, the woman’s body is used as a tool to produce a child. Most cases of surrogacy contracts are commercial ones, where the woman gets compensated for her services and rents out her reproductive system. Similar characteristics can be drawn to prostitution and trafficking in women, which is not considered to respect women’s dignity (La Hougue and Roux, 2015: 9). Although surrogacy is a commerce of the female body, it is often recognized as a softer version of prostitution since the occurrence of violence, sexual abuse, and mortality is rated lower. However, a surrogacy contract lasts for at least nine months where the woman is restricted and cannot escape the contract which per se restrict the freedom of the surrogate (Ekman, 2010: 178). The surrogate is often closely monitored during the pregnancy, which can be interpreted as constraining. In some cases, the surrogate women have to live in a house with other surrogates, kept away from their families. These places are generally called ‘baby farms’ where the surrogates are monitored continuously, and the unborn child’s health is the main priority (La Hougue and Roux, 2015: 12-13). Another concern raised related to women’s rights is the freedom to consent of the surrogate. In this sense, if the surrogate contract is a commercial one, the surrogate is not genuinely free since she is constrained by economic necessity (La Hougue and Roux, 2015: 10).

1.6. Delimitations

In this thesis, the decision was made to limit the research by focusing merely on how the surrogate woman is affected by the practice contract. It was also chosen to limit the research by looking at ethical concerns of exploitation, commodification, and the value of labor connected to surrogacy arrangements. Furthermore, it should be noted that the thesis focuses on ethical issues of commercial surrogacy arrangements, as these are the most common ones in the discussion of moral justification of the practice.

1.7. Chapter outline

This thesis contains seven chapters with additional subheadings. Chapter one introduces the reader to the research subject and display the aim of the thesis. Furthermore, a background,
delimitations and relevance to human rights are here outlined. In chapter two, a selection of previous research of surrogacy is outlined, together with a section of lack in existing research. The third chapter presents the methodological framework of the thesis. In chapter four, the theoretical framework of the thesis is presented. Here, the concepts of exploitation and commodification will be described followed by an explanation of the harm principle and the Marxian framework of estranged and alienated labor. The analysis is found in the fifth chapter and consist of two sections where the first one presents arguments against surrogacy, and the second section display a critical argumentation against possible counter-arguments in favor of surrogacy. In chapter six consist of a concluding observation where the assumed aim is evaluated. Lastly, in chapter seven, the bibliography is found.
2. PREVIOUS RESEARCH

As this thesis is of a normative nature, the previous research presented in this chapter will act as the material. The previous research presented are within the philosophical sphere and covers moral and ethical concerns of the practice. The decision was made to mainly focus on previous philosophical research since this thesis categorizes itself within the normative field.

2.1. Exploitation and commodification

Amrita Banerjee outlines that most of the research made on surrogacy focus on contemporary problems since surrogacy, and especially the commercial kind, today is available on the global market. The up rise and availability of transnational commercial surrogacy have resulted in most philosophical research made is focused on the ethics of the practice, where reproductive liberalism versus concerns of exploitation are raised. The tendency here is to look at the moral grounds of rights and wrongs in surrogacy arrangements. Banerjee further states that most research made originates itself in the practice of surrogacy in Western contexts (Banerjee, 2010: 107). The argument in favor of surrogacy often base in advocating reproductive liberalism. Here, the notion of autonomy and choice is raised where it is argued that surrogates had the right to make decisions concerning her own body and reproductive capacities. The autonomy argument is generally found in the creation of new opportunities and conditions for the surrogate, where it is argued that she can exercise a higher form of autonomy than before. The scholarly debate arguing against surrogacy mainly focuses on models of exploitation, where discussions of commodification also becomes relevant. The feminist ethical debate argues that, in the context of commercial surrogacy, giving women control over their bodies serves a different purpose that results in reducing and defining women to their reproductive capabilities. In the aspects of commodification, the paradigm of exploitation debate that the surrogate is a victim of exploitation since both her body and labor is judged based on usefulness and value. Another aspect of the commercial surrogacy debate is the question of choice. Where what appears to be a choice in many cases is an outcome of coercion, this since commercial surrogacy contracts expand the options of the surrogate, but also result in women taking a decision they do not prefer, it becomes a decision they cannot refuse, since the price of refusal is too high (Banerjee, 2010: 109).

Banerjee (2010) is contributing and expanding the existing research by criticising the Western ethical models that dominate the research market, and instead identifies new starting points of analyzing the problems raised toward transnational surrogacy in a more effective way.
By applying a feminist pragmatist model, she aims to give justice to the lived experiences of the women involved in surrogacy arrangements together with providing a broader phenomenology of oppression. Banerjee further, like the majority of research made, draws upon examples from the state of India\(^2\). This since India has been the capital of reproductive tourism in modern times. To find a yes or no resolution to the debate of transnational surrogacy is impossibly hard and naive. Since, as Banerjee argues, even if it can be argued that surrogacy is ethically wrong and should be prohibited on the legal grounds of exploitation, the practice is likely to continue as long as economic inequalities exist.

Stephen Wilkinson (2016) bases his research in ethics and the regulation of reproductive technologies and will act as one of the primary sources used to provide the framework in favor of commercial surrogacy in this thesis. In his article, Wilkinson focuses on critics on commercial surrogacy in the context of exploitation. By examine the defensibility of exploitation related claims and possible suggestions on how to make the practice less exploitative, Wilkinson seeks the answer on how strong the case is to prohibit commercial surrogacy. He concludes that exploitation in surrogacy arrangements can be solved by improving surrogates pay and conditions. Wilkinson further argues that exploitation does not have to be wrong in an all-things-considered judgment. To provide an example; the global trade between the North and South is outlined as 80% exploitative. However, to stop the global trading market would most likely result in impoverishing the people living in the global South and result in billions of deaths. Therefore, Wilkinson states, it is reasonable to continue allowing international trading, since it becomes the right thing to do, although considered exploitative. By examine exploitation from the distinction of taking unfair advantage of the surrogate, Wilkinson outlines that exploitation only occurs if; “(a) The person derives (or is at risk of deriving) an unfairly low level of benefit and/or suffers from an unfairly high level of cost or harm; and (b) the exploited person’s consent to the arrangement is defective or invalid” (Wilkinson, 2016: 127).

Similar to his article, Wilkinson (2003) is using the concepts of exploitation, harm, consent, and commodification as tools to justify and strengthen the case that commercial surrogacy does not have to be exploitative and can be valid as consensual in his monograph *Bodies for sale - ethics and exploitation in the human body trade*. Wilkinson is not focusing on

\(^2\) It should be noticed that India does no longer permit commercial surrogacy, primarily based on exploitative grounds (The Surrogacy (Regulation) Bill, 2018).
the anti-surrogacy view. Instead, he aims to outline why commercial surrogacy should not be prohibited.

Kutte Jönsson (2003) is in his monograph *Det Förbjudna Mödraskapet* (*The Forbidden Motherhood*) applying John Stuart Mill’s harm principle, which will be described more detailed in the theory chapter, as a liberal reproduction ideology to justify surrogacy arrangements. Jönsson argues that surrogacy arrangements should be permitted if following conditions are upheld; (1) the arrangement is based on free choice, (2) the agreement is based on consent between all parties involved and, (3) The child is in no form harmed by the arrangement. These conditions Jönsson argues are of necessity for the acceptance of surrogacy arrangements as a reproductive method (Jönsson, 2003:125).

Furthermore, Jönsson (2003) is like Wilkinson discussing the exploitation arguments towards commercial surrogacy. Jönsson highlight the fact that there is a lack of research towards why the practice is exploitative. Jönsson agrees that surrogacy arrangements could be exploitative but intrinsically, he argues, they are not. Hence, if exploitation occurs, it does so based on circumstances of a specific arrangement and not because of the practice itself. In the discussion of exploitation, Jönsson has chosen to not connect exploitation with the commodification of the female body, which is two concepts often combined in the debate of surrogacy. Here, Jönsson argues that the two concepts should be addressed separately, and therefore, he focuses on economic exploitation.

2.2. Social structures and labor

Serene J. Khader (2013) raises attention to the critical debate of how race, class and, cultural background of surrogates in the global South affect the moral acceptability of transnational surrogacy. More specifically, Khader expands the discussion of how race and class oppression of surrogates located in the global South weights on questions of the moral acceptability of transnational commercial surrogacy. Applying an intersectional theory to the debate of the practice, Khader believes, will help overcome the limitations in the current feminist discussions of the practice. Khader further brings up the discussion of otherness. Here, Khader states that the critical analysis of transnational surrogacy arises concerns that westerners are extra likely to inflict harm of surrogates in the South since they are often in a more vulnerable economic situation along with more vulnerable to patriarchal norms where the woman’s value is attached to her reproductive capabilities. Although Khader focuses on the moral acceptability of transnational surrogacy, her aim is not to offer an all-things-considered judgment of the debate.
Instead, Khader intend to complement the existing research by providing a nearer list of considerations which are relevant to the remodeling of the judgment of the race and class discussion of surrogates living in the global South weight in questions of the moral acceptability of the practice.

Another author raising concerns about surrogacy arrangements is Andrea Dworkin (1983). In her monograph *Right-Wing Women*, she problematizes surrogacy arrangements as the practice is often portrayed as the surrogate entering the contract on individual will. Dworkin argues that the state intrusion the woman to sell her reproductive capabilities, which provokes a defense of her will and herself, which result in the woman provide services which are appropriate for females to sell. By comparing surrogacy to prostitution, Dworkin outlines that surrogates sell their reproductive capabilities in the same way as prostitutes sell sexual services. This sense, surrogacy arrangements grounds itself in a similar view of women’s rights as seen in the discussion of prostitution. Those who advocate both prostitution and surrogacy are critical to the state acting restrictedly the right of the woman to sell her body or uterus as she self chooses freely. Dworkin problematizes this view of female autonomy by arguing that the woman selling her body based on free will does not exist. As the state has constructed the social, economic, and political situation where some women have to sell their reproductive capabilities to survive.

Another debate of the surrogacy practice raised within the field of philosophy is the one of labor together with questions related to value and how social reproduction should be compensated. Crotzer, Johnson, and Hajzler (2014), are in their research addressing the undervaluation of emotional and biological labor, where subsidization is applied as a method to address causes of undervaluation. The authors connect the biological and the emotional labor, where they state that the unquantifiable patterns of the practice since the emotional labor exists as a form of unpaid work. The concept of how to value transnational surrogacy as a form of paid social reproductive labor is used to move the discussion forward and to interrogate questions of value and labor in uneven relations of power. Like other research made, they identify that the differences are structured through global economic inequalities which leave little space for solidarity. The authors describe transnational surrogacy as a form of victimization rather than a work, based on the argument that surrogacy is a form of labor which potentially stage exploitation of women as a class of workers. Further, they identify that legal documents of regulating commercial surrogacy leave gaps concerning the interest of the surrogates. For example, in the *Assisted Reproductive Technologies Bill* from the Indian
Council of Medical Research, the surrogates are not explicitly included in the composition in any of the committees.

Another author discussing transnational surrogacy in connection to labor is Kelly Oliver (1989), who argues that the liberal framework conceals gender and class issues which allows judges to justify and enforce surrogate contracts. By applying a Marxist theoretical framework, Oliver aims to bring some of the concealed issues of surrogacy contracts to the surface. More specifically, Oliver focuses on Marx distinctions between estranged and alienated labor, where she argues surrogacy contracts becomes a form of estranged labor. Oliver further explains that although defenders of surrogacy arrangements admit that very few women would perform surrogate services without being paid for their labor, the proponents defend the practice as a woman’s right to use her body and freely enter contracts and make money as she wishes. Further, Oliver argues, that in the contemporary capitalist societies the market demand controls the propriety. These types of arguments overlooks that the demanding market forces women into surrogacy contracts. Thus, economic vulnerability causes the woman to make decisions and do something she otherwise would not have done to make a living. Compared to other services rendered without really wanting it, surrogates work 24 hours a day for at least nine months. Also, most people sell their labor or service and not the body itself as labor. Oliver is throughout her article, challenging the raised benefits of surrogate arrangements, which she strongly argues are created under presumptions of the liberal framework operating within a capitalist patriarchal society. Within the liberal framework, all people have the freedom to exercise their right as long as they do not interfere with others; in other words; all people are considered equal with equal rights. Although surrogacy arrangement can be portrayed as an agreement between equal parties, where an equal exchange is made, the liberal framework overlooks gender and class differences between the parties, which shows that the parties involved in the contract are not on equal grounds from the start. Oliver, therefore, argues that surrogacy contracts would not exist if the party involved were equal. Also, Oliver argues, that without the class differences women would not enter surrogacy contracts. Instead, the surrogate contracts are in favor of the male, or the financially secured commissioning parents. As the contract protects the commissioning parents right to procreate and defend the surrogate right to enter the contract because she is a free individual. However, it also limits her freedom over her body when the contract is entered.
2.3. Lack in existing research

As seen throughout the chapter of previous research, the majority of existing philosophical research position itself against the moral justification of surrogacy arrangements. Ethical concerns of exploitation, commodification, and value together with issues related to class, gender, and social structures are raised. The outlined exceptions presented are Wilkinson and Jönsson, who are both arguing that surrogacy should be morally justified. The two authors were chosen to represent the pro-side as they both discuss the ethical issues which are of central interest of this thesis.

Although there is a fair amount of research made on surrogacy, it is still a limited amount of research within the philosophical sphere. As seen in the previous research presented, concerns of exploitation and commodification are perhaps the two areas which are frequently seen in the debate of surrogacy. Despite this, these are two of the main concepts and concerns raised in this thesis. This decision was made as to the exciting research where concerns of exploitation and commodification are raised, the concept itself is described rather briefly, and instead, the focus tends to be a specific case or towards a particular state. This thesis will hopefully expand the existing research by providing a more in-depth argumentative analysis of concerns of exploitation and commodification along with complement the two concepts by applying the Mill’s Harm Principle and the Marxian framework of estranged labor.
3. METHOD

In this thesis, a critical, argumentative analysis is used as a method to demonstrate why surrogacy is not a morally justified practice. As the arguments in the analysis highlight ethical issues of surrogacy, it felt natural to use a normative argumentative method, as ethical concerns lies on normative philosophical grounds. Also, an argumentative method was found suitable for this thesis as it aims to examine arguments critically.

The purpose of doing an argumentative analysis is to evaluate arguments, and by doing that unearthing its insufficiency. An argumentative analysis can be described as doing research based on arguments from a set of perspectives where one provides reasonings to strengthen the perspectives. To achieve this, one first outlines the arguments, and after that evaluate them, which will eventuate in a well-established result (Björnsson et al., 1994: 7-9). In the analysis section of this thesis, arguments raised both for and against justification of surrogacy will be outlined, and after that evaluated by applying the concepts of exploitation, commodification, the harm principle and the Marxian theory of estranged labor. The evaluation of the arguments through the concepts and theory will after that, hopefully, create a result which can expand the existing research in the area.

As this thesis is based in moral and ethical issues, it is also vital to create an awareness of the intent of the material, since philosophical research tends to hold a particular point of view which the author wishes to convince the reader is the considered right one. By providing arguments that support their position, the author offers reason and evidence which aims to support the particular claim or conclusion (Thomson, 2002: 5). This becomes relevant for the thesis both when reading other arguments, and when forming my own.
4. THEORY

4.1. Definitions of concepts

When presenting the concepts of exploitation and commodification, Stephen Wilkinson’s description of the concepts will serve as the primary source. Wilkinson is providing a detailed layout of the two concepts, which he presents from a neutral standpoint. In the debate of justifying surrogacy, a liberal framework is often applied. Therefore, John Stuart Mill’s harm principle will be explained.

4.1.1. Exploitation

The most common argument used to assert why surrogacy should be prohibited is based on concern of exploitation of the surrogate mother. As outlined previously in this thesis, some scholars resist these accusations. Therefore, the need for clarifying and understanding the grounds of the concept becomes necessary.

Another reason to elucidate the concept of exploitation is that although it is both heavily used and an accepted moral concept, exploitation has not been included enough in contemporary political and moral philosophy. Wilkinson describes exploitation as “to exploit something, in the most general sense, is simply to put it to use, not waste it, take advantage of it” (Wilkinson, 2003: 9).

Exploitation can be applied in a moral and non-moral sense. The discussion of exploitation can be made in a neutral sense, e.g., when we use a resource, opportunity or talent. In these cases, the moral disapproval of exploitation is not expressed. However, when it is alleged that somebody has used another, moral criticism strikes harder. This form of exploitation is not meant to be applied to actions where using someone is acceptable, e.g., when students use their teachers to learn. It instead refers to using others, in the sense of taking wrongful advantage for one’s own purposes (Wilkinson, 2003: 11). Within the moral sense of exploitation, two different concepts can be outlined. The first one occurs when one is making wrongful use, or where there is no economic or commercial dimension to the transaction. The second condition refers to when there is some disparity in the value of the exchange of goods and services. These two can either function independently or in some cases, both concepts of exploitation can be outlined in the same situation (Wilkinson, 2003: 13-14).

Exploitation is often seen as unfair or unjust where the injustice consists of redistribution of harms and benefits. A connection between exploitation and benefit can be
drawn, where the idea that the exploiters derive a benefit from their behavior or action. Hence, the exploiters are getting or gaining something when they exploit (Wilkinson, 2003: 16). However, exploiters do not necessarily use others to benefit themselves, instead “they necessarily use others to foster the achievement of their own goals” (Wilkinson, 2003: 21). This can be explained as; although most goals people have are of self-interest where people typically use others to benefit themselves, however, to benefit oneself does not necessarily have to be on exploitative grounds (Wilkinson, 2003: 21). The attributes of people, together with their circumstances are often the factors being exploited. Exploitation can in this case include various things, e.g., exploiting peoples trust, fears, loyalty, bad luck, homelessness or joblessness. Here it can be argued that exploiting a person’s attributes is not the same thing as exploiting a person per se (Wilkinson, 2003: 21).

In standard exploitative relationships two types of aspects can be found; Advantage-exploitation and benefit-exploitation. The advantage-exploitation refers to when someone is being exploited based on their weakness or vulnerability. Here, the exploiter gets an advantage over the subordinated and takes advantage of the other. Wilkinson argues that one can be advantage-exploited without being exploited. Hence, it is in innocent or beneficent cases where advantage-exploitation becomes sufficient for exploitation. Furthermore, advantage exploitation becomes relevant when bringing up the discussion of disparity of value exploitation, since this form of exploitation usually involves agreeing on a bad deal, by taking advantage of a person’s personal or situational weaknesses. Therefore, without advantage-exploitation people would most likely not agree to, nor be pushed or tricked into bad deals (Wilkinson, 2003: 23).

In benefit-exploitation “some attributes of the person from which we derive benefit or use to chive our end” (Wilkinson, 2003: 23) are exploited. Just as the advantage-exploitation, it is argued that the benefit-exploitation in not sufficient for full exploitation of a person. This sense, if this were the case, exploitation would occur whenever anyone is useful to anyone else. Benefit-exploitation can however be applicable for the full exploitation of a person since it is entitled of the use condition. The use condition outlines that exploiters use the exploited as means to achieve their own goals. Furthermore, a person can only be exploited if they have one or more useful attributes which are benefit exploitative. Thus, in order to be exploited one must be both vulnerable and useful. Meaning, if a person is entirely useless, he or she cannot be exploited because then the person will not help contribute to achieving the explorer’s goals. The same thing applies when a person is invulnerable, as then the person cannot be exploited simply because he or she will not agree to an exploitative deal by having their weakness
advantage exploited. Therefore, the ones most exploitative are those who are both very useful and very vulnerable. When it comes to wrongful use exploitation, it can be outlined that benefit-exploitation is needed for it to exist. Hence, the benefit-exploitation does not require the exploited to agree upon a bad deal, as advantage-exploitation does, since the person being exploited does not have to agree nor does the deal does not have to be considered as bad (Wilkinson, 2003: 23-25)

4.1.2. Commodification

Just like exploitation, commodification can be used both in a moral and in a non-moral sense. In a non-moral sense, the concept refers to social practice and/or legal system where commodification can be explained as the social practice of treating things as properties or commodities that can be bought, sold or rented. Here, commodification is used in a descriptive sense where equal people are buying and selling. In a moral sense, commodification can be understood as a negative moral term referring to a form of wrongdoing (Wilkinson, 2003: 44). In cases of commercial practices, such as surrogacy, it can be argued that renting someone’s body is based on making a commodity of human beings which encourage an immoral climate. Wilkinson writes that “the commoditization of human beings proceeds apace” (Wilkinson, 2003: 45), here permitting practices such as commercial surrogacy can be included since it creates an extension of the social practice of commodification. Permitting these practices, therefore, encourage people to treat other people as commodities.

When talking of commodification, discussion of objectification is often raised. This because commodification can be seen as a type of objectification. Hence, to commodify is to treat something or someone as a commodity which is not an actual commodity. The term commodity can, therefore, be referred and used in different senses towards things that are traded. Here, commodities are seen as fungibles which the buyer buys typically an amount of to a specific price. If commodities then are fungibles, to commodify is to treat “as fungible something which isn’t fungible and/or oughtn’t to be waived as such” (Wilkinson, 2003: 46). Therefore, to treat people as fungibles, or as objects, fails to respect their human dignity. Wilkinson uses two Kantian moral principles to describe the ethical concerns of objectification of persons. The first one being “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only” (Wilkinson, 2003:29), meaning that people should be treated as ends-in-themselves rather than as means. The second principle is Kant’s distinction between price and dignity. It says that “In the kingdom of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent;
on the other hand, whatever is above all price, and therefore admits of no equivalent, has a
dignity” (Wilkinson, 2003: 29), which refers to that people have dignity and should because of it be treated and viewed with such. Treating people as fungibles, therefore, fails to respect their dignity and is to regard them as having bare price. Hence, we should not treat people as if they are replaceable or interchangeable. Instead, people should be treated as irreplaceable where the value of a person is neither more, nor less than the value of another person (Wilkinson, 2003: 30). The second Kantian principle can be connected to commodification by regarding a person as fungible, especially in cases where money or commerce is involved (Wilkinson, 2003: 48) It can here be concluded that to commodify is to fungibilise either through, or because of commerce.

Another concern raised in the debate of commodification and objectification is the treatment of persons and the ethical concerns of treating bodies as objects. Thus, bodies and body parts are physical objects, and therefore the concern is not whether if bodies are treated as an object but rather how bodies are treated as mere objects. Bodies can be seen as mere objects since the body is intimately related to a person. Therefore, to objectify the body becomes the same thing as objectifying the person (Wilkinson, 2003: 53-54)

4.1.3. The Harm Principle

In the philosophical essay ‘On Liberty’ John Stuart Mill presents the Harm Principle as; “That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” (Mill, 1956: 13). To clarify, according to the Harm Principle, neither the state nor any other has the moral right to intervene in individuals actions, as long as the action made is not composing any harm of others. Mill continues describing his principle, where he states that the individual should freely make choices concerning himself, as the individual is his own sovereign over his body and mind. The only exception from the principle are individuals which are not yet considered mature of their faculties, e.g., children or other people who are in a state of mind which have to be protected from their own actions and external injury (Mill, 1956: 13). Another exception in his principle is that, although Mill dismisses the state to intervene in individuals’ action, he states that “if anyone does an act hurtful to others, there is a prima facie for punishing him by law” (Mill, 1956: 14). Meaning that if an individual is causing harm of others, the state should protect its citizens from it as it is in their direct interest. However, in cases where society is not affected
by the action of the individual, if it is not a direct but instead an indirect interest of the state, and if the individual action affects only himself and others who freely and consensual agreed on the action taken, the state does not have the right to intervene. Only as the action is taken, and the possible harm it causes the individual the action making individual is not in the direct interest of the state. Mill describes this as the appropriate religion of human liberty and continues by describing freedom as “that of pursuing our own good in your own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it” (Mill, 1956: 14-15). To clarify, the freedom of the individual shall not intervene on other persons mutual right to freedom as long as it is not causing harm to others. However, if this occurs, the state has the right to interfere and punish the ones causing harm.

In the introduction of an edited version of On Liberty Elizabeth Rapaport identifies two types of harm which is of particular interest according to Mill. The first one is the harm which society has an obligation to protects its citizens from. The second one refers to harm, or potential damage, which the society should tolerate. As harm can, according to Mill, occur when a person’s right is being violated this distinction becomes relevant for the discussion of where the boundaries should be drawn of the individual freedom in a liberal democratic society (Rapaport, 1978: xvii). Although it becomes challenging to define the line of where the individual freedom should start and where the societal authorities should stop, Mill presents a suggestion that “Each will receive its proper share if each has that which more particularly concerns it. To individuality should belong to the part of life in which it is chiefly the individual that it is interested; to society, the part which chiefly interest society” (Mill, 1956: 91). Furthermore, Mill describes that it is the individual self who is in firsthand most interested in its own well-being. Here Mill writes that “the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else” (Mill, 1956: 93), meaning that the individual has a superior knowledge of oneself, which is the most significant of the individual’s action. Here, the self-interest becomes more important than the public interest simply because the self-interest is direct, whereas the public interest becomes indirect.

4.2. Marxism

In the introduction of the edited book Marxism and Feminism it is outlined that applying a Marxian framework can provide perception or an understanding of the complexity involved in the dismantling of class and patriarchy. It also provides a framework towards how the society
as a whole exist in relationships of determination, as a social formation or a mode of production (Mojab, 2015: 4). There is no doubt that Marxism has several alignments which can be applied to various situations. In the Economic and Philosophic Manuscripts, Marx writes in a somewhat more philosophical way when presenting his theory of alienation and alienated labor. Here, Marx does not emanate from the human suffering in general, instead he grounds his alienation theory of in how labor came to divide the society into two classes, where one class have private capital and the other is without property and therefore must sell their labor to survive (Månsson, 1997: 38-41). In these manuscripts, Marx outlines the effects of the new form of labor and production has on human beings involved in a contract (Månsson, 1997: 45). From a Marxian lens, the parties involved in a contract are not autonomous equals. Instead, each party enters the contract based on particular relationships and contexts to the means of production. Also, according to the Marxian framework all human beings are unique since they act not only for the good of the self and their species but also for the good of all species. Therefore, human beings are both individual and social beings at once, this Marx calls species-being. (Oliver, 1989: 104).

4.2.1. Estranged labor

In the distinction of estranged and alienated labor, alienated refers to a natural and healthy human relation to the world, and estranged means an unhealthy or distorted relation to the world. However, for the human to realize that they are in this position, one must first separate oneself from the outside world. Hence, the alienated relationship is what makes human beings see oneself as both a social-being and species-being. However, Marx argues that the relationship of estrangement is produced when the alienated relationship becomes inverted and the separation of the self exists for the sake of covering up the species-being (Oliver, 1989: 104).

Marx brings up the discussion of the differences between estranged and alienated labor in the Economic and Philosophical Manuscripts. Here, Marx argues that it is both natural and necessary that humans take that which they produce to be outside themselves since their capacity to produce and alienate humans can see that they are in a unique relationship to the world. Therefore, alienation can reveal the species-being of humans since humans in this relationship to labor humans stay alive in order to maintain themselves so that they can use their human capacity to be social. Although Marx argues that not all labor is estranged labor, since it is not necessarily so that humans are estranged from what they produce, it can be applied to surrogacy (Oliver, 1989: 105).
Marx outlines four characteristics of estranged labor. In the first one, Marx suggests that the worker is estranged from nature and her product. This sense, the worker’s subsistence is dependent on the product, which in a way makes the worker a slave to her product. Within this first characteristic of estranged labor, the body becomes a set of commodities which the human must produce on demand (Marx, 1975: 327). The second characteristic of estranged labor is that the worker is estranged from herself and the process of production. Here, Marx argues that humans are treated like machines in the exchange of human labor for money within capitalism. Hence, capitalism turns the worker into a fragment of a person. In this category, freedom is discussed since Marx means that workers are only free when their bodily desires are met, and they are engaging in animal pleasures such as eating, drinking, sleeping or procreating. These, Marx argues, covers the human potential as human beings and therefore separates humans from animals (Marx, 1975: 327). The third characteristic of estranged labor according to Marx is that the worker is estranged from her existence as a social being. Thus in relationships which are estranged, the social labor humans have to do to stay alive is one of necessity. However, within estranged labor, this relationship becomes reversed since the labor turns into means which has to be upheld to maintain the animal function. Therefore, Marx argues that estrangement conceals species-being whereas alienation reveals it. Furthermore, Marx writes that “life itself appears only as means of life” (Marx, 1975: 328). By this, Marx means that the human experience of being both social and individual simply becomes means to life since the estranged labor conceals the social character of all human experience (Marx, 1975: 328). Marx further critiques the capitalist framework, in which he argues human exchange is estranged; thus, since capitalism distorts the human, both as a social and an individual being. Because, on the one hand, the estrange exchange turns the social activity of work and exchange into a means for individual existence, and on the other hand, the estranged exchange reduces the individual into an equal since the individual can be exchanged within the labor force. As a results, the estrange exchange changes the social activity of work into means of individual subsistence to stay alive, but also make all individuals to individuals or equals (Oliver, 1989: 108). Lastly, the fourth characteristic of estranged labor is that the worker is estranged from other people. Because, as Oliver describes it “she takes her estranged relation to nature, herself, and her species-being, to be the natural relation for everyone. She sees everyone in this estranged relation” (Oliver, 1989: 109).
5. ANALYSIS

In the following section, a critical, argumentative analysis of why surrogacy is not morally justified is presented. Here, arguments against surrogacy is outlined, followed by possible counter-arguments from Wilkinson and Jönsson which will be problematized and critically questioned.

5.1. Arguments against surrogacy

5.1.1. Surrogacy as an exploitative practice

As mentioned throughout this thesis, one of the most common concerns of surrogacy arrangements is the exploitation of the surrogate. In the theory section, the concept of exploitation was described as using someone or taking unfair advantage of someone for one’s own purposes.

It has further been outlined that in commercial surrogacy arrangements three parties are usually involved; the surrogate, the commissioning parents, and the surrogacy agency. It is through the surrogacy agency that the surrogate is approved, and after the contract is signed, the surrogate has to obey the rules of the contract. The surrogates usually are citizens in the global South, Eastern Europe, or living in a financially vulnerable situation in the west, where choosing to be a surrogate becomes an option the secure the future and survival of herself and her family. The commissioning parents are often described as rich western couples longing for a child. Here it can be displayed that there are evident economic inequalities between the surrogate and the commissioning parents. Although there are cases described where the surrogate is offering her reproductive capabilities and services based on the kinship to help an infertile or childless couple, the majority of surrogates would not consider entering the surrogacy business if there was not a financial benefit of it. Since most of the surrogates are in a vulnerable situation, choosing surrogacy is often the last option to consider. Going through a pregnancy and giving birth is both a physical and mental stressful, which in the worst cases can lead to lifelong complications and mortality. Therefore, it can easily be understood that becoming a surrogate and undergo the possible risks for someone else’s benefit is not done without having considered other options in the first hand. In commercial surrogacy arrangements, it can be argued that both the surrogate and the commissioning parents benefit from the practice, since the surrogate gets compensated and the commissioning parents get a child. However, the surrogate is the only person within the contract who is in the risk of harm. When looking at the concept of exploitation and the redistribution of harms and benefits,
commissioning parents can be seen as the exploiters who are gaining a benefit, in this case, a child and a family, from their exploitative action. Although to benefit oneself does not have to be made on exploitative grounds, the combination of attributes and circumstances of the surrogate per se makes the arrangement exploitative. In the aspects of Advantage-exploitation, a person is exploited because of her weakness or vulnerability, and therefore, the exploiter has an advantage over the exploited. Since the majority of surrogates are in a vulnerable situation, she is easily subordinated by the exploiter as she becomes an easy target to take advantage of. As aforementioned, the concept of exploitation distinctions of value exploitation becomes relevant in discussions of taking advantage of a person’s personal or situational weaknesses.

Kajsa Ekis Ekman points out that the surrogate can be compared to the proletariat, the lowest class in the Roman empire, this because the only property both the surrogate and the proletariat owns is themselves, their bodies and their fertility. Ekman here also sees a similarity in surrogacy arrangements, where the contract is used to make the economic power relations between the commissioning parents and the surrogate (or the higher class and the proletariat) look like a mutual favorably usage of one another (Ekman, 2010: 154). Although the proletariat is used as a metaphor for describing the situation of the surrogate’s place in society, it brings a valid point to the discussion of mutual benefits. However, the question raised here is if the surrogate is using the commissioning parent’s vulnerable situation of not being able to procreate to the same extent as they are using the surrogate’s reproductive capabilities to get a child? Can it be argued that both parties are equally exploiting each other, or can it be seen as a fair exchange of means? According to the concept of benefit-exploitation it cannot, as attributes of the surrogate, her uterus, and body, is used and exploited to achieve the end, a child. Thus, benefit-exploitation is entitled of the use condition, as the exploiters use the exploited as a means of achieving their own goal. The only option available on the market for commissioning parents to get a child carrying their genes today is through a surrogacy arrangement. Looking at the goal of the surrogate, the main goal is to get compensated for her labor. As stated before, surrogacy is in the majority of cases seen as the last option taken for women already in a vulnerable situation, if other safer and less physically and mentally harmful forms of labor were offered as an option, the surrogate would most likely reconsider her choice to achieve her goal. Also, as shown when describing the concept of exploitation, a person can only be exploited if they have one or several useful attributes which are benefit exploitative, for example being both vulnerable and useful. Put into the context of the attributes of the surrogate, she is assumably in a vulnerable economic situation and useful for the exploiters, because of her reproductive capabilities and fertility. Looking at the same issue, but from
commissioning parents’ point of view, they are in the opposite of the surrogate, most likely, not in a vulnerable financial situation. They can, however, be in a vulnerable situation, because of their childlessness and infertility. Hence, useful for the surrogate since they have the financial means which are useful to achieve the surrogate’s goal.

Looking back at Ekman’s metaphor of comparing surrogate to the proletariats during the Roman empire, it can be concluded that although one can argue that the surrogate and the commissioning parents are in a mutually favorable agreement both using and exploiting each other. One must not forget that the surrogate only has her body and fertility along with the one taking all the risks a pregnancy implies and therefore becomes the weaker and more desperate party to agree on a bad deal with exploitative grounds.

5.1.2. The Commodification of the female body argument

In section 4.1.2, the concept of commodification is presented as the social practice of treating things as properties or commodities which can be bought, rented, or sold. One argument raised in the debate of commercial surrogacy arrangements is that the practice of surrogacy encourage the moral acceptance of making commodities of human beings as the surrogate is treated as a property where her uterus and reproductive capabilities become a commodity to rent. Therefore, justifying commercial surrogacy could result in extending the social practice of commodification and encourage humans to treat others as commodities.

One of the most common parables to surrogacy is prostitution, as they both are connected to the trade of the female body. Compared to prostitution, surrogacy is often portrayed as a softer form of commerce as the occurrence of violence, homelessness, murder and sexual abuse is of less risk (Ekman, 2010: 178). Although surrogacy can be seen as an extended version of prostitution as the woman in both scenarios are compensated for selling her body, surrogacy becomes less stigmatized than prostitution (Ekman, 2010: 144). Hence, by selling her reproductive capabilities instead of sex, where her womb and not her vagina is the focus of the purchase, the surrogate is portrayed as the Madonna and therefore becomes a more social and moral appropriable action (Dworkin, 1983: 182). A similarity found in both the case of prostitution and surrogacy is that the female body is treated as means used to achieve the goal of the purchaser. Just as sex in cases of prostitution become a commodity, reproduction becomes a commodity in cases of commercial surrogacy.

Andrea Dworkin argues that the issue of both surrogacy and prostitution is not the practice per se, but how the innovation of ART will be used in a system where women are already exploited and used as sexual and reproductive commodities (Dworkin, 1983: 187). If
again looking back at section 4.1.2, it is stated that commodification can be seen as a type of objectification where to commodify is to treat something or someone as a commodity which is not an actual commodity. In the case of surrogacy, it can be outlined that the female body is treated as a commodity, as an object. As the body is intimately related to the person, objectifying body parts such as the uterus becomes directly related to the objectification of the person the body part belongs to, as both the body and body parts are physical objects. It can, therefore, be concluded that although the surrogate is not an object, her person, her body and her reproduction become objectified and treated as mere objects; as a fungible or a commodity available on the market. It can also be concluded that the objectification of the surrogate and her body fails to respect the moral principles of human dignity, both as her body is treated as means only and also for the simple reason that since, according to Kant, all people have dignity and therefore all people should be treated with such. Thus, by looking at the surrogate as a means only, as a fungible or as an object, fails to respect her dignity and instead focuses on the price where she as a person and her body is treated as a commodity.

5.1.3. The estranged labor argument

Proponents of surrogacy arrangements usually argue that each party in a surrogacy contract enter as autonomous equals with the same right to exercise their freedom. Oliver, however, argues that the right to exercise one’s freedom covers up the construction of the social context where social transactions become a result of economic and social structures that are upholding structures of sexism and classism (Oliver, 1989:104).

When looking at surrogacy arrangements from a Marxian perspective, it has been described in section 4.2.1 that both class and gender issues can be diagnosed, as the parties involved in the arrangements are not seen as autonomous equals since the parties who enter the contract based on individual contexts and relationships to the means of production. In Marx’s description of estranged and alienated labor, surrogacy arrangements can be seen as estranged labor relationships. One reason for surrogacy to be counted as estranged labor is that compared to other forms of labor the surrogate sells their labor every hour of the day for at least nine months. Surrogacy as a profession, therefore, becomes a form of labor which affects every aspect of the surrogate’s life.

Kelly Oliver argues that because of the relationship between the body and labor in the context of surrogacy, the surrogate becomes doubly estranged (Oliver, 1989: 105). This Oliver display by applying surrogacy to Marx four characteristics of estranged labor. In the first characteristic the surrogate becomes estranged from her product; the child or her inorganic
body of nature. However, since the child is not an inorganic body, the surrogate becomes doubly estranged as she is both estranged from her own organic body and the body of the child. Therefore, the contract makes the product, the child, to a commercial product which exists for the sake of exchange (Oliver, 1989: 105-106). As for the second characteristic of estranged labor, when the worker is estranged from herself and the process of production, surrogacy arrangements can be put into context since the surrogate is treated as a machine whose services are exchanged for money. This argument is quite clear and easy to apply, as the surrogates rent out her uterus to create and deliver a product. Hence, her body becomes the machinery of production which is being controlled by the contractor; the commissioning parents and the agency (Oliver, 1989: 106). In the third characteristic, the worker is estranged from her existence as a social being. Which can be connected to surrogacy since the social constitution of the animal functions (eat, sleep and procreate) is covered up. Thus, in the contract, the surrogate has to maintain her life and adjust to her condition so she can produce and deliver the child in exchange for the financial means she needs to secure her own life. Therefore, within surrogacy arrangements, it can be argued that “life itself appears only as a means to life” (Marx, 1975: 328), since what the surrogate produce is the life of a child, an organic body. As a result, the creation of life and the subsistence of life becomes a means of making a living or live (Oliver, 1989: 107). In the last of Marx four characteristics of estranged labor, he states that the worker is estranged from other people, which can be applied to surrogacy as the surrogate is simply the producer of a child. (Oliver, 1989: 109).

As argued above, surrogacy arrangements can be counted as an estranged and unhealthy form of labor, and in some cases, the surrogate becomes doubly estranged since she is both estranged from her potential as a human being, but also estranged since every aspect of her life, including her animal pleasures, are controlled by the contract she is engaged in. Looking back at the liberal argument where the parties in surrogacy arrangements act as autonomous equals, it can here be outlined that they are not. By empathizing the argument of free choice of the individual, it covers up the fact that choosing to become a surrogate is in many cases, not a free choice to make; it is a choice to subsist.

5.2. Critical argumentation of arguments in favor of surrogacy

5.2.1. The individual freedom argument

In the previous research section of this thesis, Kutte Jönsson’s study of surrogate motherhood was briefly presented. As Jönsson represents one of the proponents of surrogacy arrangements,
his arguments of justifying surrogacy, which is based on liberal ideas of individual freedom, will here be demonstrated.

Jönsson (2009: 97) argues that surrogacy should be justified if the following three conditions are upheld:

1. The surrogacy arrangement is based on free choice.
2. The agreement has been made through mutual consent between decision, competent, and well-informed adult individuals.
3. The arrangement does not harm the child.

John Stuart Mill’s harm principle is used to defend surrogacy arrangements in Jönsson’s research. This as, in surrogacy arrangements, it is the individual and not the society who carries the main interest of the practice. Which can justify surrogacy arrangements as according to the harm principle neither the state nor any other have the moral right to intervene in individual actions as long as the action is not composing any harm of others. Jönsson, therefore, argues that the freedom of the individual makes surrogacy arrangements possible to justify, as it gives all individuals involved in the arrangement the same opportunity to satisfy their self-interest, as long as it does not harm others.

As argued in section 5.1, it is the surrogate who is taking all the risks, which can be understood as she is the one harmed by the arrangement she freely chose to enter on mutual and well-informed grounds. What can be questioned when applying Mill’s harm principle to Jönsson’s three conditions of justifying surrogacy is if the adults involved in the arrangement has the capability, and the right information, to make the right decisions for their own vested interest. Although there might be cases where the surrogate is well-informed and aware of the risks a pregnancy implies, this is often not the case.

The state of India is often used as an example to demonstrate the awareness of the details and meaning of the contract the surrogate enters. Amrita Pande has done one of the most in-depth interview studies of the Indian surrogacy industry, in which she stayed at a surrogate clinic for nine months. She states that most of the surrogates at the clinic do not speak or understand any English, and as the contract is written in this language, almost none of the surrogates understand most of the terms in the agreement. Although some essential points of the contract is translated, such as; that they have to hand over the child once it is born and that the doctor is not responsible for any complications in the process and that they will receive the last payment after the delivery of the child, a lot of information is left out. Pande further provides examples from interviews of surrogates where it is displayed that although the surrogate is informed of some details of the contract, she is not aware of all the risks or the
medicines and injections she has to endure, which shows that there is a lack of information (Pande, 2009: 147-148). This challenges Jönsson’s conditions as they are, in many cases, not upheld. What can be questioned here is if they were upheld, could surrogacy be morally justified? One could argue that they could, based on the grounds of the harm principle and arguments of individual freedom. However, there are factors which shows that to maintain the conditions are impossible. In section 2.2 it was outlined that the surrogate is being taken advantage of by the other parties in the contract because of the structural injustices between them as the surrogate is already in a vulnerable situation, but also more vulnerable to patriarchal norms where her value is connected to her reproductive capabilities. It was further stated in section 2.1 that the practice of surrogacy will most likely continue as long as economic inequalities exist. If this is the case, the social structures of economic inequalities will result in that some women have to sell their reproductive capabilities to survive and not because of individual will which results in that Jönsson’s conditions will never be fully upheld.

In section 4.1.3, it is outlined that according to the harm principle it is the individual who is the most interested of her own well-being, as she has a superior knowledge of the importance of her actions, and therefore makes decisions and act in her own self-interest. When put into context of surrogacy it can be argued that the surrogate act in her own individual best interest and have freely entered a contract, where although risks can occur and where she is under control of both the commissioning parents and the surrogacy agency, she makes the decision as security of her own well-being.

Pande is in her study looking at the narratives of the surrogate involved in commercial surrogacy arrangements. Pande here outlines several examples of where the surrogate is persuaded by others to become a surrogate. In some cases, the woman chooses surrogacy because the husband needs the money and is not informed of the money involved in the contract. In other cases, the woman chooses surrogacy so she can afford the heart surgery which her own child needs. Commonly in almost all stories of the surrogates in Pande’s study is that the women are downplaying the choice aspect in their decision (Pande, 2009: 156-161). The surrogates are instead of making a choice based on their own self-interest making a choice based on their roles as selfless mothers and wives whose primary role is to serve the family and their husbands (Pande, 2009: 162). It can, therefore, be questioned if the surrogate is really acting in her own self-interest or if she is choosing to become a surrogate because of the vulnerable situation she and her family is in. It can, of course, be argued that choosing surrogacy because of her family could be recognized as acting in her own self-interest as these persons are of her interest. However, if the surrogate had another option to choose from, or if
the subsistence of her family was not at risk, she would most likely not enter a surrogacy contract.

Another discussion which can be brought up is the one of where the limit of harm is and should be drawn. As displayed in section 4.1.3, Mill suggests that the limit is reached when a person’s rights are being violated. Jönsson puts Mill’s distinction of harm limit in context to surrogacy and argues that the surrogate is violating the right of the commissioning parents if she fails to deliver the service, or if she acts in ways which will harm of the child she is carrying. As she is in a contract which she has agreed upon, the commissioning parents expect her to obey the rules of the contract. Therefore, if the surrogacy is violating the contract she is in, she will also harm and violate the rights of the commissioning parents, which from a Millsian perspective goes against the harm principle (Jönsson, 2003: 102).

Jönsson’s argument can, however, be questioned firstly, as it is unclear if the surrogate was fully informed of all the details in the contract. As stated previously, Pande’s study shows that this is not always the case. Secondly, as it has been shown that the surrogate is in many cases, not entering the contract freely based on her own self-interest. Lastly, one has to question if the commissioning parents and the agency are violating the right of the surrogate. As presented in section 4.1.3, the distinction of what limit of harm that should be tolerated becomes relevant when discussing individual freedom in a liberal democratic society. Although, a surrogacy arrangement might not be harmful to the society directly, should the society tolerate that their citizens are not being treated with human dignity? As presented in section 1.5, international organs problematize surrogacy arrangements in both reports and conventions that condemns surrogacy as it objectifies the surrogate and her reproductive capabilities, expose both the physically and mentally health of the surrogate and as in a commercial contract the surrogate is not genuinely free as economic necessities constrain her.

Looking back at Jönsson’s conditions, it can be outlined that the main problematization of the conditions is that they will never be truly upheld. Both because of the social structures of economic inequality but also as far from all surrogates are well-informed of the details of the contract, and as entering a surrogacy contract is rather based on the selfless and vulnerable roles as mothers and wives instead of free choice. Furthermore, it can also be stated that the rights of the surrogate are often violated, as she is not fully aware of all the risks becoming a surrogate implies.
5.2.2. Surrogacy as a non-exploitative practice

Both Jönsson and Wilkinson are in their studies arguing that surrogacy is not an exploitative practice. Jönsson states that it would be naive to deny that exploitative behavior could occur in surrogacy arrangements. However, he argues that if exploitation occurs, it is because of circumstances around individual cases and not because of the practice per se (Jönsson, 2009: 125).

Jönsson’s argument raises several questions which can be problematized. Firstly, by arguing that surrogacy is not an exploitative practice per se, but that exploitation can occur in individual cases, one can argue is both naive and problematic. As stated on several occasions in this thesis, the surrogate is in the majority of cases in a more vulnerable situation, both financially and mentally, than the other parties involved in the contract. As presented in the previous section of the analysis, Pande’s studies show that the woman chooses to become a surrogate to secure the subsistence of her family, where she is acting as the selfless mother and wife.

It can also be argued that the surrogate is exploited because her emotional needs and vulnerabilities are treated as factors which can be manipulated to favor the needs of the agency and the commissioning parents (Andersson, 1990: 87). In the theory chapter, which explains the concept of exploitation and in section 5.1, it was outlined that to exploit something or someone can be described as taking advantage of something or someone. The concept of advantage exploitation can here be used to recognize surrogacy as a practice of exploitative kind, as both the commissioning parents and the surrogacy agency has an advantage over the subordinated surrogate which results in exploitation of the surrogate because of the vulnerable situation she is in. Advantage exploitation can also be applied to the case of surrogacy as is base itself that the person being exploited has agreed on a bad deal, which the person most likely would not have agreed on if she was not in a vulnerable situation. Another concern which can be raised here is that it is only women who can become surrogates. The woman and her reproductive capabilities are essential for the bearing of a child. In the case of surrogacy, the woman is portrayed as a technical function, as the machinery, that is needed to produce a child and not as a human being. Which can be perceived as the woman, and her reproductive capabilities are being exploited simply because she is a woman and therefore structurally subordinated to men, which raises issues of both class and gender in relation to exploitation. Although there are women who argue that they are choosing to become surrogates because of kinship to help a couple create a family, it has been outlined throughout this thesis most
surrogates enter the contract as the last option considered. It can, therefore, be argued that the practice is exploitative per se, as it is only women who can become surrogates but also as the economic injustice exploit the emotional needs and vulnerabilities of women to favor the needs of the other parties involved in the contract.

To demonstrate the possible exploitative behavior in surrogacy arrangements, Jönsson presents three conditions where he argues that the surrogate is exploited only if the following conditions take place;

(1) An intentional exchange of products and labor takes place, and;
(2) the one buying the product or labor is aware that the compensation is less of what it should be in relation to the value of the product or labor, or;
(3) if the consent of the surrogate is not on voluntary grounds (Jönsson, 2009: 136).

What can be primarily problematized in Jönsson’s three conditions are the second (2) and third condition. The second condition raises questions of how a child and the labor of the surrogate ought to be valued and priced for it not to be considered as exploitative. Here one can argue that surrogacy always is exploitative per se, as the surrogate’s vulnerability is manipulated and controlled by the commissioning parents and the agency. Therefore, the price does not matter as it will always be seen as exploitative in relation to what the surrogate has to endure. It further raises question of the undervaluation of emotional and biological labor, as the emotional labor of the surrogate remain unpaid. As presented in section 2.2, it was outlined that there are unquantifiable patterns in surrogacy arrangements as the emotional labor exists as a form of unpaid work.

Jönsson’s third condition can be problematized as although the surrogate agrees on the contract, which can be perceived as consensual, she is in many cases not fully informed of the details and risks the contract contains or she feels enforced to choose surrogacy as a last option. As seen in section 4.1.1, it has been outlined that exploitation is often seen as an injustice of redistribution of harms and benefits, as the exploiters are benefitting from the exploitative behavior. It can here be concluded that the main problematization with Jönsson’s conditions is that one cannot be certain that they will not occur. If looking at previous research of surrogacy, at least one of the conditions will fit in the majority of cases, which although Jönsson argues that all three of the conditions should occur if surrogacy should be counted as exploitative, could be seen as enough motives to identify the immoral grounds of the practice.

Another argument brought up in connection to exploitation is how it could be solved, Wilkinson argues that concerns of exploitation can be solved by improving the pay and conditions of the surrogate (Wilkinson, 2016: 126). Wilkinson further argues that exploitation
is some cases should be allowed as the exploited are better off with it than without it (Wilkinson, 2003: 71). Similar ideas can be seen in Jönsson’s argumentation as he states that although most surrogates are in a vulnerable situation, it does not have to mean that their interests are not met. Thus, in commercial surrogacy, the surrogate has freely entered an agreement where she is paid for her services, which can help the surrogate improve her life situation (Jönsson, 2003: 137-139).

What can be problematic with Wilkinson’s argument is as discussed above, deciding the fair price of a child and the labor of surrogacy is impossible. From a global market perspective, the supply and demand of the service set the price, which results in that the service and product can be bought for a much less price in the global south. If the surrogates were to set the price themselves, it could result in that the vulnerable situation they are in affects the price setting result in a low price because they are in desperate need of money. If the payment is raised, it can be questioned if the offer becomes too good to resist, and if the surrogate enters a contract because she feels that she cannot refuse the offer. What can be questioned here is the role of the surrogacy agencies concern of the fair price setting and concerns of the surrogate mother.

When looking through the webpage of Tammuz Family, which is one of the most established surrogacy agencies operating in Sweden, they clearly state that they are striving to keep the cost of surrogacy to be as low as possible and that their price is one of the lowest at the market. When looking at the price, it differs where a child from the USA can be bought for 70.000 US dollars, and a child from Ukraine costs 49.950 US dollars. How much of that money is given to the surrogate mother is nowhere to be found, neither is any concerns of ethical issues of exploitation or commodification raised (Tammuz Family, Website). Although one cannot find out how much of the payment to the agency is given to the surrogate from Tammuz Family, it has been stated that a US surrogate usually receives between 20-30.000 US dollars, which is, compared to what surrogates not living in a western state, a significantly higher price. If once again taking India as an example, the price of surrogacy used to be between 12.000 and 25.000 US dollars, where the surrogate generally receives between 2.000 and 10.000 US dollars for the same labor and explosion of risk and harm as the surrogate from the US (Bailey, 2011: 718). There is no doubt that the compensation for the labor provided will most likely improve the life situation of the surrogate, as she entered the surrogacy market to escape her vulnerable position, and to sustain her family. However, although the compensation will improve her life situation it does not mean that surrogacy is not exploitative or morally wrong. The surrogate is still in the majority of cases entering the surrogacy contract because she has no other option,
she is still risking her health and life for other parties which are not in the same vulnerable situation as she is in. Because of the economic and social structures, the commercial transaction in surrogacy arrangements raises issues of both class and gender, where the parties are not entering the contract as autonomous equals and do not have the same right to exercise their freedom. Instead, the parties enter the contract on individual contexts where the surrogate is the one who is exposed to estrangement and exploitation.
6. CONCLUDING OBSERVATIONS

This thesis has aimed to demonstrate why surrogacy is not a morally justified practice. To achieve this, the concept of exploitation, and commodification together with Mill’s Harm principle and The Marxian framework of estranged labor has been applied to identify the ethical concerns of the practice, along with to strengthen the arguments. In the analysis it has been outlined that the main factors causing the exploitation in surrogacy arrangements are the economic inequalities together with the risk of harm of the surrogate where the combination of attributes and circumstances makes the arrangement exploitative per se. It has also been found that the surrogate is more likely to be exploited as the only thing she owns is her body and fertility, along with, that she is the one taking all the risks in the arrangement. Furthermore, it was stated that justifying commercial surrogacy will encourage humans to treat others as objects or fungibles, which fails to respect the moral principles of human dignity. Since the surrogate is treated as a commodity because the body and the uterus are intimately associated to her as a person, hence, to objectify body parts becomes directly related to objectifying the person the body belongs to as both are physical objects. The Marxian framework of estranged labor showed that surrogacy arrangements become estranged labor as being a surrogate affects every aspect of the surrogate’s life. The surrogate is therefore estranged from her potential as a human being and treated as a piece of machinery which is controlled by the contractors, which shows that the parties involved in surrogacy arrangements are not autonomous equals.

The counter-arguments from Jönsson and Wilkinson, who both state that surrogacy is not an exploitative practice per se and should be morally justified has been critically examined. It has here been displayed that the main problematization in Jönsson’s conditions of justifying surrogacy is that they will never be truly upheld. As the parties in the contract will never be on equal grounds together with, that there is no assurance that the surrogate is well-informed, and as she, in many cases, did not choose to become a surrogate based on her own self-interest but rather because of her acting as a selfless wife and mother. It was further concluded that even if Jönssons conditions were to be upheld, surrogacy is still an exploitative practice per se as the surrogate is subordinated to the other parties in the contract. Both because of her gender and because of the evident economic inequalities which become factors that are manipulated to favor the agency and the commissioning parents. Also, although the surrogate has entered the contract, and it improves her life situations, it does not imply that the practice is not exposing the surrogate of exploitation. From a human rights perspective, issues of both human dignity, freedom of consent and women’s rights can be raised. Thus, the surrogate, and her reproductive
capabilities is constrained by economic necessities and treated as means to achieve the end, together with concerns of the risk to the health of the surrogate.

The analysis of this thesis shows that the surrogate, her body, and her life is estranged by the contract she is in. Issues of class, gender, and social structures, together with the uneven relations and power structures because of the global economic inequalities leaves little room for solidarity within the surrogacy industry. As a result, the surrogate is exposed to exploitation where both she as a person and her reproduction is objectified and treated as a commodity. Based on these factors, it can be concluded that the implication of this thesis aim is legitimate, and that commercial surrogacy is an exploitative practice which is not morally justifiable.
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