

## **Persons and women, not womb-givers**

### **Reflections on gestational surrogacy and uterus transplantation**

#### **Abstract**

In a recent article in this journal, Alex Mullock, Elizabeth Chloe Romanis and Dunja Begović provide an analysis of gestational surrogacy and uterus transplantation (UTx) from the perspective of those who may decide to act as gestational surrogates and womb donors, referred to as “womb-givers”. In this paper, I seek to advance two sets of claims aimed at critically engaging with some aspects of their analysis. Firstly, I argue that the expression “womb-givers” obscures the biologically, socially and politically salient issue that those who engage in these practices are primarily persons and women. My contention is that this is of substance in discussions of such burdens and benefits, which need to consider the specific position that women occupy in society, and the hierarchies that mediate their lives, experiences and preferences. Secondly, I argue that, if one were to take seriously the experiences and preferences of the women who may engage in these practices, and their bodily autonomy, then gestational surrogacy and UTx should be regarded as biologically and socio-politically incommensurable. Mullock et al. overlook important aspects of gestational surrogacy, such as the embodied nature of pregnancy and childbirth, the socio-political significance of these experiences, and the often-oppressive social norms that shape them. Whilst biology is not destiny, I suggest that it is socially and politically thick when it comes to this significance and norms, especially within the sphere of reproduction. Towards the end of the paper, I query the authors’ conceptualisation of bodily autonomy and of the instruments that enable its respect and promotion.

#### **Keywords**

Gestational surrogacy; uterus transplantation; bodily autonomy; assisted reproduction; feminism; gestation; embodiment

## Introduction

In ‘Surrogacy and uterus transplantation using live donors: Examining the options from the perspective of “womb-givers”’, Alex Mullock, Elizabeth Chloe Romanis and Dunja Begović provide an analysis of two practices that, in their words, “females without a functioning womb”<sup>1</sup> can rely upon to have children that are genetically related to them: gestational surrogacy and uterus transplantation (UTx).<sup>2</sup> The authors’ focus is however on the subjects at the other end of these practices, i.e., the women who would be acting as gestational surrogates and/or womb donors, referred to throughout as “womb-givers” or “WG”. Mullock et al.’s aim is to canvass the burdens, benefits and subjective experiences of the so-called “womb-giver” and establish what practice would be more desirable *from their perspective*. The authors devise a scenario wherein Bea, an imaginary woman, wishes to enable her sister, Ali, affected by absolute uterine factor infertility, to have genetically related children. In their scenario, Bea is confronted with the decision to act as a gestational surrogate or to donate her womb. This enables Mullock et al. to examine the relative desirability of each practice and assess the burdens, benefits, especially of relational nature, and subjective experiences of what they construe as **an** unified subject: the womb-giver. The authors’ conclusions—other than reiterating the necessity of giving primary importance to the subjective experiences and preferences of the potential surrogate and/or donor—tentatively cast gestational surrogacy as a less clinically risky practice and hence, at present, preferable to UTx.

I will return to the authors’ conclusions in the next section, in which I briefly outline their appraisal of the burdens and benefits associated with gestational surrogacy vis-à-vis UTx. For

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<sup>1</sup> Such a group, as they explain in the article, comprises those that experience absolute uterine factor infertility and are unable to gestate children as a result.

<sup>2</sup> Mullock, A., Romanis, E.C., & Begović, D. (2021). Surrogacy and uterus transplantation using live donors: Examining the options from the perspective of ‘womb-givers’. *Bioethics*. 1–9. <https://doi.org/10.1111/bioe.12921>

now, it is important to note that Mullock et al.'s analysis is innovative and in line with what I believe to be normatively desirable ends. Firstly, unlike other discussions of these practices, it meticulously canvasses *both* the burdens on and the benefits to those who engage in gestational surrogacy and UTx. Secondly, as the authors note, the autonomy and reproductive options of the women who experience infertility are often taken to be the most, and sometimes the only, central aspect of discussions on the desirability of these practices. Their analysis is instead explicit in its commitment to respecting and promoting the bodily autonomy of those at the other end of these practices; and to taking into consideration their unique perspective and experiences. What motivates my response to their article is hence not a disagreement about the value of bodily autonomy or the significance of experiences and preferences in these matters; I agree with the authors' conclusion that both are of paramount importance.

Despite these merits, I find some aspects of the authors' examination of gestational surrogacy and UTx problematic; overall, it risks falling short of considering important features of the subjective experiences of women who act as gestational surrogates or who donate their wombs as well as how these experiences are socially, culturally and politically mediated. Therefore, building on a critique of some elements of Mullock et al.'s analysis, this paper advances three claims. Initially, that those who engage in gestational surrogacy and UTx are first and foremost persons (and women: more on this in a moment), and that this is a biologically, socially and politically salient issue. Secondly, I argue that—if such a salient issue is taken on board in the theorising over the two practices—it becomes apparent that such practices should be regarded as incommensurable, and that analyses of the burdens and benefits of each practice should be kept distinct. Thirdly, in closing, I query Mullock et al.'s conceptualisation of “bodily autonomy” and of the instruments that enable its respect and promotion.

My argument in this paper is structured as follows. I begin by outlining key aspects of Mullock et al.'s analysis of the burdens and benefits of gestational surrogacy and UTx, and lay out their

conclusions. Then, I advance three claims: that such an analysis requires a shift from the concept of “womb-givers” to that of “women”; that gestational surrogacy and UTx should be regarded as incommensurable from a biological and socio-political perspective; and that to truly respect and promote women’s bodily autonomy, it is necessary to engage with the conditions and oppressive norms that may hinder the free exercise of bodily autonomy.

A note before proceeding. Whilst all of those who engage in gestational surrogacy and UTx are persons, not all of them are (cis) women, as per Mullock et al.’s note. Even if, at present, the vast majority are women, trans men could also be potential “womb-givers”. This is a salient biological, social and political issue, one that—in societies characterised by discriminatory attitudes towards trans persons—does give rise to a number of normatively significant implications that warrant close consideration. My focus in this paper is however limited to the women who may engage in gestational surrogacy and UTx, and the biological, social and political aspects of this. I will say more about this below, but, for now, suggest that even if the expression “womb-giver” might be *prima facie* more inclusive, it is so at a certain cost: that of overlooking the specific aspects of the experience of women who engage in these practices and their surrounding socio-political circumstances.

### **Surrogacy and UTx in Mullock et al.’s analysis**

The authors’ article begins with a discussion of gestational surrogacy. They maintain that this practice is relatively onerous in terms of its length and nature: it lasts around 24 months; it entails several steps, including embryo transfer, gestation and birth; and it is fraught with potential for complications and risks that seldom arise in traditional forms of gestation and childbirth. Moreover, they note, unlike such forms of gestation and childbirth, it involves several additional parties, including the commissioning parents, as well as close monitoring; it

carries the risk of being exploitative and of not being adequately consented to; it necessitates a certain degree of emotional labour; and it may have adverse psychological effects due to the need to surrender the child that the surrogate has gestated and birthed. Mullock et al. conclude their appraisal of this practice by surveying its benefits, which range from psychological gains associated with having performed an altruistic act to more specific gains pertaining to the relational aspects (or, more accurately, the *potential* relational aspects) of being part of the new family unit that the gestational surrogate has helped to create.

Next, the authors move to an examination of UTx, a relatively novel practice that entails the removal of the womb of the woman who acts as a donor womb: commonly referred to as a hysterectomy. The authors list several reasons as to why UTx is complex, invasive and potentially risky, especially compared to hysterectomies performed for medical reasons. It entails the removal of the surrounding blood vessels alongside the womb; when performed as an open surgery rather than laparoscopically,<sup>3</sup> it lasts longer, carries increased risks and involves a more painful recovery; and it does not yield any clinical benefits for the donor.<sup>4</sup> Additionally, the potentially invasive nature of the procedure, the risk of complications, the lack of clinical benefits and the lengthy recovery time contribute to a greater risk of long-term physiological, physical and psychological side effects.<sup>5</sup> For these reasons, Mullock et al.

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<sup>3</sup> It is increasingly carried out laparoscopically: Brännström, M., Kvarnström, N., Groth, K., Akouri, R., Wiman, L., Enskog, A., & Dahm-Kähler, P. (2020). Evolution of surgical steps in robotics-assisted donor surgery for uterus transplantation: Results of the eight cases in the Swedish trial. *Fertility and Sterility*. 114(5), 1097–1107. <https://doi.org/10.1016/j.fertnstert.2020.05.027>. I am grateful to one of the anonymous reviewers for bringing this to my attention.

<sup>4</sup> Mullock, Romanis, Begović (op. cit. n. 2); Brännström, M., Dahm Kähler, P., Greite, R., Mölne, J., Díaz-García, C., & Tullius, S.G. (2018). Uterus transplantation: A rapidly expanding field. *Transplantation*. 102(4), 569–577. <https://doi.org/10.1097/TP.0000000000002035>

<sup>5</sup> Mullock, Romanis, Begović (op. cit. n. 2) : 1–9 O’Donovan, L. (2018). Pushing the boundaries: Uterine transplantation and the limits of reproductive autonomy. *Bioethics*. 32(8), 489–498. <https://doi.org/10.1111/bioe.12531> Kisu, I., Mihara, M., Banno, K., Umene, K., Araki, J., Hara, H., ... Aoki, D.

observe that “UTx seems difficult to justify from a clinical and ethical perspective”.<sup>6</sup> In light of their commitment to providing an appraisal of *both* the burdens and the benefits of each practice, they also observe that some may wish to rid themselves of their wombs, such as those with a family history of cervical cancer; and that UTx might be preferable to surrogacy in that a surgery with a six-to-eight-week recovery period would be less burdensome than “the lengthy process of being a surrogate”, which entails “getting pregnant, being pregnant, giving birth”.<sup>7</sup> Lastly, UTx might generate similar benefits to gestational surrogacy with respect to the psychological and relational aspects of enabling someone to have genetically related children. Whilst the authors note that the options available to those who may want to engage in gestational surrogacy or UTx entails “whether and how” they use their body “to help the womb-seeker”<sup>8</sup>, some of the benefits that the authors list with respect to UTx are comparative; i.e., they are benefits of deciding to undergo UTx *instead of* becoming a gestational surrogate. For instance, they argue:

Bea might also prefer to have a surgery with a 6–8-week recovery window than to undergo the lengthy process of being a surrogate; getting pregnant, being pregnant, giving birth. Uterus retrieval is an invasive option, but surrogacy is also invasive and for a much longer period.<sup>9</sup>

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(2013). Risks for donors in uterus transplantation. *Reproductive Sciences*. 20(12), 1406–1415. <https://doi.org/10.1177/1933719113493517>

<sup>6</sup> Mullock, Romanis, Begović (op. cit. n. 2) : 7

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. : 9

<sup>9</sup> Ibid. : 7

This way of framing women's decisions to engage in these practices should, in my view, be resisted. The reason for this is that the women making decisions regarding their bodies and options are unlikely, given the substantive differences between the two practices, to weigh up the comparative burdens and benefits of gestational surrogacy vis-à-vis UTX. Such a scenario only materialises if we consider women as "womb-givers"; i.e., as a unified category of beings whose options and bodily autonomy are constrained. But, as I argue below, the expression "womb-givers" is problematic and these practices should be regarded as incommensurable.

Before moving on to this issue, I wish to briefly outline the authors' final reflections. The authors suggest that "surrogacy might, in the current circumstances, be deemed preferable by more prospective womb-givers because it is more likely to be successful and might be conceptualized as less clinically risky overall".<sup>10</sup> But their "only firm conclusion" is that "the preferences of the womb-giver should be central in order to give the utmost respect to their personal experiences, relational perspective and bodily autonomy".<sup>11</sup> This is very important and should be at the centre of any normative analysis of reproductive technologies, especially those like heterologous artificial insemination, gestational surrogacy and UTX, among others, which necessarily involve other parties than the prospective parents. To honour such a commitment, however, the language employed in the article and the burdens and benefits considered in the appraisal of gestational surrogacy and UTX need to be replaced with an analysis that seriously engages with the subjects that are involved in these practices and with the salient biological, social and political dimensions of this engagement.

In the next section, I explain why I find the expression "womb-giver" problematic and why it should not be used in these discussions. Then, building on feminist scholarship on the

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<sup>10</sup> Ibid. : 9

<sup>11</sup> Ibid.

embodied nature of pregnancy and childbirth, I posit that gestational surrogacy and UTx be regarded as incommensurable from a biological and socio-political perspective. In closing, I query Mullock et al.'s characterisation of the concept of "bodily autonomy". I propose that to truly respect and promote bodily autonomy, one needs to engage with the material conditions and oppressive social norms that may hinder this.

### **Persons and women, not womb-givers**

The first claim I wish to advance in this paper is that those who may engage in gestational surrogacy and UTx are *persons* and, most of the time, *women*. This, arguably, is of substance for normative appraisals of the desirability of engaging in these practices, and of the relative burdens and benefits associated with them. It is for this reason that the characterisation of the women who engage in these practices as "womb-givers" should be resisted where possible.

In two footnotes, Mullock et al. explain that they use "person" (which they drop soon thereafter) as this term is more "inclusive" than "woman", which is "both too narrow and too broad to describe those with the physiology to carry a pregnancy".<sup>12</sup> They use "womb-giver" as this is "the most adequate term" for the purpose of their discussion, for it encompasses "both people temporarily 'leasing' their womb and those donating their womb".<sup>13</sup> Now, the view that I wish to put forward in this section is that such characterisations of those who engage in gestational surrogacy and UTx should be resisted.

Depicting those who engage in gestational surrogacy and UTx as "womb-givers" risks objectifying them: something that, as the early work of feminist scholars has shown, both

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<sup>12</sup> Ibid. : 2

<sup>13</sup> Ibid.



embodies and sustains unequal gender relations. In addition to the risk of objectification, the expression “womb-giver” risks obscuring the specific experience and position in society of (most of) the persons who engage in gestational surrogacy and womb donation: women.<sup>14</sup>

Historically, women’s bodies and their reproductive capacities have been used to oppress and to exercise control over them. This, in my view, should be taken as an integral part of the theorising about the desirability of reproductive technologies and practices to facilitate efforts to engage with and resist this history and contemporary iterations of oppression and control.

The concept of objectification is central to feminist theory.<sup>15</sup> Foundational work on this notion by feminist scholars such as Catriona MacKinnon<sup>16</sup> and Andrea Dworkin<sup>17</sup> is mostly concerned with *sexual* objectification in the context of pornography. According to MacKinnon and Dworkin, objectification occurs when a person is treated like an object, when such a person loses everything but their instrumental worth. In their work, this notion is linked to men’s consumption of pornography, which both typifies gender inequality and creates the conditions to sustain such inequality. Other authors have expanded on the concept of objectification by

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<sup>14</sup> Additionally, the authors refer to the persons who wish to have genetically related children and are unable to do so as both ‘females without a functioning womb’ and ‘womb-seekers’. This is, I believe, problematic. With respect to ‘womb-seeker’, I have similar views to ‘womb-giver’: it risks objectifying those who engage in gestational surrogacy and UTx, and it obscures distinctive biological and socio-political issues associated with this engagement. Also, using the expression ‘female’ for one party and ‘womb-giver’ for the other is problematic. It draws a line between the two, and, with it, it undermines the unity of women as a political entity. This unity need not and should not be achieved in exclusionary ways. Despite this, I believe it to be necessary to uncover, and resist, forms of oppression specifically directed at and experienced by women.

<sup>15</sup> For a review, see: Papadaki, L. (2010). What is objectification? *Journal of Moral Philosophy*. 7(1), 16–36. <https://doi.org/10.1163/174046809X12544019606067>

<sup>16</sup> MacKinnon, C.A. (1989). Sexuality, pornography, and method: Pleasure under patriarchy. *Ethics*. 99(2), 314–346. <https://doi.org/10.1086/293068> MacKinnon, C.A. (1989). *Toward a Feminist Theory of the State*. Boston, MA: Harvard University Press.

<sup>17</sup> Dworkin, A. (1989). *Pornography: Men Possessing Women*. New York, NY: E. P. Dutton. Dworkin, A. (1985). Against the male flood: Censorship, pornography, and equality. *Harvard Women’s Law Journal*. 8, 1–30.

going beyond instrumentality.<sup>18</sup> For instance, according to Martha Nussbaum, treating a person as an object involves more than using them as a “tool for his or her purpose”.<sup>19</sup> It involves denying their autonomy, agency, integrity and some additional features of their humanity.<sup>20</sup> But this idea of objectification is also relevant, as Carolyn McLeod purports,<sup>21</sup> to the realm of (assisted) reproduction. Indeed, feminist scholars and activists, and fierce critics of assisted reproductive technologies, such as Janice Raymond<sup>22</sup> and Gena Corea,<sup>23</sup> see in them both the expression and the promotion of the idea of women as breeders.<sup>24</sup> Tellingly, Raymond’s work on assisted reproductive technologies carries the title of *Women as Wombs*. In Raymond’s and Corea’s work, women are reduced to and identified with their reproductive organs and functions, and it is this objectification that grounds their oppression. As I argue below, even if one does not entirely subscribe to these views on reproductive technologies, as I do not, the risk of these technologies contributing to objectifying persons is very much present. It is therefore important to use expressions that resist the objectifying tendencies that may underly discourses on and uses of reproductive technologies and practices, and to remember that those

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<sup>18</sup> Papadaki (op. cit. n. 17) : 16–36

<sup>19</sup> Nussbaum, M.C. (1995). Objectification. *Philosophy & Public Affairs*. 24(4), 249–291. <https://doi.org/10.1111/j.1088-4963.1995.tb00032.x>

<sup>20</sup> For a complete list of what Nussbaum calls the ‘seven ways to treat a person as a thing’, see Nussbaum (op. cit. ibid.)

<sup>21</sup> McLeod, C. (2002). Mere and partial means: The full range of the objectification of women. *Canadian Journal of Philosophy*. 28, 219–244. <https://doi.org/10.1080/00455091.2002.10717588>

<sup>22</sup> Raymond, J.G. (1995). *Women as Wombs: Reproductive Technologies and the Battle Over Women’s Freedom*. Melbourne, AU: Spinifex Press.

<sup>23</sup> Corea, G. (1987). *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs*. New York, NY: Harper Collins. Corea, G. (1985). How the new reproductive technologies could be used to apply the brothel model of social control over women. *Women’s Studies International Forum*. 8(4), 299–305. [https://doi.org/10.1016/0277-5395\(85\)90011-1](https://doi.org/10.1016/0277-5395(85)90011-1)

<sup>24</sup> McLeod (op. cit. n. 23) : 219–244

who engage in gestational surrogacy and UTX, before being “donors”, “leasers”, “givers” or “surrogates”, are first and foremost persons.<sup>25</sup>

In addition to the concept of objectification, another central theme in feminist theory is oppression “on the basis of sex”; that is the kind of oppression directed towards women qua women, which originates in their bodies and reproductive capacities. For this reason, one could argue that the history of feminism is the history of women’s struggles to gain and retain control over their biological destinies and their bodies. Traditional feminist slogans such as “My Body My Choice” epitomise this and emphasise the importance of being in control of one’s own body and the right to exercise bodily autonomy. Following this view, women’s oppression originates in the biological differences between men and women,<sup>26</sup> and in the socio-political meanings that these differences have acquired. To be clear: one does not need to surrender to essentialism to view the biological differences between men and women, and women’s specific role in gestation and childbirth, to get to the root of women’s oppression “on the basis of sex”. Moreover, it is not just biology that matters: the social norms and roles that have modelled these differences have further contributed to women’s oppression in different spheres of their lives: from the home to the workplace.

To resist these oppressive norms, it is necessary to consider the particular position that “womb-givers” occupy in society, and the hierarchies that mediate their lives, experiences and preferences. In other words, it is necessary to theorise about women’s engagement in assisted reproduction by taking as a starting point the contextual circumstances of such an engagement,

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<sup>25</sup> I am indebted to one of the anonymous reviewers for prompting this broader understanding of objectifying terminology.

<sup>26</sup> Biological differences concern mostly women’s reproductive capacities, but, as Giulia Cavaliere argues, they need not be limited to them. See: Cavaliere, G. (2020). Ectogenesis and gender-based oppression: Resisting the ideal of assimilation. *Bioethics*. 34(7), 727–734. <https://doi.org/10.1111/bioe.12789>

and the oppressive social norms and gender inequality that contribute to shaping them. In my view, not doing so risks being akin to producing colour-blind and class-blind analyses, which end up ignoring rather than dismantling race-based and class-based forms of oppression. As **Giulia Cavaliere argues**, building on Iris Marion Young's work, liberating projects such as those that would promote bodily autonomy can be grounded in the idea of treating female biology, the roles that women occupy in society and their specific lived experiences as strengths rather than liabilities. It is for these reasons that when discussing gestational surrogacy and UTx—and especially their relative burdens and benefits—it is important that it is *women* who engage in these practices. The position that women occupy in society necessarily influences the kind of burdens (as well as benefits) that those who engage in these practices will experience. Thus, in addition to the burdens that Mullock et al. identify, there are those uniquely linked to being a woman in a society characterised by gender inequality.

### **Incommensurability and the body**

In the previous section, I have argued that the expression “womb-givers” carries the risk of being objectifying and masking the subjects who engage in gestational surrogacy and UTx and their specific experiences. There are, however, additional good reasons to refrain from using this expression. The use of “womb-givers” gives the mistaken impression that those, in Mullock et al.'s words, “temporarily ‘leasing’ their womb” and those “donating their womb” can be regarded as a unified category. My issue with this is conceptual rather than terminological: if women are collectively portrayed as “womb-givers” *then* it makes sense to carry out a normative appraisal of gestational surrogacy vis-à-vis UTx from the perspective of those who may engage in these practices. But, if one were to take seriously the subjective experiences of these women, their bodily autonomy and the circumstances in which such

autonomy is exercised—as Mullock et al. purport to do— *then* the two practices should be regarded as incommensurable and the women who may engage in them should not be considered a unified category.

To clarify: in the literature on the moral permissibility and desirability of UTx, it is common to find comparative analyses of this practice and gestational surrogacy.<sup>27</sup> The reason for this is that, if one does not take into account UTx, women with absolute uterine factor infertility (AUF) who wish to have children have only two options: adoption and gestational surrogacy. If one were to discuss the perspectives and experiences of these women then comparative analyses seem apt. Moreover, it has been argued that a concern for the respect and promotion of *their* reproductive autonomy may provide a prima facie reason to allow these women to access UTx.<sup>28</sup> But Mullock et al.’s article seeks to do something different: to examine the relative burdens and benefits of gestational surrogacy and UTx from the perspective of those who may decide to carry a child on behalf of women with AUF or donate their uteri to them. Additionally, it seeks to establish which option, if any, better respects and promotes these women’s bodily autonomy.

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<sup>27</sup> See for instance: Kirby, J. (2021). An ethics-informed, comparative analysis of uterus transplantation and gestational surrogacy for uterine factor infertility in high-income countries. *Journal of Bioethical Inquiry*. 18(3), 417–427. <https://doi.org/10.1007/s11673-021-10114-2> Guntram, L., & Williams, N.J. (2018). Positioning uterus transplantation as a ‘more ethical’ alternative to surrogacy: Exploring symmetries between uterus transplantation and surrogacy through analysis of a Swedish government white paper. *Bioethics*. 32(8), 509–518. <https://doi.org/10.1111/bioe.12469> Testa, G., Koon, E.C., & Johannesson, L. (2017). Living donor uterus transplant and surrogacy: ethical analysis according to the principle of equipoise. *American Journal of Transplantation*. 17(4), 912–916. <https://doi.org/10.1111/ajt.14086> Robertson, J.A. (2016). Other women’s wombs: Uterus transplants and gestational surrogacy. *Journal of Law and the Biosciences*. 3(1), 68–86. <https://doi.org/10.1093/jlb/lsw011>

<sup>28</sup> For a discussion of this, see for instance: O’Donovan (op. cit. n. 7) : 489–498

In this section, I argue that the analysis that Mullock et al. develops seems to be at odds with the focus and aim of their article, and the moral and political values that they defend. I purport that, if what matters are the perspectives and experiences of the women who may engage in gestational surrogacy and UTx, and their bodily autonomy, these two practices should be regarded as incommensurable from a biological and socio-political perspective.<sup>29</sup> More specifically, it is my view that the embodied nature of pregnancy and childbirth vis-à-vis the disembodied (from the perspective of the woman who may donate her womb) nature of a pregnancy carried out by another woman **make** the two practices biologically incommensurable. But my contention is that they are also incommensurable from a socio-political perspective, due to the acquired social and political meanings of gestation and childbirth and the (gendered) social and political norms that surround these activities. My views thus differ from those of Mullock et al. in that I adopt an approach that regards certain aspects of gestation and childbirth as salient from a biological and a socio-political perspective, and in that I do not consider comparative analyses of the burdens and benefits of gestational surrogacy vis-à-vis the burdens and benefits of UTx to do justice to such a perspective.

Opposition to gestational surrogacy is rife within feminist scholarship. One of the main reasons for this is that the body of a woman is employed by third parties to fulfil *their* desire for genetic parenthood. This, for some, makes gestational surrogacy, at least prima facie, an exceptional case with respect to other reproductive technologies and practices. But regardless of one's view of gestational surrogacy and regardless of one's agreement with the critiques of this practice advanced by feminist theorists, their contribution is important as it brings to the fore a broader, less contentious, claim: how features and capacities of the female body can be employed to oppress and control women. Even in jurisdictions that have outlawed spousal rape, as well as

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<sup>29</sup> I am thankful to one of the anonymous reviewers for their helpful suggestions about this specific issue.

pregnancy and maternal workplace discrimination, and that have legalised abortion and contraception, social norms are still playing catch-up and women continue to suffer from more or less explicit forms of discrimination, with more or less tangible effects. Normative analyses of assisted reproductive technologies and practices that make the experiences, preferences and bodily autonomy of the women who carry children for others or donate their uteri need to grapple with the idea that the body (and particularly the bodies of women) should play an important role in the theorising about these technologies and practices, if only because gendered oppression has often originated in the bodies of women and their reproductive capacities.

a.<sup>30</sup> Biologically, a woman ceases to be an entirely separate entity from the foetus she carries.

As Margaret Olivia Little puts it:

To be pregnant is to be *inhabited*. It is to be *occupied*. It is to be in a state of physical *intimacy* of a particularly thorough-going nature. The fetus intrudes on the body massively; whatever medical risks one faces or avoids, the brute fact remains that the fetus shifts and alters the very physical boundaries of the woman's self.<sup>31</sup>

Thinking about gestation and childbirth in terms of womb-giving obscures the fact that the woman who is gestating does not just give away her uterus for a while. The foetus she is

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<sup>30</sup> This, importantly, does neither mean that all surrogates will experience the relationship with the foetus they carry in the same way, nor that they will necessarily develop forms of emotional attachment and bonding. After all, the empirical literature on both surrogacy and abortion has repeatedly shown that this is often not the case. But this does not let the authors' disembodied analysis of gestation and childbirth off the hook, if only for the socio-political meanings inherent in these experiences.

<sup>31</sup> Little, M.O. (1999). Abortion, intimacy, and the duty to gestate. *Ethical Theory and Moral Practice*. 2(3), 295–312. <https://doi.org/10.1023/A:1009955129773>

gestating is, in a saliently biological sense, part of her.<sup>32</sup> Additionally, as I have discussed in the previous section, gestating and birthing are specific actions that women perform, which, in turn, have acquired a certain socio-political significance and are both shaped by and contribute to shaping social norms. Biology is not destiny, but it is socially and politically enmeshed with this significance and norms, especially with respect to the sphere of reproduction, albeit not limited to this.

It is for these reasons that gestational surrogacy and UTx should be regarded as incommensurable: at the centre of normative assessments of reproductive technologies and practices there should be both subjects and bodies, and discussions of how these subjects and bodies are in the world. These should in my view consider how these subjects' experiences contribute to "making" them and the world around them,<sup>33</sup> and how the world around them—including the potentially oppressive social norms that shape the experience of being a woman, *and* being a woman who is gestating (for somebody else)—mediates their decisions and preferences.

### **Bodily autonomy and preferences**

In addition to drawing attention to the key importance of embodiment and to the particular biological and socio-political meanings of gestation and childbirth, another important contribution of feminist scholarship to discussions of assisted reproductive technologies and

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<sup>32</sup> Kingma, E. (2019). Were you a part of your mother? *Mind*. 128(511), 609–646. <https://doi.org/10.1093/mind/fzy087>

<sup>33</sup> Here I am building on the work of Catherine Mills. I owe to her this idea of thinking about 'bodily autonomy' as a practice of self-making. See: Mills, C. (2013). Reproductive autonomy as self-making: Procreative liberty and the practice of ethical subjectivity. *Journal of Medicine and Philosophy*. 38(6), 639–656. <https://doi.org/10.1093/jmp/jht046>



practices has been to question the concept of women's "choice" in these matters.<sup>34</sup> The idea here is not that women do not have agency. Rather, it is to question (and resist) the socio-political norms and circumstances that constrain such agency in oppressive ways.

Before delving into the reasons why any analysis that puts the concept of "bodily autonomy" at its centre requires a more nuanced and critical understanding of this concept than what Mullock et al. offer in their article, I briefly outline their discussion of bodily autonomy. At the outset, Mullock et al. stipulate that this concept should entail "allowing them [the 'womb-givers'] to make choices about assisted gestation".<sup>35</sup> Subsequently, they explain:

[T]he situation from the womb-donor's perspective is actually a matter of bodily autonomy. In deciding *how* they want to assist by sharing or giving their womb, a person is deciding on *how* they use their *body* to assist.<sup>36</sup>

In addition, Mullock et al. note that:

[T]he most important aspect of the decision of assisted gestation is the bodily autonomy of the potential WG and their informed consent to the method (carrying a pregnancy or donating their uterus) that they are considering.<sup>37</sup>

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<sup>34</sup> Roberts, D.E. (1997). *Killing the black body. Race, reproduction and the meaning of liberty.* New York, NY: Pantheon. Rowland, R. (1987). Technology and motherhood: Reproductive choice reconsidered. *Signs: Journal of Women in Culture and Society.* 12(3), 512–528. <https://doi.org/10.1086/494342> Rothman, B.K. (1985). The products of conception: The social context of reproductive choices. *Journal of Medical Ethics.* 11(4), 188–195. <https://doi.org/10.1136/jme.11.4.188>. In a similar vein, scholarship on the concepts of 'adaptive preferences' and 'social construction' has provided important insights into women's autonomy in societies characterised by predominantly patriarchal norms.

<sup>35</sup> Mullock, Romanis, Begović (op. cit. n. 2) : 2

<sup>36</sup> Ibid. : 4

<sup>37</sup> Ibid. : 9

Feminist scholars are divided with respect to reproductive technologies. Some have long looked suspiciously at them, regarding these technologies as further instruments of oppression and as ways to control women's bodies by ensuring the fulfilment of what supposedly is women's biological destiny: having children. Others—such as those subscribing to a liberal political outlook or those that see in technological development an instrument of liberation rather than oppression—have instead taken them to be an expression of, and an exercise in reproductive and bodily autonomy.<sup>38</sup> Now, I consider myself one of those feminists who tend to have a positive view of reproductive technologies and practices. I see the demand for them—albeit certainly shaped by social norms, which are often oppressive<sup>39</sup>—as an expression of women's agency. Relatedly, I consider analyses of these technologies that centre on women's agency, promote women's freedom and emphasise the importance of satisfying women's preferences to be feminist.<sup>40</sup> Despite this, feminist scholars' scepticism towards reproductive technologies and practices is not without merit. And I believe that it should be taken into account in analyses of reproductive technologies and practices committed to respecting and promoting bodily autonomy. In particular, it is important to consider the contribution of this critical scholarship to the idea that such a commitment requires an engagement with the

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<sup>38</sup> Admittedly, this is a simplification of some of the dominant views that feminist theorists hold on reproductive technologies, and most of these theorists can be placed on a continuum between the two extremes. See for instance: Murphy, J. (2006). Is pregnancy necessary? Feminist concerns about ectogenesis. In S. Gelfand & J.R. Shook (Eds.), *Ectogenesis. Artificial Womb Technology and the Future of Human Reproduction* (pp. 27–46). Amsterdam, NL: Rodopi. Donchin, A. (1989). The growing feminist debate over the new reproductive technologies. *Hypatia*. 4(3), 136–149. <https://doi.org/10.1111/j.1527-2001.1989.tb00597.x> Wikler, N.J. (1985). Society's response to the new reproductive technologies: The feminist perspectives. *Southern California Law Review*. 59(5), 1043–1060.

<sup>39</sup> See also: Lotz, M. (2021). Public funding of uterus transplantation: Deepening the socio-moral critique. *Bioethics*. 35(7), 664–671. <https://doi.org/10.1111/bioe.12914> in this journal.

<sup>40</sup> With the necessary caveat that women's freedom to access these technologies is often constrained by their purchasing capacity, and that race and class mediate women's capacity to enjoy such a freedom.

conditions that may hinder the exercise of bodily autonomy. Thus, whilst I share the moral and political values that underpin Mullock et al.'s analysis, it seems to me that the role they assign to the concept of "bodily autonomy" within their analysis is circumscribed: limited to honouring the decisions and preferences of those who engage in gestational surrogacy and UTx, and to ensuring that a valid informed consent is obtained from them.

A comprehensive theory of how women's bodily autonomy can be respected and promoted in reproductive matters is beyond the scope of this paper. However, some initial considerations that build on Mullock et al.'s original analysis can be given. Whilst informed consent is the juridical tool created to ensure the respect and promotion of bodily autonomy, it falls short of engaging with the socio-political norms and circumstances that continue to constrain women's decisions and preferences. A commitment to honouring and respecting preferences (and obtaining informed consent) needs to be accompanied by efforts to challenge the oppressive social norms that shape the emergence of these preferences in the first place and that risk constraining women's decisions and autonomy in harmful ways. These pertain for instance to the pressure to engage in these practices that specifically women may experience; to the potentially burdensome nature of engaging in gestation for third parties; and to the related checks, monitoring and invasive practices that this entails. Moreover, even if I have argued that the subjects who may engage in UTx and gestational surrogacy are women, not all women are in an equal position to exercise bodily autonomy. The pull of the oppressive societal norms that shape their decisions can vary significantly depending on background, a particularly salient matter in the case of gestational surrogacy.

More generally, as I have suggested, the fact that persons and women are the beings who engage in gestational surrogacy and UTx should be made an integral part of the theorising on the desirability of each practice. Abandoning the expression "womb-giver" in favour of persons

and women represents a first step in this direction. A second step would be to focus on the conditions that may hinder the exercise of their bodily autonomy.

## **Conclusion**

This paper is a response to Mullock et al.'s article 'Surrogacy and uterus transplantation using live donors: Examining the options from the perspective of 'womb-givers''. I concur with the authors that it is important to look at the preferences and experiences of the women who enable others to fulfil their parenthood projects. And, as they do, I consider the respect and promotion of the bodily autonomy of these and other women to be a central aspect of and commitment to any normative analysis of reproductive technologies and practices. Despite this, in this paper I have queried their characterisation of the persons and women who engage in gestational surrogacy and UTx and their representation of them as a unified category. Whilst this might seem at first sight to be a terminological disagreement, I have sought to show that it is rather a conceptual and normative disagreement, one that goes to the core of their examination of the burdens and benefits of gestational surrogacy vis-à-vis UTx. I have argued that the fact that those who engage in these practices are women is of substance in discussions of such burdens and benefits, for biological and socio-political reasons. I have also contended that a serious commitment to considering the biological and socio-political dimensions of these practices would regard them as incommensurable. Mullock et al.'s article is a welcome contribution to normative discussions on gestational surrogacy and UTx, but any such input ought to start with the subjects who engage in these practices, and with a serious commitment to considering these practices' biologically and socio-politically salient specificities.