

The Question of Agency

A Postcolonial Approach to the Political Discourse on
Surrogacy in Sweden

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Master's Thesis
Spring Semester 2021

Abstract

The aim of this thesis is to explore how the agency of women who take part in surrogacy arrangements is addressed in the political discourse on surrogacy in Sweden. Surrogacy is and remains a both controversial and ethically complex issue that is intensely discussed on the public agenda in Sweden. Surrogacy arrangements are not permitted within the Swedish health system but is otherwise unregulated which means that no legislation regulates the fact that Swedish citizens take part in commercial surrogacy arrangements abroad. The thesis attempts to present a discourse analysis that examines how the Swedish Government official report “Different Paths to Parenthood SOU 2016:11” and three referral statements submitted in response to the inquiry address the issue of agency and self-determination in the context of surrogacy. The thesis further seeks to position the political discourse on surrogacy more explicitly within a postcolonial feminist framework. After conducting the analysis, I determine that agency is constructed according to the two dominant discourses of humanism and exploitation. Whereon actors in favour of surrogacy construct it as a matter of autonomy, bodily self-determination and empowerment, while actors against surrogacy construct it in terms of constrained agency and as an exploitation of socioeconomically disadvantaged women. I conclude that to construct the choice to become a surrogate as empowering merely based on self-determination, autonomy and free choice without taking into consideration that this happens within broader exploitative contexts, overlooks the structural inequalities in which women exercises their agency.

Key words: surrogacy, agency, self-determination, postcolonialism, discourse

Words: 17586

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1 Introduction

Surrogacy is considered a form of assisted reproductive technology and is an arrangement where the parties involved, the intended parents and the surrogate mother, agree that the woman granting her body to become pregnant will carry and birth a child with the explicit intention to give the child away when it is born. Surrogacy can be either commercial or altruistic whereon commercial arrangements means that the surrogate mother receives financial compensation for carrying the child and being a surrogate mother, whereas in altruistic arrangements no compensation is paid in addition to the costs that can be attributed to the pregnancy, such as medical costs and lost wages. Surrogacy arrangements are currently not regulated within the Swedish healthcare system, but it is not illegal to turn to other countries where medically assisted surrogacy is available and usually these legal restrictions in the country of the commissioning parents can be overcome by turning to other countries in order to enter a surrogacy arrangement. Since transnational surrogacy often involves people from Western countries turning to women in low-income settings, many ethical issues have been raised about the risk of exploitation and commodification in surrogate motherhood (Gupta 2012; Pande 2009, 2014; Twine 2011).

The controversial and complex issue of surrogacy is firmly on the public agenda in Sweden and as there are currently no legal regulations around surrogacy the debate centers around whether a clear regulation is needed. The public debate has to a large extent been concerned with the question of whether altruistic surrogacy based on genuine voluntariness, without social and financial pressure, is possible or not. A consensus exists that commercial surrogacy should be prohibited in the Swedish health system, although no legislation regulates the fact that Swedish citizens take part in commercial surrogacy arrangements abroad. The Swedish National Council on Medical Ethics has for many years considered surrogacy arrangements to be unethical (SMER 1995) but in 2013 they released the report *Assisted Reproduction - Ethical Aspects* where the council opened up to the

possibility that “altruistic surrogacy - under special conditions - can constitute an ethically acceptable method of assisted reproduction” (SMER 2013: 171). This report laid the foundation for upcoming government investigations on the issue (Dir 2013:70).

The discussions and debates about assisted reproduction technologies are many and surrogacy, being one form of assisted reproduction, is growing phenomenally and appears to be replacing transnational adoption as the method of overcoming involuntary childlessness (Gupta 2012; Rotabi and Bromfield 2012; SVT 2018). Many relevant questions about reproduction and reproductive rights are raised in this debate where the question and understanding of self-determination and autonomy is a fundamental yet controversial issue. Providers of reproductive services use the feminist language of agency, empowerment and self-determination to justify women’s decision to undertake surrogacy which is something that scholars such as Gupta (2012) oppose arguing that in the context of surrogacy it is a misuse of these terms. Authors that have been writing about women’s autonomy in relation to assisted reproductive technologies and about the “myth of choice” infer that “women’s agency in this respect cannot be isolated from other areas of life that condition women’s agency” (Gupta 2012: 46). According to this way of thinking it is important to recognize the constraints on choice that shape our actions, since although a choice may be a considered decision, the decision might be made in a context of limited possibilities (Corea et al. 1987: 7-8; Gupta 2012: 46). A central question in the surrogacy debate is the conflicting views on these ethical issues about freedom, autonomy, the right to self-determination and free choice.

1.1 Aim and Research Questions

The aim of this thesis is to explore how the agency of women who take part in surrogacy arrangements is addressed in the political discourse on surrogacy in Sweden. In addition to the exploration of how the discourse considers the issues of agency, self-determination and bodily autonomy this thesis seeks to position the political discourse on surrogacy in Sweden more explicitly within a postcolonial framework, since the ethical and political debates on surrogacy are intertwined with issues concerning global power relations and the potential risk of exploitation in surrogate motherhood. The overarching purpose of this thesis is therefore to examine the ethical aspects of surrogacy arrangements. Thus, the following research questions are guiding the thesis:

- How is agency and the individual's right to self-determination expressed in the Swedish political discourse on surrogacy?
- How can such discourses be understood from a postcolonial feminist perspective?

1.2 Definitions of Surrogacy

Gestational surrogacy is a surrogacy arrangement where the embryo is created through In Vitro Fertilization (IVF) and the egg can come from either the intended mother or from an egg donor. In these cases, the surrogate mother can be said to have a biological but not a genetic connection to the child. In traditional surrogacy the surrogate uses her own egg which is fertilized through an insemination procedure, using sperm from the intended father or a donor, therefore IVF is not required. This means that the surrogate mother has both a genetic and biological connection to the child since she is contributing with her egg as well as carrying the pregnancy and giving birth (Twine 2011: 14). Altruistic surrogacy refers to an arrangement in which no commercial transaction or third-party payment is involved, instead the surrogate woman agrees to *help* another individual or couple to become parents and no financial compensation except for pregnancy related expenses is paid (Ibid: 13). Commercial surrogacy is on the other hand based on

economic profit purposes and a financial compensation is paid to the women that carry a child to term for an individual or a couple who will then keep the child as their own (Rotabi and Bromfield 2012: 132).

1.3 Background

The issue of surrogacy has received considerable attention ever since the latter half of the 1980s when the first American public custody dispute over a child born through surrogacy took place, a case known as the *Baby M* case. In 1986 the surrogate mother Mary Beth Whitehead refused to give up the child she was carrying as a surrogate for William and Elizabeth Stern. Ms. Whitehead was inseminated with the sperm of the commissioning father Mr. Stern and signed a surrogacy contract prior to being impregnated, that she would relinquish her rights as the mother in order for the child to be adopted by Mr. Stern and his wife Ms. Stern. But after the child was born Ms. Whitehead changed her mind and refused to sign the adoption papers and subsequently a custody battle ensued. Since Ms. Whitehead had a genetic tie to the child there was ambiguity about whether she could be forced to give up her rights as the legal mother, especially since Ms. Stern had no genetic tie to the child. However, in 1987 the New Jersey Court ruled that surrogacy contracts are unenforceable, and the judge awarded custody of Baby M to the biological father Mr. Stern and his wife Ms. Stern (Twine 2011: 7-8). The case caused a huge number of reactions among feminists who were torn between “support [of] a women’s right to use her body as she chooses and concerns about the exploitation of women” (Peng 2013: 569). Not only legal but also several relevant bioethical questions connected to surrogacy were raised.

At present time it is not possible to obtain accurate global statistics on the extent of the surrogacy industry and the information is scarce both within specific countries and transnationally. Nevertheless, surrogacy in the USA is a multimillion-dollar industry (Holcomb and Byrn 2010: 647). In the US, only gestational surrogacy tends to be reported, whereas no statistics are available on the use of traditional surrogacy. Moreover, the current data does not include any demographic information about the surrogate mothers, although such information

is highly relevant to questions of racial and financial exploitation (Gugucheva 2010: 7). Many countries have legal restrictions addressing the use of surrogacy, but likewise it is to a great extent unregulated, as in Sweden. India legalized commercial surrogacy in 2002 and it became a booming business and developed into a billion-dollar market industry, where India for a long time provided the largest number of gestational surrogates in the world (Pande 2016: 244-246; Saravanan 2018: 29). However, the advocates against commercial surrogacy have grown and among other countries India declared a ban on transnational commercial surrogacy in 2015 and after extensive consideration the 2016 Surrogacy (Regulation) bill was passed in 2018 (Najar 2015), stating that “it ha[s] become necessary to enact a legislation to regulate surrogacy services in the country, to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through surrogacy” (The Surrogacy (Regulation) Bill 2016: 19). The bill aimed to regulate the industry by only allowing altruistic surrogacy for infertile Indian couples based on concerns of exploitation of the surrogate mother. India’s ban on commercial surrogacy has meant that the industry has moved out of India and that European commissioning parents now turn to countries such as Ukraine, Georgia and Russia (Salama et al. 2018; Symons 2018; Cheung 2018). It is relevant to mention the industry of transnational commercial surrogacy since Swedish commissioning parents are using surrogacy services in these countries (Reddy et al. 2018), once again indicating that despite the absence of a surrogacy regulation in Sweden it is possible for the intended parents - if they have the financial means - to enter into surrogacy arrangements in countries where medically assisted surrogacy is provided.

1.4 The Swedish Context

Until 1985 there was no legislation on assisted conception in Sweden, but in 1981 a commission of inquiry was appointed by the Government to examine the need for legislation in this area. The *Insemination Investigation* presented its proposals in the report *Children Conceived by Artificial Insemination* (SOU 1983:42) which resulted in the new Legislation Act (SFS 1984:1140) which entered into force in

1985. By then the *Insemination Investigation* had produced its second report *Children conceived through In Vitro Fertilization* (SOU 1985:5) which among other proposals presented to the Government recommended that surrogacy and egg donation should not be permitted. The proposal was accepted in the Government Bill on IVF where surrogacy arrangements were rejected, based on the view that surrogacy is a highly problematic phenomenon that presupposes that children become objects of financial bargaining which is not ethically justifiable (Prop. 1987/88:160). Another view emphasized in the Government Bill in regard to egg donation was that “[it] can never be an unconditional human right to have children. Nature's imperfection must sometimes be accepted” (Prop. 1987/88:160 p. 27). Indicating that although involuntary childlessness is a problem for many which leads to great suffering there is no ‘right to a child’. This was in line with the standpoint held by the Swedish National Council on Medical Ethics in their report on ART released in 1995 (SMER 1995) and was also a view reinforced in the Government Bill on *Treatment of Involuntary Childlessness* released in 2001 (Prop. 2001/2:89). In that same Government Bill, the Government continued to suggest that surrogacy should not be legalized, on the grounds that it is not ethically defensible and should therefore not be permitted stating that:

It cannot be regarded as consistent with the principle of human dignity to use another woman as a means of solving the childless couple's problem. Nor is surrogacy desirable from the child's perspective. (Prop. 2001/2:89: 55)

The arguments against surrogacy which were brought up in these initial preparatory legislative documents have constituted the ground on which policy makers rely on when justifying surrogacy as ethically indefensible. Although this precautionary approach towards surrogacy, it is not clearly regulated in Swedish law. In addition to this, the regulation on IVF has an effect of aggravating the possibilities for surrogacy since the donation of eggs is regulated in the *Genetic Integrity Act* (SFS 2006:351). In other words, regarding to how the legislation on assisted reproduction has been formulated, surrogacy is not permitted. However, in June 2013, a government-appointed committee was set out to investigate different ways to increase the possibilities for treatment of involuntary childlessness (Dir. 2013:70) and inter alia consider whether to permit surrogacy in Sweden on the basis that it shall, in that case, be altruistic. In the committee

directive it was pointed out that earlier preparatory works concerned with surrogacy underlined that severe conflicts could arise if a woman who at an initial stage agreed to *lend* her body to carry a child for another person or persons may later change her mind and the child may be forced to experience and become part of such conflicts (SOU 1985:5; Prop. 1987/88:160 and Prop. 2001/02:89). However, the committee directive indicated that attitudes towards parenthood and reproduction have changed over time as a result of changes in social values and norms as well as new knowledge. The same applies for attitudes about the family and today many children grow up in family constellations that differ from the traditional nuclear family. Surrogacy arrangements have become an increasingly popular family-building option for individuals and couples around the world and have caused involuntarily childless in Sweden to travel abroad with the purpose to become parents through surrogacy (Dir. 2013:70). This development is also well reflected in the Swedish debate about what methods should be allowed for treating involuntary childlessness. Due to the above statements the Swedish Parliament announced in 2012, that it is of importance that the issues of surrogacy should be investigated unconditionally “from a broad perspective that includes legal and ethical issues as well as economic considerations and consideration of international conditions” (Bet. 2011/12:SoU26). The Swedish National Council on Medical Ethics presented 2013 in their report *Assisted Reproduction - Ethical Aspects*, that the majority of the council considers that surrogacy under certain conditions can constitute an ethically acceptable method of assisted reproduction (SMER 2013: 171). In the committee directive where the Swedish Government in 2013 appointed a commission of inquiry with the task to consider different ways to expand the possibilities for involuntarily childless people to become parents (Dir. 2013:70), the interim report concerning assisted reproduction for single women was presented in 2014 (SOU 2014:29) whereas the remaining parts of the task were presented in 2016 in the report *Different Paths to Parenthood* (SOU 2016:11). The Government Official Report (SOU 2016:11) will constitute part of my material and will thus be further examined in the analysis section of this thesis.

2 Previous Research

Academic research on the phenomenon of surrogacy covers many different areas and various disciplines, although a large part of these studies falls within the field of social sciences. Still, research on the experience of the surrogate mother has been limited (Rahmani et al. 2011) but as surrogacy has assumed new dimensions in the context of globalization, ethnographic research concerned with commercial surrogacy as a transnational phenomenon has grown (Pande 2014, Ragoné 1994, Twine 2011). Among these studies there is research on surrogacy based on a postcolonial feminist perspective which is of relevance to this thesis and some of which I will give an account of in this chapter.

2.1 Literature Review

One of the researchers that can be found in this field is Amrita Pande, being one of the first to publish a detailed ethnographic study, interviewing Indian surrogate mothers about their experiences (Pande 2009a, 2009b, 2010, 2014). A greater focus on the role of gender, race, class and globalization dynamics in relation to surrogacy have emerged, where Pande frames surrogacy as a form of reproductive labor and strongly emphasizes the commodification of the female body in surrogacy as an exploitation of women. This contrasts with the neoliberal discourse on surrogacy with a pro-choice rhetoric justifying surrogacy arrangements as empowering, which is a notion questioned in transnational feminist scholarship (Kroløkke and Pant 2012). Pande wants to shift focus from the Eurocentric portrayals and speculations about surrogacy and remarks that it is a vast scholarship on the issue that revolves around surrogacy in the global North, although scholars such as Corea (1986) made predictions about surrogacy in the global South (Pande 2010: 971).

It May Be Her Eggs but It's My Blood (Pande 2009a) and *Not an 'Angel', not a 'Whore'* (Pande 2009b) are two research papers which are part of Amrita Pande's larger research project on commercial surrogacy in India - *Wombs in Labor* - which was published in 2014. This ethnographic work includes interviews with surrogate mothers and provides insights into the decision-making process when a woman decides to participate in this practice. It also includes valuable information about the consent procedures and the minimal details given to the (often) illiterate women who have a very limited ability to understand the surrogacy contract (Pande 2009b: 147). Pande who stayed at a surrogacy clinic in India for nine months when she was doing her in-depth interviews with the surrogates, affirm that most of the women did not speak nor understand any English (Ibid: 147, 149). Hence, some of the essential points of the contracts were translated although a lot of information was left out and her interviews show examples of surrogates not being aware of all the serious risks involved (Ibid: 147-148). Pande further introduces the concept of 'sexualized care work' which she describes as a new type of reproductive labor, that is commercial surrogacy, incorporating aspects of both care work and sex work. She makes it clear how commercial surrogacy in India has become a viable industry which for many poor women and their families has emerged as a survival strategy (Pande 2010: 971-972). Pande's studies show that the main reason for participating in the practice is that it offers a way out of poverty (Pande 2010: 988) and she writes that:

While supporters of surrogacy emphasize the element of choice in surrogacy - that a woman has the right to choose what to do with her body - most of the surrogates' narratives work toward downplaying the role of choice in their decision to become surrogates. They deny choice by highlighting their economic desperation. (Pande 2010: 987-988)

Jyotsna Agnihotri Gupta has just like Pande researched about commercial surrogacy in India (Gupta 2012) examining how surrogacy can be investigated from a postcolonial feminist perspective as well as problematizing the issue of the right to self-determination (Gupta 2006). When embarking upon a study of how new reproductive technologies (NRT) as well as transactions in reproductive body parts affect the autonomy of women from an international comparative perspective, Gupta draws a comparison to the second wave of the feminist

movement and its united goal to legalize abortion. The question of sex-selective abortion demonstrates a fragmentation in the feminist solidarity, where patriarchal ideologies of son-preference were causing women in countries with population control policies to take advantage of the liberal abortion laws. This in order to abort female fetuses due to the desire to have male children. In India, this practice became so extensive that a national legislation banned the tests in 1994. Indian feminists were divided regarding the ban whereas some argued in favor of the practice since it “upheld women’s right to choose to abort the female fetus, as a key freedom” (Ibid: 27). Gupta state that the NRTs have brought ‘new freedoms’ in the form of some women that have been given greater opportunities through contraception and abortion that prevents unwanted pregnancies, but also the possibility for infertile women and couples to become parents. For some women these technologies have brought “more outside control and expropriation” and it is therefore difficult to formulate “common feminist strategies of resistance to the medicalization of women’s bodies and the adverse effects of certain technologies” (Ibid: 28).

Gupta stresses that a woman’s right to choose can be seen to be in a crisis and which will not be more visible or sharp than in relation to transactions of reproductive services and reproductive body parts. To understand the booming surrogacy industry Gupta places the commercialization of (assisted) reproduction in the context of globalization and the emergence of neoliberalism. She implies that the neoliberal ideal and the rapid growth of global capitalism has brought new regimes of consumption. Not only have women’s whole bodies been thrown onto the world market for trafficking, the human body and its parts (organs, tissues, cells) have been turned into commodities that are exchanged and traded (Gupta 2006: 29).

Gupta has further investigated whether there can be common gender interests and if the need of infertile women for surrogacy services or egg donors in relation to the financial need of the women, that for this reason offer their services, is creating a relationship based on mutual dependence. But also, if these cases should be viewed as examples of women's agency and self-determination. Gupta indicates that those in favor of a full commercialization of reproduction do this

based on women's right to self-determination over one's own body, while also claiming it to valorize women's labor which otherwise is done unpaid (Ibid: 31-31). Gupta however puts forward that within this 'supermarket of reproductive alternatives' "the right to choose is reduced to a right to consume" stating that neoliberal ideologies have an important role when constructing choice and autonomy in terms of individualism and consumerism (Ibid: 32). Further she remarks the debate about whether women are choosing freely to participate in surrogacy arrangements or if their choice is socially and economically constrained. Nevertheless, Gupta concludes that surrogacy is exploitative since women are encouraged to treat their body as a commodity for consumption (Ibid: 33).

Amrita Banerjee (2010) argues that in the analysis of transnational surrogacy, an ethical paradigm inspired by a feminist pragmatist framework will better than the dominant Western ethical models - reproductive liberalism versus the exploitation model - do justice to the lived experiences of the women concerned. Banerjee further states that the tendency of most Western philosophical literature on surrogacy is to look on the moral grounds of the practice when either arguing in favor of or condemning it. The argument in favor of surrogacy can be seen as based on reproductive liberalism, whereon the notion of autonomy and choice is used to reinforce the argument that surrogates have the right to make decisions regarding their body and their reproductive capacities (Banerjee 2010: 108-109). Transnational surrogacy is often marketed in the language of autonomy which is projected as leading to new opportunities for the surrogate mother and possibilities for her to exercise greater autonomy due to increased financial resources. The scholarly argumentation against surrogacy on the other hand revolves around exploitation and the commodification argument. According to this camp of ethicists "instead of making the feminist project a reality by giving women control over their bodies, in fact, [it] serves the opposite purpose" since it rather defines and reduces women to their reproductive capacities (Ibid: 109). Banerjee demonstrates how this argumentation, which also includes the aspect of commodification and exploitation, imply that the surrogate is being exploited since her body and labor are judged based on their usefulness. Banerjee further highlights the question of choice in the industry of commercial surrogacy which is

spelled out as something that does not arise in a 'socio-cultural vacuum'. As commercial surrogacy contracts may expand options for the surrogate, that might result in women taking decisions they do not prefer, although "cannot refuse because the price of refusal is too high" (Ibid: 110). Banerjee argues that it is naive to search for a yes or no resolution on this issue of transnational surrogacy, since "even if surrogacy is condemned ethically and prohibited legally on grounds of exploitation, such practices are likely to continue undercover as long as economic inequalities exist" (Ibid: 111).

3 Theoretical Framework

In this section I will provide a background to the theoretical framework used in the thesis which will help me to conceptualize the research problem as well as supporting the analysis. The framework will depart from a postcolonial perspective paying attention to issues of uneven power relations and exploitations in the industry building on the concept of agency. I will address the idea of agency and how understandings of agency, autonomy and self-determination can be conceptualized. Postcolonial feminist frameworks are commonly useful when adopting a transnational focus but will in this thesis be used on a national case characterized and shaped by global power relations and interactions. Furthermore, the concepts and ideas defined in this chapter will serve as the foundation for the analysis.

3.1 Postcolonial Theory

The literary scholar Loomba defines colonialism as the conquest and control of other people's land and goods (Loomba 2015: 20). In this sense it must be said that colonialism has been a recurring and widespread phenomenon very far back in history and one could argue that human history is a history of colonialism. In the 1930s an estimated 84% of the land surface of the globe was controlled by European countries (Ibid: 5, 20). As a historical background it can be said that colonialism is intertwined with two different phenomena, partly an economic development but also an ideological political development. Colonialism as a historical process almost immediately met the needs of capitalism by systematically making all the world's resources available to Europe. Through the constant "flow of human and natural resources between colonized and colonial countries" colonialism provided capitalist production in Europe with an enormous amount of free labor in the form of slavery (Ibid: 21-22). We cannot dismiss the contemporary global economic imbalance being a result of large parts of the

world getting drained of their resources while all capital accumulation took place in Europe and all wealth came to be generated in Europe. It should be noted that the “contemporary global imbalances are built upon those inequities that were consolidated during the colonial era” and they came to be built into the structure of the capitalist economy (Ibid: 28-29). Colonialism was however not only connected with this mode of economic production but also with ideology, considering that the dominance and violence by European countries was legitimized by a way of thinking that claimed Europe and the European people as by nature superior to other peoples and therefore it was also right and even the duty of the Europeans to subjugate what was considered inferior peoples (Ibid: 72-73, 210). One can say that colonialism was the means through which the economic system that is capitalism achieved its global expansion, whereas this was ideologically legitimized by the system of thought that is racism (Ibid: 131).

The historical process known as decolonization refers to when colonized countries regained their independence. It is difficult to say exactly when decolonization began since “formal decolonization has spanned three centuries” and there is a crucial difference in the decolonization process among societies (Ibid: 29). Discovered by people living in once-colonized countries was nevertheless that even after formal independence various forms of exploitation deepened and formal independence did not mean an end to subordination (Ibid: 33). Many decolonized countries were strained to commit themselves to create a capitalist market economy which in practice worked as a way of maintaining exactly the same kind of economic system that had existed under formal colonialism. This way of more indirect control in contrast to formal colonization became known as neo-colonialism (Ibid: 25). Kwame Nkrumah wrote that “the essence of neo-colonialism is that the state which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus political policy is directed from outside” (Nkrumah 1965: xi). Nkrumah considered neo-colonialism as being ultimately sustained by the threat of military violence while being exercised through economic or monetary means (Nkrumah 1965: ix).

Frantz Fanon, a pioneer of postcolonial theory, wrote in the early 1960s that “the Third World needs to begin the history of the human anew” (Fanon 2004: 240). This new way of thinking that Fanon was demanding is what came to be postcolonial theory, although the concept did not exist during Fanon’s lifetime, he has come to be regarded as a leading figure in postcolonial theory. Another leading figure in postcolonial theory who was a driving force in the very important Negritude movement was, Aimé Césaire, who wrote about the colonial injustices in which he opposed the colonial idea that colonialism would have had a civilizing function on the colonized peoples (Césaire 2001: 88). Moreover, Edward Said came in the late 1970s with an influential and widely read postcolonial critique of Western constructions of the orient in his piece *Orientalism*. The book gained a huge influence with Said’s analysis of the Western imperial discourse about “the Orient” where he presents a way of examining colonial discourse (Said 1995). Said questioned the scientificity of the production of knowledge about “the Orient” and alleged that the construction of Orientalism was a political vision of establishing an absolute difference between East and West.

Postcolonial theory encompasses a wide variety of approaches that questions issues of power and the structures and processes of colonization, imperialism, neo-colonialism and certainly the configuration of the term postcolonial (McClintock 1992: 87). The study of postcolonialism examines both the history and legacy of Western colonialism and the imperial structures maintained in the world after formal de-colonization, but also how new forms of racism, exploitation and violence take place today. Postcolonial theory accordingly criticizes Western knowledge production where throughout European modernity several different scientific disciplines arose which in different ways examined other and foreign cultures. Which cannot be seen as separate from the European countries’ pursuit of political and economic dominance. Instead, postcolonial theorists have tried to demonstrate the economic and social interests behind the various disciplines and oppose this knowledge being objective and neutral but instead ideologically and politically motivated knowledge whose basic purpose was to legitimize colonialism and the dominance of Europe (Said 1995; Loomba 2015: 60). Postcolonial theory is further a critique of Western universalism and

the idea that there are certain universal values as well as the ethnocentric universalism created by Western scholars (Ibid: 261, Mohanty 2003: 21). Furthermore, it is a critique of Western historiography and the idea of a linear time where humanity moves collectively forward according to the linear idea of progress and development (McClintock 1992: 85).

3.2 Postcolonial Feminist Theory

In the early 1980s, a group of South Asian and Indian scholars formed an interdisciplinary research collective entitled the Subaltern Studies Group. This group, which was led by Ranajit Guha, was critical of the Indian and British historians who after India's independence in 1947 wrote various types of work on Indian history in which they only focused on India from a colonial or elitist perspective (Guha 1999). The Subaltern Studies Group wanted to shed light on the non-elite, the resistance and social groups that had not belonged to the Indian establishment, so-called subaltern groups which had been excluded from the dominant historiography. In 1983, Guha wrote the book *Elementary Aspects of Peasant Insurgency in Colonial India*, in which he studied the 19th century peasant uprising in India where he tried to write out the Indian peasants' own consciousness. He wrote:

To acknowledge the peasant as the maker of his own rebellion is to attribute, as we have done in this work, a consciousness to him. Hence, the word 'insurgency' has been used in the title and the text as the name of that consciousness which informs the activity of the rural masses known as jacqueri, revolt, uprising. (Guha 1999: 4)

A problem that existed around the concept of subalternity, was that it by definition pointed to a lack of autonomy and subjectivity. The very purpose of the Subaltern Studies Group, that was to demonstrate the consciousness of the subaltern, became self-contradictory just when the subaltern was defined as the one who had not been allowed to write a self-consciousness. The Indian historian Gyan Prakash writes "the desire to recover the subaltern's autonomy was repeatedly frustrated because subalternity, by definition, signified the impossibility of autonomy:

subaltern rebellions only offered fleeting moments of defiance” (Prakash 1994: 1480). Someone else who clearly emphasized this issue was Gayatri Chakravorty Spivak, who also was part of the Subaltern Studies Group at the same time as she was critical of the idea that it would be possible to reconstruct the subaltern’s experiences. In Spivak’s texts *Subaltern Studies: Deconstructing Historiography* (1985) and *Can the Subaltern Speak?* (1994) she points to this problem. Spivak believes, that although it is not possible to recreate the consciousness of the subaltern on an epistemological level, it can be done for strategic reasons. She uses the term strategic essentialism in her reading and discussion of the work of the Subaltern Studies Group, which means to let collective features within a minority group be the defining ones for strategic reasons in order to work for a common political cause (Spivak 2014: 148).

Postcolonial feminist critique is about representation and questions of location and could be described as “an exploration of and at the intersections of colonialism and neocolonialism with gender, nation, class, race, and sexualities in the different contexts of women's lives, their subjectivities, work, sexuality, and rights (Rajan and Park 2005: 53). Postcolonial feminist theory was developed much as a critique of the idea that there would be universal concepts such as “woman” but also as a response to feminism focusing solely on women in the West and their experiences. Postcolonial feminism has different areas of focus whereon it displays how gender plays a role in colonial power structures, it is a critique of the Eurocentrism of traditional Western feminism and it is a critique of postcolonial theorists such as Fanon and Said’s lack of a gender perspective. The colonial discourse was largely founded on the female body as a metaphor for the conquered country, which Anne McClintock demonstrates in her book *Imperial Leather* (McClintock 1995). Colonial travel was systematically formulated in the form of intrusion into virgin land and McClintock wrote that “the myth of the virgin land is also the myth of the empty land, involving both a gender and a racial dispossession. [...] Within colonial narratives, the eroticizing of ‘virgin’ space also effects a territorial appropriation, for if the land is virgin, colonized peoples cannot claim aboriginal territorial rights” (McClintock 1995: 30). McClintock thus points out that the colonial language was based on sexualized concepts that enabled male control over non-European peoples but also over

women. McClintock further objects to the term post-colonialism and imply that it indicates an unwillingness to renounce “the privilege of seeing the world in terms of a singular and ahistorical abstraction” (McClintock 1992: 86). She considers the term as too simplistic since it inscribes history as a single issue and has the potential to erase significant nuances in the matter, in the same way that the singular category of “women” as monolithic subjects does not take into account the “varied histories and imbalances in power among women” (Ibid: 86).

Regarding the critique of traditional Western feminism and Eurocentrism it can be said that the goal of this type of feminism was to liberate women in singular. Audre Lorde writes that “within the women's movement today, white women focus upon their oppression as women and ignore differences of race, sexual preference, class and age. There is a pretense to a homogeneity of experience covered by the word sisterhood that does not in fact exist” (Lorde 1984: 116). She criticizes the feminist movement for using the concept of woman as a universal concept and declares that white feminists have assumed that all women are subjected to the same patriarchal oppression. Lorde states that differences between women should not be suppressed but acknowledged and she believes that feminism would benefit from becoming more inclusive and based on active cooperation between groups that can set common goals and also mutually acknowledge that they are different (Lorde 1984). A similar discussion is conducted by bell hooks that in *Ain't I a Woman* (hooks 2015) writes:

Black women were told that we should find our dignity not in liberation from sexist oppression but in how well we could adjust, adapt, and cope. We had been asked to stand up and be congratulated for being ‘good little women’ and then told to sit down and shut up. No one bothered to discuss the way in which sexism operates both independently of and simultaneously with racism to oppress us (hooks 2015: 7).

In a similar way as Lorde, hooks thus point out that black women have been largely ignored by the white feminist movement in the United States during the 20th century (hooks 2015: 127). She writes that white women formulated the feminist struggle completely based on their own experiences while at the same time excluding black women from the struggle. She also draws attention to the

civil rights movement in the 20th century and how it was permeated by patriarchal and anti-feminist ideas writing that “many black men who express the greatest hostility towards the white male power structure are often eager to gain access to that power. Their expressions of rage and anger are less a critique of the white male patriarchal social order and more a reaction against the fact that they have not been allowed full participation in the power game” (hooks 2015: 94).

Both Lorde and hooks wrote about the situation in the United States and their experiences as black women in the US, whereon Chandra Talpade Mohanty is a researcher who discusses these issues from a larger global perspective. Her article *Under Western Eyes* (2003) and its critique of the political project of Western feminism and its discursive construction of the concept of “Third World woman” have had an enormous impact on postcolonial feminism. Mohanty states that the discursive construction of the “Third World woman” involves portraying them as victims without the opportunity to change their situation. She writes that:

This average Third World woman leads an essentially truncated life based on her feminine gender (read: sexually constrained) and her being 'Third World' (read: ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.). This, I suggest, is in contrast to the (implicit) self-representation of Western women as educated, as modern, as having control over their own bodies and sexualities and the freedom to make their own decisions. (Mohanty 2003: 22)

In postcolonial theories agency becomes apparent through the concept of resistance which is understood as an act or struggle to liberate oneself from existing colonial structures (Mohanty 2003: 83). The historical sense of resistance directed against colonial and imperial powers and nations can also be used to analyze oppression and exploitation within the boundaries of a nation. A postcolonial theoretical framework with its notion of agency would allow me to examine how agency and the extent of the free choice among women taking part in surrogacy arrangements is addressed in the political discourse on surrogacy in Sweden. Thus, I plan to relate to the postcolonial feminist critique of transnational commercial surrogacy practices while also considering if all forms of agency can be justified “even within severe exploitative situations to reinforce subaltern experiences” (Saravanan 2018: 133).

3.3 Conceptualizing Agency

Agency and particularly the agency-structure debate has been a central issue in the social sciences. The disputes about this problem center around the correlation between the individual and the system and whether we believe that individuals determine their own lives and act upon the system or that they are determined by the system and social structures in society (Carlsnaes 1992: 245). Weber suggested that structures “are abstractions created by individuals and cannot determine the action of their makers” whereas according to a Durkheimian view “structures self-generate and determine the very nature of individual consciousness” (Bilge 2010: 12). In this manner the agency-structure problem revolves around the issue of whether individuals are capable to make independent decisions and free choices without influence from various political, economic, social and cultural factors in society. The literature on agency has sought to address these differences, examining the capacity and limits of individuals ability to act independently of structural constraints (Rapport and Overing 2000: 1-2). Inherent in the theory of action is a humanistic conception where agency is synonymous with concepts such as autonomy, freedom, rationality and moral authority (Davies 1991: 42).

In the liberal construction of the autonomous (male) human, agency is defined as “the free exercise of self-willed behavior” (Mack 2003: 149) which is strongly connected to the humanist discourses where agency is “by definition, a feature of each sane, adult human being” (Davies 1991: 42). Given the fact that historically women, non-whites and children have not been constituted as agentic, agency and to denounce women’s lack of agency is vital to the formulation of feminist politics and has become a matter of great concern for emancipatory politics (Hekman 1995: 194-195). But agency is also a contentious issue in social theory where it has been criticized for being “an abstraction greatly underspecified, often misused, much fetishized [...] by social scientists” (Comaroff and Comaroff 1991: 37). Yet a substantial critique of agency comes from poststructuralism with its critique of the humanist subject.

As a consequence of poststructuralist theories of subjectivity, the question of agency has aroused in recent times, with the poststructuralist critique of the term positing that “human subjectivity is constructed by ideology (Althusser), language (Lacan) or discourse (Foucault), [therefore] any action performed by that subject must be also to some extent a consequence of those things” (Ashcroft, Griffiths and Tiffin 2000: 6). Considering the workings of power and ideology within the use of language and in the construction of the subject, poststructuralists oppose the humanist account of being a person and extend theories of subjectivity, where scholars such as Judith Butler have been very influential (Mack 2003: 151). For Butler psychoanalysis is an important theoretical tool for providing her critique of the tendency to appeal to a prediscursive subject. Butler’s account of agency is dependent on “the fact that [one is] constituted by a social world [one] never choose” (Butler 2004: 3) and she also draw on Foucault’s notion of subjectivation - which implicate the process by which one becomes a subject - and the relation between productive power and the subject. Butler remarks that the question of locating agency is often dependent on an understanding of the subject as preexisting, that is, not culturally constructed and she argues that:

This kind of reasoning falsely presumes (a) agency can only be established through recourse to a prediscursive “I,” even if that “I” is found in the midst of a discursive convergence, and (b) that to be constituted by discourse is to be determined by discourse, where determination forecloses the possibility of agency. (Butler 2006: 195)

Butler objects to what she claims to be the unnecessary binarism of free will and determinism and contends that it is wrong to conclude that discursive constructionism presupposes determinism. Stating that “construction is not opposed to agency; it is the necessary scene of agency, the very terms in which agency is articulated and becomes culturally intelligible” (Butler 2006: 201). Donna Haraway further implies the importance of modern critical theories since the perspective of the discursive subject allows feminists to understand how meaning and bodies get made and she indicates that:

Subjectivity is multidimensional [...] the knowing self is partial in all its guises, never finished, whole, simply there and original; it is always constructed and

situated together imperfectly, and therefore able to join with another, to see together without claiming to be another. (Haraway 1988: 586)

The turn to agency has been really important in the field because it comes from a place where the concept of autonomy is inherently masculinist, and women have been denied agency and to be a subject of their own. Although feminist critiques of autonomy have recognized substantial problems in both historical and contemporary notions of autonomy, the conception is crucial to the understanding of oppression, subjection and agency (Mackenzie and Stoljar 2000: 3). Agency is particularly important in postcolonial theory as it concerns “the ability of post-colonial subjects to initiate action in engaging or resisting imperial power” (Ashcroft, Griffiths and Tiffin 2000: 6). For this reason, poststructuralism becomes important in the conceptualization of agency in this thesis, since it invokes a radical critique of the inadequacies of humanist theories of subjectivity and agency.

4 Methodology

This section aims to explain the methodology that will be used in the thesis in order to answer my research questions. As this thesis aims to analyze the political discourse on surrogacy in Sweden and my material is textual, I am relying on methods of text analysis in my research and thus intend to investigate the research problem using the methodology of discourse analysis focusing on Laclau and Mouffe's discourse theory. Using a qualitative method such as discourse analysis includes both methodological and theoretical considerations which will be addressed in this chapter.

4.1 Text and Discourse Analysis

Discourse analysis stems from social constructionism and poststructuralist theory and is a method of analysis that cannot be used detached from its theoretical foundations. Therefore, it suits a qualitative study such as this well. I will hereon give a brief outline of the philosophical premises that underpin discourse analytical approaches. To begin with a critical approach is held towards knowledge about the world being treated as absolute or objective truths (Burr 1995: 3) rather initiating that "there is no knowledge without a particular discursive practice" (Foucault 1972: 183). Accordingly, this social constructionist view presumes that people are historical and cultural beings and therefore our knowledge about the world are the products of situated interchanges among people which are "highly circumscribed by culture, history [and] social context" (Gergen 1985: 266-7). They postulate that discourses and social contexts at a particular time in history have a role in producing the social world, thus standing for an anti-essentialist worldview (Winther Jørgensen and Phillips 2002: 12). This relates to the link between knowledge, social processes and actions, where knowledge is created and maintained by social processes while different social understandings of the world form actions which have social consequences

(Gergen 1985: 268-9). This claim of structuralist and poststructuralist linguistic philosophy, deeming that our perception of reality is shaped by language, does not mean that reality does not exist but only that we apprehend our reality and give it meaning through discourse (Winther Jørgensen and Phillips 2002: 15). Consequently, social constructionist approaches aim at deconstructing commonly held social assumptions and values.

4.2 Laclau and Mouffe's Discourse Theory

Ernesto Laclau and Chantal Mouffe's discourse theory has its starting point in the poststructuralist idea that our perception of reality and the social world is mediated by discourse that constructs meaning. Owing to the instability of language this means that the social world never can be ultimately fixed, as discourses are constantly being transformed (Ibid: 13). Discourse theory is developed through "the deconstruction of other bodies of theory" where Laclau and Mouffe mainly draw on Marxism and structuralism which they fuse into a single poststructuralist theory (Ibid: 27). The idea of Laclau and Mouffe's discourse theory is that "social phenomena are never finished or total [thus] meaning can never be ultimately fixed and this opens up the way for constant social struggles about definitions of society and identity" (Ibid: 27). Which discloses the aim of discourse analysis that is to map out these social struggles of fixating meaning that also correlate with the potential struggle of meaning in regard to agency that take place in the discourse about surrogacy (Winther Jørgensen and Phillips 2002: 28).

Furthermore, Laclau and Mouffe define several concepts in their comprehensive theory which will be examined in the following. As explained in their principal work, *Hegemony and Socialist Strategy* (1985) they understand 'discourse' as "the structured totality resulting from the articulatory practice" whereby 'articulation' is defined as "any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice" (Laclau and Mouffe 1985: 105). All signs within a discourse they call 'moments', which get their meaning and are determined by their differences and relations to other

signs whereas they call ‘elements’ “any difference that is not discursively articulated” (Ibid: 105). Any discourse is formed by partial fixations of meaning attempting to construct “that impossible object” and in these attempts there are certain privileged discursive points which they call ‘nodal points’ (Ibid: 112). Moreover, the other signs in that ‘field of discursivity’ gain their meaning in relation to the privileged sign that is the nodal point (Ibid: 111). There are also those signs that have not yet been fixed by the discourse, the so-called elements, which sometimes are “particularly open to different ascriptions of meaning” and these elements are called ‘floating signifiers’ (Laclau 1990: 28). In discursive struggles different discourses strive to invest the floating signifier with their particular meaning, in order for it to occur as natural and objective instead of constructed.

As Laclau and Mouffe’s text primarily aim at developing theory they have been regarded as lacking practical tools for empirical analysis. Nevertheless, some features from their approach will be suitable for the purpose and the type of material analyzed in this thesis. Their approach is oriented towards analysis of the ‘political’ where the construction of discourses takes place in and through hegemonic struggles. As my material consists of different actors that try to construct a meaning over surrogacy, these are issues that will be addressed through my analysis. In the context of surrogacy, agency takes shape through the concepts of self-determination, choice and autonomy. Thus, I will be analyzing floating signifiers such as self-determination, autonomy, free choice and bodily integrity. These concepts can be defined in different ways if different discourses fight to invest them with meaning in their own way. By identifying the floating signifiers in the material, it will become clear how the concepts are given meaning in relation to dominating discourses. That a concept’s meaning is not determined and has not been completely fixed displays how different actors struggle to impose the signifier with their respective meaning (Winther Jørgensen and Phillips 2002: 36). The transition when something goes from being disputed to being socially accepted does not happen uninterruptedly but rather as a result of hegemonic struggles. Laclau and Mouffe describes hegemony as “the key concept in understanding the very unity existing in a concrete social formation” (Laclau and Mouffe 1985: 7). They understand the relationship between signs and

meaning as determined by power relations, where certain truths are perceived as objective and normal, but which they argue always are constituted by power and politics (Winther Jørgensen and Phillips 2002: 37). When analyzing the reasoning about agency in the Swedish political discourse on surrogacy, the use of discourse analysis will allow me to explore the ways in which power and certain truth claims work.

4.3 Epistemology

Donna Haraway's theory of situated knowledge presents a critique of the traditional notion of scientific objectivity and argues instead for a different understanding of scientific objectivity based on a feminist understanding of situated knowledge. Haraway opines that knowledge is always created in specific contexts and thus there is always a connection between the knowledge producer and the different power structures that exist in that context (Haraway 1988: 591). In the research process, we must therefore discern our own positioning in the world in order to be able to claim objectivity. If we situate ourselves and do this, we can more likely produce embodied objective knowledge than if we claim to be neutral observers. Haraway further declares that situated knowledge requires that the study object is portrayed as an agent and not only as a resource from which the researcher gathers its information (Ibid: 592). She states that "indeed, coming to terms with the agency of the "objects" studied is the only way to avoid gross error and false knowledge of many kinds in these sciences" (Ibid: 592-3). This is relevant for me in the writing of this thesis, since I choose to write about a topic such as surrogacy, where a discussion is held about the risk of exploitation of women's bodies and their reproductive organs, it is particularly important not to overlook the agency of the women concerned. Still, I believe it is possible to affirm the study object's agency while at the same time analyzing whether a free choice exists isolated from other areas of life that condition women's agency. Furthermore, this standpoint means that I am aware that my own approach and interpretations of the material in the analysis are influenced by my position within different power structures.

4.4 Material

The selection of material will consist of official documents, that is publications from the Swedish Government, such as inquiries and reports. The entry point will be the Swedish Government official report *Different Paths to Parenthood* (SOU 2016:11) due to its relevance and the scope of the investigation. The inquiry appointed by the Swedish Government with the overall remit to consider different ways to increase the possibilities for involuntarily childless people to become parents, presented their final report in 2016 (SOU 2016:11). This final report of the investigation had three tasks that is of relevance to this thesis, firstly; to take a stand on whether altruistic surrogacy should be permitted in Sweden, secondly; to investigate and take a stand on whether specific regulations are needed for those children born through surrogacy arrangements abroad, and thirdly; to suggest the possible changes needed in the regulation or legislation (SOU 2016:11). In addition to this it will consist of referral statements submitted in response to the inquiry, such as material from the non-profit organization The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (RFSL), the organization The Swedish Women's Lobby (SWL) and The Swedish National Council on Medical Ethics (SMER).

In the Swedish policy process, before submitting a proposal for new legislation to the Parliament (Riksdag), the matter in question must be analyzed and evaluated by an inquiry appointed by the Government. Before the Government takes up a position on the recommendations of the commission of inquiry, various referral bodies such as authorities, organizations and other stakeholders whose activities may be affected by the proposals are invited to respond to the inquiry's proposal by submitting referral statements. This process provides valuable feedback and gives the Government the possibility to take these opinions of various referral bodies into consideration before submitting the bill to the Riksdag (Ramberg et al. 2018: 46). When it comes to the report *Different Paths to Parenthood* (SOU 2016:11) there were 67 referral bodies submitting their comments on the inquiry's proposal. Out of these I have selected three referral statements, one from an

organization that supports surrogacy (RFSL), one from an organization that is against surrogacy (SWL) and one from the national body SMER.

On their website RFSL describe themselves as a non-profit organization working toward the goal that LGBTQI people should have the same rights, possibilities and obligations as everybody else in society. Whereas SWL describe themselves as a politically and religiously independent umbrella organization for women's organizations in Sweden. Their work is based on feminist values and they operate to ensure women's full enjoyment of human rights in an equal society. None of these organizations were explicitly created to only advocate for or against surrogacy although they both take a clear stand on the issue. For both actors I have also tried to find an official document in which they explain their position towards surrogacy, whereon SWL has a document explaining their stand on surrogacy which will be used as a complement to their referral statement which was not as thorough as the referral statement by RFSL. As RFSL do not have any other document explaining their stand on surrogacy, except their referral statement, that is what will constitute the material. SMER is a national body with an independent status within the Government offices. The council works as an advisory board to the Swedish Government and Parliament on ethical issues raised by scientific and technological advances in biomedicine. Members of the council represent the eight major political parties of Sweden, as well as agencies and interest groups. As a key council on ethical dilemmas, the referral statement from SMER has a given space in the thesis as well.

Overall, preparatory legislative documents will be relied on heavily in this thesis, that is primary sources that concern the background to the legislation. All references and citations made to Swedish sources in this thesis will be translated by myself if not specified otherwise.

4.5 Limitations

The focus and scope of this thesis is limited to the case of Sweden, that is at a domestic political level, as the material does not extend to an international level. Although the theoretical framework opens the possibility to an analysis of surrogacy arrangements as a global phenomenon. The study is also situated within a specific time frame where I have collected data from the year 2016 as that is the year when the final report from the commission of inquiry was presented, as well as the year of the referral process. I have chosen to use the latest and most current Government investigation that *inter alia* is concerned with surrogacy arrangements (SOU 2016:11). This is because the Government investigations that have been previously published are not as relevant in relation to the aim of the thesis. In addition to this the three referral statements have been chosen on the grounds that two of them represent clear stands for and against surrogacy, whereas SMER represents a body with an independent status that is not openly positioned on the issue.

5 Analysis

In this chapter, the analysis of the Swedish Government official report *Different paths to parenthood* (SOU 2016:11) and referral statements submitted in response to the inquiry will be presented. I will thus organize the analysis according to these documents, beginning with surrogacy in Sweden followed by surrogacy arrangements abroad since the inquiry treats the issues separately. Thus, excerpts from the material and all quotations contained from the respective chapters will only be telling for that part. Accordingly, I will examine the referral statements from the organization opposing surrogacy and the organization in favor of surrogacy. Further I will use the perspective of postcolonial feminist theory when engaging with the material.

5.1 Different Paths to Parenthood (SOU 2016:11)

The overall remit for the inquiry has been to consider different ways to increase the possibilities for involuntarily childless people to become parents. As the interim report concerning assisted reproduction for single women was presented in 2014 (SOU 2014:29) the remaining parts of the task that were presented in this final report included a consideration of whether to require a genetic link between the child and the prospective parent or parents in the case of assisted fertilization; considering whether to permit surrogacy in Sweden on the basis that it shall, in that case, be altruistic; considering whether special rules are needed for children born through surrogacy abroad; considering whether the abolition of the sterilization requirement and of the ban on retained reproductive capacity in cases of gender change can result in problems when, for example, applying legislation concerning parenthood; and proposing the consequential amendments needed to the regulations concerning parenthood and other legislation.

To begin with the commission of inquiry account for their ethical standpoints applied in the deliberations about abolishing the requirement of a genetic link and permitting surrogacy. They state that all matters that concerns assisted fertilization must be based on a humanistic view of human beings as free and responsible creatures with human dignity. Referring to the principle of human dignity they make clear that all human beings have the same worth and the same right to have their rights satisfied. This also means that no person may be viewed or treated merely as a means to someone else's end. However, this principle does not mean that it is a human right to either give birth to one's own child or to become the parent of a child in some other way (SOU 2016:11: 48). Further these matters must take account of the starting points of justice, non-discrimination and self-determination (autonomy). Self-determination is identified as everyone's right to have their own values, opinions and wishes respected. Someone who is incapable of defending their right to self-determination must have their dignity protected by for instance the society. Another important aspect of self-determination is identified as that of informed consent. This means that a person must be given enough information and understand the information - that is the implications and consequences of an action - before giving their consent (Ibid: 49).

5.1.1 Discursive Struggles Over the Meaning of Agency

This part of the analysis deals with chapter 13 in the report, which specifically concern surrogacy arrangements in Sweden. According to the task which was to consider whether to permit surrogacy in Sweden on the basis that it shall be altruistic, the commission declares that as they understand the directives, this does not constitute an absolute obstacle to them proposing a regulation of surrogacy that is not based on altruism, if there are sufficiently strong reasons for it. However, the commission proposed that commercial surrogacy should not be permitted in the Swedish health system and that society should also work to counter commercial surrogacy. Although a consideration of commercial surrogacy was not in the directives of the inquiry the commission chose an approach where they also examine the commercialization of reproductive labor, as they find it to be of importance to the discussion about surrogacy in general. And since they

concluded that commercial surrogacy cannot be accepted, that will be an important outset for the further discussion.

Nevertheless, they believe that there is reason to raise some arguments that suggest that if surrogacy arrangements were to be accepted, the surrogates should be able to have a profit motive, since it is reasonable that a woman who make such a large commitment on behalf of someone else also receives compensation for this. Indicating that the fact that the surrogate mother receives compensation does not in itself preclude that her motives are altruistic. Further they point out that “some debaters have argued that a ban on commercial surrogacy entails a restriction on every woman’s right to, against payment, use her body as she wishes” (Ibid: 80). This is an argument that implicate that a ban on commercial surrogacy would restrain women’s agency and their right to use their bodies as they wish. They conclude that there are some reasons that do support that surrogacy arrangements should be able to have a profit motive. However, there are stronger counterarguments that lead them to the conclusion that commercial surrogacy should not be permitted. Even though the commission comes to this conclusion, their claim about every woman’s right to use her body as she wishes is strengthened by a humanistic approach that embraces freedom of choice.

One of these arguments is that it is contrary to the various international and domestic laws prohibiting trade with organs. They also assert that commercial surrogacy could be seen as a form of trade with women’s bodies regardless of whether they have given a free and informed consent. This assertion implies that regardless of whether the woman in question has given an informed consent and made an individual decision about her body, her choice can be denied on the basis that the surrogacy contract involves a trade with women’s bodies. This indicates that the commission considers that the right to self-determination cannot be applied in all situations. Nevertheless, they account that there is a risk that women in vulnerable situations would be forced and exploited if commercial arrangements were to be allowed. Since women in certain situations can feel compelled to act as surrogate mothers due to financial reasons and there are also cases where women by their partner have been pressured into becoming a surrogate. Considering this the commission state that “in such situations, one can

strongly question whether the decision is an expression of the woman's actual will" (Ibid: 383). In this statement the commission demonstrate a reading of free will as conditional, which corresponds with the poststructuralist conception of agency as not detached from social structures in society. This claim, where the commission declares that in this particular context it could be possible that the woman's decision is not an expression of her actual free will, relates to an exploitation discourse which infer that such a decision can rather undermine the woman's actual autonomy.

The principle of human dignity is also invoked against a permission of commercial surrogacy. The principle prohibits the use of people merely as a means for someone else's end. At the same time the investigation points out that it should not be denied that a woman who receives financial compensation for entering a commercial surrogacy arrangement, may also have other reasons than profit motives for participating. Indicating that it therefore also can be argued that the woman is not only a means to someone else's end but also acts for her own sake. This again give emphasis to the importance of recognizing the woman's agency and her capability to make decisions based on her own individual motives, according to a more humanistic conceptualization. This is put forward by the commission since they believe the argument that surrogate mothers are used only as means to someone else's end portray surrogate mothers as an object rather than as a subject with the ability and right to make their own decisions (Ibid: 432). This is partly consistent with Guptas (2006) claim that for some women the use of new reproductive technologies "has meant a shift from being 'objects' and 'victims' to 'knowing subjects' and 'agents' of control over their own bodies, [while] for others they have brought more outside control and expropriation" (Gupta 2006: 28). In the above section the struggle between discourses of humanism and exploitation, to define what agency and self-determination actually is in the context of surrogacy, becomes evident. Since it is both constructed in terms of a shift where women go from being objects to agents in control over their own bodies, while also being constructed as a site for pressure and constrained choice.

When considering altruistic surrogacy, the commission concludes that this form of surrogacy should not be permitted in the Swedish health system either. They

remark that it is a controversial phenomenon that some consider comprises an objectification and exploitation of women, whereas some see it as an expression of women's liberation and the individual's freedom of choice. To reach their conclusion regarding whether altruistic surrogacy should be allowed, the commission go through with a careful analysis of the arguments that can be put forward in favor of or against a permit. One of the questions posed by the commission in the analysis is whether the use of a woman's reproductive capacity for another can be reconciled with women's rights, which is referred to as the surrogate mother's right to self-determination and the conditions for a woman to give her free and informed consent, as this quote shows:

The humanistic view of human beings means that humans are reasonable creatures, who have free will, responsibility and human dignity. It presupposes that people can choose freely on the basis of their reason and their own ethical considerations and is prepared to take responsibility for their actions. A part of this view of human beings is the right to self-determination. We all have the right to have our self-determination respected to the extent that it does not interfere with the right of others to have their self-determination respected. It is an important principle in our society that women have the right to decide over their bodies and their reproductive capacity. The right to abortion and to have the abortion performed in the health care rests on this principle. (Ibid: 416)

Here, by raising the question of self-determination and emphasize it, the commission demonstrate that the issue of agency is of great importance when it comes to surrogacy. Once again, they also highlight their ethical standpoint being the humanistic view of free will and autonomy and they presuppose that the woman's will should always be respected. Nevertheless, this becomes somewhat problematic as they acknowledge the surrogate's reproductive autonomy and the choice to become a surrogate whereas the surrogate's right to self-determination in terms of the right to abortion during the pregnancy might be obstructed. Although that they mention the right to abortion outside the context of surrogacy arrangements.

Another aspect that is addressed is the risk of pressure and commercialization. In the view of the commission there is a risk that some women may be put under pressure or experience an emotional compulsion to become a surrogate. This

could be the case when women feel a tacit pressure to help a close relative. The commission observes that it can be difficult to say no to family members and that there are women who live in families with strong patriarchal traditions who might have little influence over their lives and bodies (Ibid: 422). Having that said, the question becomes whether it is possible to design a regulation that sufficiently counteracts that women are being pressured into or feeling compelled to act as surrogate mothers. Although within a Swedish context it would be possible to carry out careful investigations to be able to identify signs if the woman does not have her own deep desire to become a surrogate, the question is whether the risk that consent has been caused by pressure, feelings of inner coercion or hidden economic motives, can be fully eliminated. In the matter of reassuring that a given consent reflects the woman's innermost will and is not prompted by pressure, the commission points out that:

In countries where people are more vulnerable due to economic circumstances and deficient education, the risk of pressure and coercion of various kinds is greater, especially in the case of commercial arrangements. Nevertheless, it is impossible to ignore the fact that there is an obvious risk that some women could be exposed to pressure to be surrogate mothers if the procedure became permitted in Sweden. (Ibid: 447)

Continually the commission affirm that we cannot know for sure that it is the free will of the woman to become a surrogate mother. Therefore, it would go against her autonomy. Concluding that their overall assessment is that:

Regardless of the design of the regulations and regardless of how the investigation takes place, it is not possible to create, through reasonable measures, sufficient guarantees against women appearing as surrogate mothers due to pressure, because they feel that they must or for profit. [...] This strongly argues against allowing [altruistic] surrogacy. (Ibid: 425)

By addressing the alternative that the potential surrogate could undergo an investigation to ensure that she has not been subjected to pressure that would interfere with her genuine and autonomous intent, the commission do not leave the issue of agency unquestioned. Rather they acknowledge that the choices humans make can be dictated by forces beyond their control. This also oppose the

autonomy argument that “in so far as women have the right to decide whether, and how, to procreate, they have the right to do so by contract and against payment” (Banerjee 2010: 109) which according to Corea et al. (1987) means that you are aware that there is a differential access to choices “depending on a woman's race, class, age, marital status, sexuality, religion, culture, and sometimes disability” (Ibid: 8).

The commission pose the question whether surrogacy is compatible with the woman's right to control her body, which already has been touched upon. They raise the aspect that one may argue that a permit in one respect would strengthen women's autonomy, through allowing them to be given the choice to become a surrogate. On the other hand, the surrogacy arrangement may take place in a way that is contrary with her bodily integrity. These conflicts are exemplified by the commission as a situation where the surrogate has entered an arrangement out of free will, but where restrictive rules about how she shall live her life during the pregnancy and her right to abortion, would clearly interfere with her autonomy and self-determination. Furthermore, they conclude that respect for the autonomy of the surrogate mother and her right to self-determination also requires that she must be able to change her mind after the child is born (SOU 2016:11: 426). A potential regulation of surrogacy should therefore never entail restrictions on the woman's freedom of action during the pregnancy or her right to abortion. Having that said, the fact that the surrogate mother formally has the right of decision does not necessarily mean that no pressure can be exerted on her. According to the commission this speaks against a permit for surrogacy (Ibid: 426).

The commission also suggests that in general it is difficult to understand in advance what it means to carry and give birth to a child and then give it away to the intended parents, even though the surrogate mother previously would have undergone a pregnancy and has children of her own. The surrogate might get strong feelings for the child and therefore wants to keep it. The question is thus whether it would be acceptable with a regulation where a woman agrees in advance with a binding effect to give the child away, which might lead to a situation where the surrogate mother must give the child away against her will.

Hence an opportunity might be required for the surrogate mother to change her mind after the birth of the child. The assessment of the commission is that:

An arrangement which means that a woman may be forced, ultimately with the help of the authorities, to give up a child she has borne and given birth to is incompatible with her right to self-determination and does not respect the bond that may arise between a pregnant woman and the child she bears. (Ibid: 430-431)

In the quotation above the commission claim that a regulation as such would be incompatible with the surrogates' right to self-determination. In this regard they also argue that it could be negative for the child to know that the surrogate mother has contrary to the prospective (perhaps genetic) parents, kept him or her. Although there would be some advantages to altruistic surrogate arrangements in Sweden, the assessment of the commission is that the disadvantages with introducing such a procedure in Swedish healthcare outweigh the advantages and therefore altruistic surrogacy should not be permitted in the Swedish health system (Ibid: 451).

5.1.2 The "Third World Woman" Discourse

This part of the analysis deals with chapter 14 in the report, which specifically concern surrogacy arrangements abroad. The remit of this part of the inquiry was to examine and analyze the current regulatory framework and its application in cases where a child has been born through a surrogacy arrangement abroad. According to the Riksdag an investigation as such "should be based on a broad perspective that includes legal and ethical issues as well as economic considerations with regard to international conditions" (SOU 2016:11: 707). Despite this, foreign surrogate mothers and the situation for women who give birth to the children who are born through surrogacy arrangements abroad is not covered in this chapter. By comparison, an extensive analysis of Swedish potential surrogate mothers was carried out in the inquiry's chapter 13, which specifically dealt with surrogacy arrangements in Sweden. Chapter 14 rather focus solely on the judicial procedure and the legal aspect of surrogacy arrangements abroad, despite the fact that the Riksdag announced the importance to thoroughly investigate surrogacy. When the inquiry calls forth that international surrogacy

arrangements can give rise to different problems, they choose to focus on the situation that arises when the child's country of birth and the country of residence of the intended parents have different rules on establishing parenthood, that is the issue of "limping legal parentage" (Ibid: 467, 517). Instead of bringing attention to the multiple systems of inequality potentially reinforced and the risk of exploitation in such arrangements (Pande 2016). At some points, however, conditions regarding foreign surrogate mothers' situations are mentioned, but then only as part of a different line of reasoning. Nevertheless, there is no reflection where foreign surrogate mothers and their agency is at center of the discussion. This is in sharp contrast to how the Swedish surrogate mother is discussed and treated in the text. One such an example, when the conditions regarding the foreign surrogate mother is mentioned in passing, is when the prospective parents express their different concerns. This is demonstrated in the following quotations:

Most couples or individuals seem to have met the surrogate mother at least once during the arrangement. Some of them have also had regular contact with her during pregnancy, e.g. via the internet, and consider themselves to have helped the surrogate mother to a better life. Some of them have expressed some concern about whether the surrogate mother was really allowed to keep the money. (Ibid: 458)

Concerns have been expressed, for example, about the treatments performed in India, Ukraine and Thailand. The concern is i.a. caused by the fact that several fertilized eggs are allowed to be inserted in the surrogate mother, that many prospective parents enter into agreements with more than one surrogate mother and thus participate in several events at the same time, that there are mixtures of gametes, that sex-selective abortion is allowed, that more or less routinely the children are delivered by caesarean section and that some surrogate mothers die during pregnancy or after the children are born. (Ibid: 467)

Despite these claims about serious matters regarding the surrogate mother in arrangements abroad, they are only mentioned in passing without further discussion. It is therefore confusing why and what purpose these statements have in this chapter of the inquiry. However, the prospective parents' claim that they consider themselves to have helped the woman acting as a surrogate mother to get a better life, can be linked to what Mohanty describe as the discursive construction of the "Third World woman". Mohanty (2003) declares how Third

World women have been posited as in need of saving, whereon this construction of Third World women as Other further function to authorize the role of the First World as their savior. Since the Third World woman is constructed as “ignorant, poor [and] uneducated” whereon they cannot save themselves from the forces that oppress them, the First Worlds’ assumed mission is to rescue Third World women. This discursive construction demonstrated by Mohanty seems highly evident in the above quotation where the prospective parents uphold their decision to enter a commercial surrogacy contract with a surrogate mother abroad as if they rescue the woman from her otherwise miserable life situation, hence they are doing a good deed.

To not construct the foreign surrogate mother as an agent in a similar way that is done in regard to the Swedish surrogate mother, further demonstrate this idea of agentive Western feminists in relation to passive Third World women. Mohanty calls this a “colonialist move” when Western feminisms’ by contrasting themselves to the representation of Third World women, enable a self-representation as the true “subjects” whereon Third World women can never rise above their “object” status (Mohanty 1991: 71). This results in depriving Third World women of their “historical and political agency” (Mohanty 1991: 72). However, I assess that there are complexities regarding the question of agency when it comes to women who act as surrogates. It is possible to acknowledge that the choice to become a surrogate implicate that women express a form of agency, by creating new opportunities for themselves, in the shape of monetary payment which will ease their families’ financial burdens. In this manner Third World women resist the discursive construction of surrogates as victims. Nevertheless, in the context of surrogacy the expression of agency can also be misrecognized as a form of empowerment whereas it instead reinforces the hierarchies inherent in transnational surrogacy (Gupta 2012: 47). The complexities of agency in the context of transnational commercial surrogacy thus take shape given that women could be seen to exert power whereas they also are subject to it.

5.2 RFSL Referral Statement (SOU 2016:11)

The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights is a driving organization for a regulation of surrogacy in Sweden. In their policy program (2012) they state that the opportunity to become a parent through e.g. assisted reproduction or a surrogacy arrangement must be open to everyone, regardless of relationship status. RFSL submitted in 2016 their referral statement to the Government investigation *Different paths to parenthood* (SOU 2016:11) in which they comment some of the inquiry's submitted proposals, such as surrogacy arrangements in Sweden (inquiry chapter 13) and surrogacy arrangements abroad (inquiry chapter 14). RFSL begins their referral statement to the inquiry (SOU 2016:11) by giving their complaints about that "several of the investigator's proposals are characterized by a cis- and heteronormative approach, and a lack of LGBTQ competence, which unfortunately limited the submitted proposals" (RFSL 2016: 1). This indicates that their main concern is that LGBTQI people with the current legislation do not have an equal opportunity to have children. RFSL rejects the inquiry's proposal that altruistic surrogacy agreements should not be regulated in Sweden and that the health care should not assist such arrangements. Instead, they believe that it is possible that surrogacy could be regulated by Swedish laws in such a way that both children's and pregnant women's rights are safeguarded and protected (Ibid: 4). Furthermore, they emphasize that it is of utmost importance that a potential regulation secures the right to abortion and that the woman who give birth to the child can change her mind for a certain time after the child is born, while the prospective parents would not be able to change their mind.

Moreover, RFSL consider that the inquiry has taken to little account of the conclusions drawn in existing research on surrogacy and they opine that the study conducted in the autumn of 2015 by a group of Nordic researchers (Söderström-Antilla et al. 2015) should have been referred to more in the investigation. This study concludes that the research that is available shows that in general surrogacy arrangements work out well, both for the surrogate mother, the child and the intended parents. The Government's inquiry, on the other hand, states that there is

very little research and knowledge regarding the consequences for children that have been born through surrogacy. I find that this part of their referral statement highlights the problem that Spivak (1994) draw attention to and which concern the exploration and study of foreign cultures based on experiences from people in the West which are made universal and seen as the norm. Spivak further opine that knowledge production in the West with its attempts to always define “the Other” is part of a colonial structure and is never neutral but instead expresses the interests of the knowledge producer. In relation to the study that RFSL invoke in their referral statement and which they believe the Government should have used in a more comprehensive way, it is noteworthy that this study was carried out by a group of Nordic researchers. Spivak and her formulation of the systematic way in which non-white women are deprived of their subject positions can call into question the fact that this study, which states that surrogacy agreements usually work well, is carried out by Nordic researchers who participate in an investigation in Sweden, which happens to be one of the countries where the number of children born through surrogacy increases dramatically (SVT 2018).

5.2.1 The Humanistic Discourse

In their referral statement where RFSL oppose the Government’s proposal, they also raise the issue of women’s right to bodily self-determination, whereon they state that “the reasonable order is that people are allowed to decide over their bodies, including the choice to end a pregnancy and to complete one” (RFSL 2016: 5). This contradicts the Government inquiry which indicate that it is not possible to guarantee that women who say they want to bear children for someone else have really made this decision out of their own free will, regardless of whether an investigation of the surrogate mother is made and regardless of what a potential regulation would look like. RFSL proclaim that the inquiry does not reference to any evidence-based knowledge in regard to the argument that it is not possible to guarantee that women appearing as surrogate mothers do this out of a free choice and not due to pressure. RFSL maintains that “the right to self-determination over one’s own body is an important principle, as is the belief in people’s capacity to make their own decisions” (Ibid: 6). The discourse that this claim is substantiated by is a notion of agency as not conditional, since RFSL

consider that a prohibition of surrogacy would diminish women's autonomy. RFSL demonstrate that they are of the opinion that if women are prevented from being able to act as surrogates, this violates their right to bodily self-determination. It is noteworthy to put this argument in relation to the postcolonial feminist conviction of the lasting effects of colonialism today, which are profoundly embedded in the social structures of society. This means that regardless of whether women "voluntarily" renounce the right to their bodies, their decisions cannot exist outside the imperialist, racist and colonial structures that exist in society (Mohanty 2003: 36). Consequently, it becomes relevant to talk about a limited agency as the choices of women who say they want to carry a child for someone else may be limited by different hierarchies and structures. This is something that RFSL does not seem to consider in their referral statement to the inquiry. The power relations between the global South and the global North are thus made invisible in this discussion and prevent surrogacy from being placed in its historical context based on global power inequalities.

5.3 SMER Referral Statement (SOU 2016:11)

The Swedish National Council on Medical Ethics is an advisory board to the Swedish Government and Parliament on medical-ethical issues. In 2013 SMER presented the report *Assisted Reproduction - Ethical Aspects* which formed the basis for the inquiry's directive and the upcoming investigation (SOU 2016:11). In their referral statement SMER assert that they share the inquiry's assessment that commercial surrogacy should not be allowed in Sweden whereas they do not share the inquiry's judgment that altruistic surrogacy should not be permitted in Sweden. In contrast to the inquiry SMER consider that altruistic surrogacy can be an ethically acceptable method that should be allowed (SMER 2016: 1). The Council also notes that not much new reflections has emerged since the Council's previous investigation in 2012-2013, however, the issue of proposing an appropriate regulatory framework for surrogacy arrangements is not addressed by the Council as they focus on the ethical and moral aspects of surrogacy (Ibid: 10).

5.3.1 The Right to Self-Determination Discourse

In the report (SOU 2016:11) two arguments are weighed against each other in regard to altruistic surrogacy, that is, the woman's right to self-determination and the risk that the decision to participate is prompted by external pressure or internal coercion. In the Council's referral statement, they endorse that:

The crucial question is whether a potential surrogate mother can be competent to make a decision to act as a surrogate and carry a child for another woman or family. This question is about women's right to self-determination and about the individual's ability to make decisions about his or her own life. (SMER 2016: 6)

The inquiry (SOU 2016:11) however conclude that it is not possible to ensure that the surrogate mother make her decision out of free will, without pressure or financial motives. SMER present that their views on this is that the investigation should have discussed the question of how likely it is that in a careful assessment one would not be able to identify if women are pressured into acting as surrogate mothers. Since the inquiry's view is that surrogacy should not be permitted in the Swedish health system, largely based on the assessment that one cannot rule out the risk of pressure in the individual case, SMER believes that the question of risk and proportionality in relation to the woman's ability to make autonomous decisions about whether to act as surrogate mother or not should have been accounted for (SMER 2016: 7-8).

The positive position held by SMER towards the possibility of opening up for altruistic surrogacy in Sweden could be referred to the two fundamental principles of medical ethics, which is autonomy and the right to self-determination. Their definition of this principle is that everyone should have the right to decide over their own life in accordance with their own values and wishes. The individual thus has a fundamental right to choose whether and when he or she wants to have children. Autonomy has traditionally been considered as a negative liberty, that is, it ensures freedom from restraint (SMER 2013:1: 114-115). The principles of self-determination and autonomy of women are strong and widely used arguments in support of surrogacy. In their referral statement a majority of the Council concluded that:

Women's right to self-determination and autonomy should weigh heavily in the assessment of whether altruistic surrogacy should be allowed in Sweden or not. The Council does not share the inquiry's assessment that it is not possible to determine with reasonable certainty whether the woman wants to undergo a surrogacy arrangement or not in most cases. The Council believes that women have the ability to make their own decisions about this and that it is possible to ensure through professional and careful assessment in several steps that the women who are exposed to pressure, as well as those who for psychological and medical reasons are not judged to be suitable, are detected and screened out. (SMER 2016: 9)

In this referral statement by SMER, an attempt to establish the meaning of self-determination and autonomy is thus made through the humanistic discourse. The meaning of these concepts is discursively constructed by making use of the argument about 'rational human nature'. Reason and the rational individual are seen as fundamental and not disputable in the humanistic discourse, while other interpretations and notions of self-determination and autonomy see them as illusions and a discursive myth which fail to recognize that "human subjectivity is constructed by ideology, language or discourse" (Ashcroft, Griffiths and Tiffin 2000: 6). It could be argued that the claims to agency invoked by both SMER and RFSL are made in order to mitigate the vulnerability among women acting as surrogates.

5.4 SWL Referral Statement (SOU 2016:11)

The Swedish Women's Lobby strongly opposes surrogacy and their position is that "surrogacy is a trade with women's bodies and children, as well as a threat to women's basic human rights and bodily integrity" (SWL 2013: 1). In their referral statement SWL write that they welcome the solid analysis of surrogacy presented in the final report *Different paths to parenthood* (SOU 2016:11) and they support the inquiry's proposal that neither commercial nor altruistic surrogacy should be permitted in Sweden.

5.4.1 The Exploitation Discourse

The exploitation argument is common against the commercial form of surrogacy. It is emphasized by not least SWL, that the method risks leading to exploitation of socially disadvantaged women, in this respect, reference is mainly made to women in the global South. Corresponding with the inquiry, SWL agree that it is generally difficult to imagine in advance what it means to carry and give birth to a child and then give it away. Likewise, to RFSL, SWL invokes bodily integrity to support their position. However, this is done in different ways, whereon bodily integrity in the humanistic discourse is founded on the conception of the autonomous subject, implying everyone's right to autonomy and self-determination over their own body. As shown in the aforementioned quotation SWL also invokes bodily self-determination and integrity but do this in a way where they set the meaning of bodily integrity in relation to prerequisites for exploitation. They declare that in the majority of the cases of commercial surrogacy, the prospective parents come from Western countries and the women acting as surrogates come from *developing countries* and hence there is an unequal power-balance. SWL state that "becoming a surrogate mother is a way for women in socially vulnerable positions to sell what fundamental human rights should protect them from being forced to sell – their own bodies" (SWL 2013: 2). Drawing on this portrayal of surrogacy SWL assert in their referral statement that:

Surrogacy clinics and various associated companies are constantly looking for new establishments, especially in poor countries, to find surrogate mothers. When countries close their markets to foreign buyers due to the exploitation of women and children that has arisen, e.g. in India and Thailand, the industry has moved to other, often poor countries where a market with women and children has proved possible. In parallel with this, surrogacy clinics and associated companies are increasingly establishing themselves in Sweden and other richer countries to find buyers. (SWL 2016: 1)

By highlighting the inherent power inequalities between commissioning parents and surrogate mothers SWL further establish surrogacy as an exploitative arrangement of women's bodies. Given that people in the West are portrayed as taking advantage of women in low-income settings, commodifying their bodies.

Building on this exploitative discourse, SWL declares that since these women often come from poor backgrounds “their conditions of living do not allow them a fair array of choices when it comes to making a living or to make a choice that does not compromise their bodily integrity” (SWL 2013: 3). This demonstrate that their conceptualization of free choice and bodily integrity implicate that the surrogacy contract divest the surrogate mother of her autonomous, decision-making rights. This is in contrast to RFSL that emphasize bodily integrity as the right to self-determination over one’s own body, which implicate the right to contract freely into a surrogacy arrangement. Furthermore, SWL allege that:

It is impossible to ensure that the woman's consent has not been prompted by pressure, feelings of internal coercion or hidden economic motives. [...] The Swedish Women's Lobby wants to emphasize the similarities between commercial and altruistic surrogacy. Even an altruistic surrogacy presupposes a contract about the right to the woman's body and the right to the child. (SWL 2016: 1)

SWL highlight that it is highly problematic to speak of free will and women’s own choice in these contexts, making use of the fact that a study on surrogate mothers in Anand, India revealed that 50% of the women were illiterate and thus unable to read the contracts they were signing (SWL 2013: 2). Corresponding to chapter 13 in the inquiry (SOU 2016:11) SWL also put forth the issue of free and informed consent. This is framed as concerns about the extent to which women acting as surrogates are influenced by social and economic pressures and are exploited through racial and cultural inequities.

The right to enter into an agreement with another individual is not absolute, and never has been. It is forbidden to stipulate a crime, for example a murder, and you cannot enter into an agreement where you give yourself away as a slave to another person, even if both parties are in full possession of their faculties. Contractual freedom only goes so far. The Swedish Women’s Lobby views surrogacy motherhood as a contract of temporary serfdom, where the surrogate mother waives her rights to bodily integrity during the pregnancy, and therefore the contract is to be considered invalid. (SWL 2013: 3)

Drawing on the humanist discourse and the position of RFSL - which emphasize that freedom and self-determination for women also include the freedom to

contract for labor - the aforementioned quotation show that SWL address this argumentation by pointing out that contractual freedom in fact has its limitations. Therefore, to invoke on the right to contract freely when justifying the choice to sign off the right to one's own body in a surrogacy contract, SWL regard as not legitimate. From a postcolonial perspective this illustrate that the humanist discourse is missing an intersectional analysis that includes the role that race, gender and class inequalities plays and that agency cannot exist outside these structures. The floating signifiers is in the referral statement by SWL thus established with meaning through the exploitation discourse. The meaning is discursively constructed by use of a poststructuralist position on subjectivity which indicate that "it may be difficult for subjects to escape the effects of those forces that 'construct' them" (Ashcroft, Griffiths and Tiffin 2000: 6).

6 Concluding Remarks

This thesis set out to answer the question of how agency and the individual's right to self-determination are expressed in the Swedish political discourse on surrogacy and how such discourses can be understood from a postcolonial feminist perspective. A great deal has been said and written about the sensitive and controversial issue of surrogacy which becomes clear in government investigations and referral statements from various political actors and national bodies. The inquiry *Different paths to parenthood* concluded that surrogacy arrangements should not be permitted in Sweden, neither commercially nor altruistically. Autonomy and self-determination are key issues that were prominent in the inquiry's argumentation and which also are central to the debate on surrogacy. They center around whether surrogacy should be constructed in terms of self-determination, choice and the individual's right to autonomy or exploitation and constrained agency. Findings from the study suggest that when actors attempt to put forth their agenda on surrogacy in the Swedish political discourse, they are negotiating agency, whereon competing discourses represented by different actors such as RFSL and SWL try to invest agency with their meaning. The Government investigation as well as SMER in their referral statement address the exploitation risk in surrogacy, while also considering a humanistic construction of agency in their deliberations.

Commercial surrogacy has opened up a new emerging market where the child becomes a 'product' and the woman's body becomes a 'resource'. This method of assisted reproduction, which from the beginning aimed at helping involuntarily childless to fulfill their desire for a child, has turned into a lucrative billion-dollar industry that enables a commodification of the female body, motherhood, and children. This portrayal of surrogacy is prominent in the exploitation discourse and corresponds with how it could be understood from a postcolonial feminist perspective, which is displayed in the analysis. The analysis further reveals complex social and ethical issues associated with surrogacy, where different

actors are struggling to invest agency with their meaning, whereon some argue against the exploitation discourse but simultaneously they are uncertain of the conditions of the whole process as well as if the surrogate mothers are well protected in the arrangements.

The articulation of agency and how it is given meaning differ in the political discourse about surrogacy in Sweden as competing discourses on surrogacy represented by different political actors such as RFSL and SWL struggle to invest it with their meaning. The language of agency, when called forth in the context of surrogacy and particularly in the humanistic discourse, can potentially disavow the Western hegemonic construction of “Third World women” as powerless and victimized and rather situate them as active and autonomous agents. Nevertheless, to use the humanistic construction of agency as the frame of reference in an analysis of surrogacy has the drawback of establishing and normalizing prevailing unequal power relations and global Norths (colonial) exploitation of the global South. This entails that to construct the “Third World woman’s” choice to become a surrogate as empowering merely based on self-determination, autonomy and free choice and to idealize her status as a subject on these grounds without taking into consideration that this happens within broader exploitative contexts, overlooks the structural inequalities in which she exercises her agency. To romanticize and justify women’s agency in this manner in order to reinforce subaltern experiences even under deeply exploitative circumstances, prevents a reasoning about larger structures of power which the surrogate is not detached from. Although surrogacy should not always be seen just as oppression of women since there are many ways that women enact agency, however limited, it cannot only be seen as an expression of free agency either since that requires an ability to formulate different choices. This indicates that a choice between poverty and surrogacy cannot be stipulated as a free choice. This is a viewpoint demonstrated by SWL who declares that the conditions of living for women from poor backgrounds do not allow them a fair array of choices. As shown in the Government inquiry women might feel compelled to act as surrogate mothers due to financial reasons or they have been pressured into becoming surrogates. This is something that the humanistic discourse fails to address when only constructing an empowered sense of agency and surrogacy in terms of choice.

By prioritizing individual choice and action, as done by RFSL in their referral statement and to advocate surrogacy as a manifestation of women's freedom of choice and as a platform impoverishing women to take control over their bodies and reproduction, has the potential to reproduce discourses that overlook structural inequities that constrain women's agency. The power relations between the global North and the global South are invisible in this construction of agency and prevents surrogacy from being placed in its historical context based on the global dimensions of power, and rather makes the uneven distribution of resources look natural. The exploitation discourse which became prominent in the referral statement by SWL instead revealed the discriminating elements and violation of women's bodies that is apparent in both the global North and global South but which some actors fail to notice and address. In their discursive construction of agency, they rather make an account of a notion that self-determination and choice may coincide with structural oppression and constraint. For this reason, they acknowledge that there are power structures that operates beneath the surface appearances of 'free choice without external constraints'. This articulation demonstrates that no one exists in a socio-cultural vacuum and that surrogacy in many contexts stratifies societies.

To frame surrogacy as a single-issue politics, that is to construct it only in terms of empowerment on the grounds of choice, is a highly problematic claim from an intersectional perspective since this type of single-issue framing result in reductive analyses of power based on a single axis of social division. The postcolonial approach in this thesis contributed to the analysis by exposing the impact of inherited power relations and the structures of power established by the colonizing process, which remain pervasive in contemporary global politics. Since postcolonial feminist theory and the question of agency has been guiding the work, the analysis has been limited to those parts of the material that touch on this. Thus, there is potential to go through the material with other theories and research questions, that for instance would look at a legalistic discourse and the legal aspects when it comes to *hiring* women to bear children. However, to delve deeper into such issues a theory other than postcolonial feminism could be more suitable.

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