



Nurbel, Ella (2014) *Transnational commercial surrogacy in the Third-World: A criminology introduction to post-colonialism.*[MSc.]

Copyright © 2014 The Author

Copyright and moral rights for this work are retained by the author(s)

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge

This work cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author(s)

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author

When referring to this work, full bibliographic details including the author, title, institution and date must be given.

<http://endeavour.gla.ac.uk/80/>

Deposited: 15 December 2016

Enlighten Dissertations  
<http://endeavour.gla.ac.uk/>  
deposit@lib.gla.ac.uk



University of Glasgow | School of Social  
& Political Sciences

Transnational commercial surrogacy in the Third-World: A criminology introduction  
to post-colonialism

Presented by

Ella Nurbel

Student number: 2102597N

Submitted in the fulfilment of the requirements for the degree of  
MSc Transnational Crime, Justice and Security

Supervised by

Dr Sarah Armstrong

Date of submission 8<sup>th</sup> September 2014

Word count: 15 997 words

Turnitin ID number: 35192760

Turnitin Grade: 3%

## **Abstract**

This dissertation is using the practice of transnational commercial surrogacy in Third-World countries to illustrate some gaps and struggles of the discipline of criminology. It is arguing that criminology seems to be very much rooted in a specific cultural and historical context, and thus it struggles to accommodate certain concepts. The field of criminology seems to have a hard time to open up its boundaries to new issues and to theoretical and analytical tools from other disciplines such as post-colonial perspectives. Although, it recently tries to analyse transnational issues, it remains somehow located in an 'Occidental' or 'Orientalist' tradition (Cain, 2000). It is in light of critiques formulated by criminologists (e.g.; Cohen, 1988/2009; Cain, 2000; Agozino, 2004; Bugess-Proctor, 2006; Richie, 2011; Bowling, 2011) that this dissertation is inscribed. The issue of transnational commercial surrogacy is growing, and should concern criminologists as it gives the opportunity to “clear the underbrush” of Occidental thinking (Cain, 2000: 250), in order to face the challenges of our times (Garland and Sparks, 2000). This practice appeals various theories and analytical tools that so far have been ignored or misused by criminologists. Therefore, it is argued that transnational commercial surrogacy in Third-World countries is an issue that gives the opportunity to criminologists to expand their research agenda to face the recent global social transformations.

## Acknowledgements

I would like to use this space to express my deepest gratitude to my supervisor Dr Sarah Armstrong who recommended me this topic at the first place. I am truly thankful for your encouragements, your suggestions and comments throughout this dissertation.

A special thanks to my friends and classmates Ms Samantha Hedges and Ms Vaishnavi Honnavalli. Your advices and support throughout this project were really appreciated.

Finally I would like to thank my parents Mrs Samia Djitli and Mr Jean-Claude Nurbel for their precious support during this one-year Master at University of Glasgow, and throughout this dissertation. They were always encouraging even at times when they did not have answers to my concerns. I am grateful to have you by my sides every steps of the way...

## Table of contents

Abstract.....	2
Acknowledgements.....	3
Introduction.....	5
Background of the case of transnational surrogacy .....	8
Methodology and theoretical framework.....	13
1) Methodology.....	13
2) Theoretical framework .....	14
A) Transnational commercial surrogacy: A feminists matter.....	14
B) Brief description of a post-colonial perspective and its relevance for transnational commercial surrogacy.....	16
a. Colonialism and post-colonialism.....	16
b. Relevance of post-colonial theory for transnational commercial surrogacy.....	17
C) Post-colonialism, sociology and criminology.....	18
a. Sociology and post-colonialism .....	18
b. Post-colonialism, imperialism and criminology .....	20
Why is transnational commercial surrogacy interesting for criminologists?.....	22
The relevance of Foucauldian concepts to the issue of transnational commercial surrogacy .....	25
1) Bio-power and bio-politics .....	25
2) Discipline.....	27
3) Power/knowledge relationships .....	29
Resisting the discipline of criminology .....	32
1) Is transnational commercial surrogacy a crime? .....	32
A) What makes commercial surrogacy a crime? .....	33
B) What might be the consequences of criminalising commercial surrogacy? .....	35
2) Transnational commercial surrogacy: a form of human trafficking? .....	36
3) 'Criminal iatrogenesis' applied to the issue of transnational commercial surrogacy.....	39
Conclusion .....	41
Bibliography .....	43

## Introduction

“Criminologists have either ignored the Third-World completely or treated it in a most theoretically primitive fashion” (Cohen, 1988/2009: 172). This critique levelled at criminology by Stanley Cohen in 1988 appears to be even truer today in a global world where criminology somehow continues to overlook Third-World countries and their historic and current relations with the 'First'-World. Although, there is an attempt to consider the Third-World within the field of criminology, this discipline somehow struggles to accommodate some conceptual issues. Maureen Cain (2000) argues that criminologists tend to 'Occidentalise' (assuming that what is working in the West will automatically work in the South) or 'Orientalise' (romanticize the other) the 'Other', and to compare criminological situations between a developing country and the UK or the US. This post-colonialist tendency of criminology tends to be more and more criticised by criminologists themselves (e.g.; Agozino, 2004; Cuneen, 2011; Aas, 2012). Indeed, the progress of globalisation represents an opportunity for criminology and criminologists to restore and develop approaches that are more equally divided up in geo-political means (Aas, 2012), and to discuss “how crime and crime control feature within them” (Garland and Sparks, 2000: 19). In this context, some criminologists have tried to open up new epistemological and analytical approaches in order to accord criminology to challenges it faces (e.g.; feminist intersectional framework; transnational criminology; inclusion of post-colonial perspectives).

Furthermore, Garland and Sparks (2000) argue that neurobiology and genetics will make more frequent and insistent incursions into the discipline of criminology. These biotechnologies have an impact on criminal justice practices and responses to crime, and to the analysis of the crime itself. For instance, DNA analysis is a technique that has increasingly helped the detection of crimes like rape. Despite the influence of biotechnologies on the criminal justice practices and responses, it is also interesting to question the use and the development of these new technologies of life through a criminological perspective. Indeed, biotechnologies are historically and deeply linked to control of populations and emerged during the European colonial period in order to classify and quantify colonised people's bodies (Lock and Nguyen, 2010). Biotechnologies are deeply linked to what Foucault calls bio-politics – management of people's lives in order to intervene on them (Rose, 2007).

The growing and powerful biotechnology industry remains quite unregulated in some parts of the world; this has led to the creation of illegal routes for the trade of body parts. Nancy Scheper-Hughes, a medical anthropologist, has denounced the transnational traffic of organs such as kidney

or liver (e.g.; Scheper-Hughes, 2004). Criminologists tend to be concerned with this issue because it falls into the category of human trafficking for organs removal purposes. However, there are various other applications of biotechnology that are raising the kinds of issues criminology is concerned with but are missing from its research agenda. Those other issues might be interesting for criminology and useful in terms of the recent wish to expand the criminological agenda to different theoretical and analytical approaches in order to face the “challenges of our times” (Garland and Sparks, 2000: 1). This dissertation focuses on one of these issues: transnational commercial surrogacy in Third-World countries – where economically well couples in First-World countries contract with poor women in Third-World countries to have their babies. Although, this dissertation focuses only on transnational commercial surrogacy with Third-World countries, it thereby suggests possible reasons for this curious absence of criminological inquiry. Indeed, this issue transforms partly the society as it challenges the traditional nuclear family. It is a matter of social justice; it reinforces the inequalities between women from the global North and women from the global South. It could be understood as a form of violence against women, instead of being physical, it is psychological and social. It is a transnational matter, and questions the role and the consequences of Western national social control policies on other countries in a global world. This issue opens up the way to a use of theoretical and analytical tools that have been so far quite overlooked by criminology such as a feminist intersectional framework to analyse all forms of oppression (Burgess-Proctor, 2006), and the inclusion of a post-colonial perspective to point out the control exerted over the global South by the West, for instance this practice shows a lot about whose babies and bodies are valued and whose are not (Bailey, 2011).

This dissertation will argue that transnational commercial surrogacy in Third-World countries is an interesting example of a practice that could offer to criminologists an opportunity to push their discipline boundaries in order to allow incursions from other disciplines such as feminist post-colonial perspective, and to “clean the underbrush” of the discipline of criminology (Cain, 2000: 250). The objective of this work is to illustrate that criminology should not stay in its comfort zone in the Anglo-Saxon cultural settings, and that there are several emerging sites of social injustice and harms around the world that criminology should be interested in.

This dissertation will be divided into five chapters. The first one will give the background of research that has been done about transnational commercial surrogacy, especially in India. Continuously, the second chapter will explain the methodology used and the theoretical framework that is underpinning this dissertation. The brief third chapter will expand the relevance of transnational commercial surrogacy for the field of criminology in the light of the recent shifts of this discipline. The fourth chapter will focus on the use of Foucauldian concepts most influential to the field of criminology and illustrate how some of these concepts are applied to the case. Finally,

the last chapter is a concrete application of a criminological analysis to the practice of transnational commercial surrogacy in Third-World countries, which highlights the gaps of the field, and argues for a resistance to the discipline that continues to be rooted into specific national cultural and historical contexts.



## Background of the case of transnational surrogacy

Since 1980s commercial surrogacy has been a topic largely discussed by academics from different fields such as lawyers, philosophers, feminists and so on (Pande, 2009a). The literature on commercial surrogacy could be divided into three areas of research (Ibid): the ethics and morality of this practice; the feminist literature focused on the commodification of women's bodies within a capitalist and patriarchal society; finally the research has been also focused on the cultural meanings of the notions of kinship and motherhood.

Nevertheless, the existent literature on commercial surrogacy is biased as it has been produced largely by the West about Western surrogates (Inhorn and Gurtin, 2011). Despite the ethnographic study conducted by Elly Teman in 2010 about commercial surrogacy in Israel (which is regulated and controlled by the state), the literature has been Euro-American focused (Ibid). This is not surprising because transnational commercial surrogacy is quite a recent phenomenon (Pande, 2009a). Neo-liberal economic globalisation and the Internet have recently pushed surrogacy beyond national boundaries of Western countries to create an international market (Gupta and Richters, 2008; Inhorn and Gurtin, 2011), where India is now the hub for transnational commercial surrogacy (Kirby, 2014). As a consequence, transnational commercial surrogacy is a new area of research for academics; hence very few empirical studies have been done so far regarding this issue (Inhorn and Gurtin, 2011). Indeed, scholars have mostly commented theoretically on this topic rather than conducted empirical research (Ibid). Amrita Pande was the first to publish empirical research about Indian surrogates' experiences in 2009 (Inhorn and Gurtin, 2011, Hudson *and al.*, 2011), followed by Kalindi Vora (Banerjee, 2014). Although Pande's research focused on surrogates' experiences, she also reported a few interviews conducted with doctors and members of the clinical staff, and with commissioning parents (Pande, 2009a; 2009b; 2010a; 2010b).

Furthermore, Vora and Pande's research were also the first to challenge the Euro-American assumptions about Southern surrogates' experiences, and notice that the research was biased by a specific cultural viewpoint (Bailey, 2011; Inhorn and Gurtin, 2011; Khader, 2013). Until Pande and Vora's empirical research, Western scholars treated the experiences of Southern surrogates the same as those felt by Western surrogates, although intensified by the element of race (Khader, 2013). The research conducted by both Pande and Vora revealed the importance of the cultural, social and economic contexts of surrogates' experiences (Pande, 2009a, 2010a, 2010b; Vora, 2009, 2013a, 2013b). For instance, Pande (2010a) describes how the Indian clinic has manufactured a "mother-worker". The clinic offers hostels where most of the surrogates have to stay during the time of their pregnancy (Ibid). This allows the clinical staff members to train the surrogates to be nurturing

mothers who take care of the foetus, and to consider surrogacy as helping a childless couple (Ibid). At the same time surrogates are trained to be disciplined workers bounded by the contract they signed which forces them to give away the baby immediately after he/she is born (Ibid). This contractual discipline experienced by Southern surrogates is an example of the great differences that can exist between Western and Southern surrogates. Testimonies of Western commissioning parents show that the discipline experienced by Southern surrogates is one of the reasons they go to India because they cannot have this kind of control over a surrogate in their home countries (Khader, 2013).

As a consequence of the empirical research conducted by both Pande and Vora about transnational commercial surrogacy, the debates initiated in the Western world have changed. Commercial surrogacy raises questions about women's agency, exploitation, free-choice, altruism, self-determination and bodily commodification, but these Western debates cannot simply be applied to transnational commercial surrogacy practised in Third-World countries like India (Banerjee, 2010; Bailey, 2011; Pande, 2011; Deomampo, 2013a; Khader, 2013). Scholars tend to apply an intensification analysis to the issue of transnational commercial surrogacy (Khader, 2013). Western feminists tend to consider transnational commercial surrogacy simplistically as a “worse” version of domestic surrogacy because race and class make gender oppression worse in the South (Ibid). Potentially empowering or liberating aspects of surrogacy are therefore neglected; for example, transnational commercial surrogacy could be for Indian women a way of escaping patriarchal oppression allowing some Indian women to divorce an abusive husband and create better environment for their families (Deomampo, 2013a).

However, transnational commercial surrogacy is not always empowering for women, at the same time it may be disempowering in particular ways that are distinct from it as a form of oppression in the West. As other research has shown, husbands and/or surrogates' parents play an important role into the decision to become a surrogate (Pande, 2009a, Karandikar *and al.*, 2014). In many clinics the agreement of the husband is one of the mandatory requirements to become a surrogate (Ibid). Furthermore, exploitation of Indian surrogates is also pointed out by authors because of the lack of control and regulation of the practice (Kirby, 2014). Most of Indian surrogates do not speak English however the contract they have to sign is in English (Pande, 2010a). Hence it is the clinic staff that explains the contract to the surrogates, which they then sign without having actually read it (Ibid). As a consequence, the lawyers have argued that a regulation of the practice could make it less exploitative for women (Nelson, 2013; Panitch, 2013; Kirby, 2014).

Moreover, commercial surrogacy is perceived as a labour understood in its both meanings: as a paid-work as well as the process to give birth to a child by surrogates and scholars (Pande,

2009a, 2010a). Pande (2009a) introduced commercial surrogacy as a new form of care work called “sexualized care work”. This new concept draws a parallel between care work and sex work (Ibid). Indeed, care work is associated with domestic and nanny who look after someone else's child and provide care and affection to the child (Ibid). Indian surrogates are hired by intended parents to nurture their baby for nine month; therefore a parallel could be made with care work (Ibid). However, considering transnational commercial surrogacy as labour, as defined above, does not mean it is less exploitative (Pande, 2010a). On the contrary understanding commercial surrogacy as work means that it could be exploitative like any other kind of work, while simultaneously it reconstructs the image of women as agents, not simply victims (Ibid). At the same time there is a stigma associated with commercial surrogacy and a comparison is often made with sex work (Ibid). Commercial surrogacy is often considered to be a 'dirty' work (Ibid). Hence, the concept of a “sexualized care work” makes the balance between the two forms of gendered work (Ibid). This concept is useful to move beyond the moral aspects associated with Western considerations of commercial surrogacy, to understand the complex realities of Southern surrogates’ experiences. It could also extend the literature on gender and work (Ibid).

However, other scholars have had another interpretation, more systemic I would say, about transnational commercial surrogacy. Other academics see commercial surrogacy as a consequence of a neo-liberal economic globalization (Scheper-Hughes and Wacquant, 2002; Gupta and Richters, 2008; Gupta, 2012; Krolokke and Pant, 2012). For instance, Gupta (2012) argues that “Economic relationships of various kinds are introduced into the social patterns of human reproduction” (p.29). The female body and its reproductive capacities have been transformed into a productive body (Gupta and Richters, 2008). These scholars illustrate their arguments by criticizing the rhetoric of free-choice, altruism, agency and contract as, in surrogacy debates, a tool to serve a patriarchal and capitalist ideology (Scheper-Hughes, 2000; Gupta, 2006, 2012). “The right to choose is reduced to the right to consume” (Gupta, 2006: 32).

Scholars have also criticised transnational commercial surrogacy on the realm of neo-colonialism (Bailey, 2011; Banerjee, 2014; Karandikar *and al.*, 2014). As a matter of fact, academics have displayed the racist stereotypes surrounding the practice of transnational commercial surrogacy, such as “the woman of colour as lacking an interest in noncommodified affective relations” with her child (Khader, 2013: 69). Scholars have explained that the discourse of choice, self-determination and contract is a new form of colonisation, which avoids reference to the realities of necessity and survival as part of the decision-making calculus (Bailey, 2011).

As a consequence, Khader (2013) argues for a feminist intersectional framework to analyse transnational commercial surrogacy. Indeed, she criticises the intensification analysis – the idea that non-western surrogacy is simply a more intensely experienced of Western-based form of surrogacy

– by explaining that this framework could not entail how the factors of race class and gender affect one each other (Ibid). Khader (Ibid) explains that the intensification analysis missed the fact that the multiple oppressions faced by women in the South do not simply make the effects of gender oppression worse, on the contrary the three factors co-constitute one another. The identity is socially and politically constructed, the intersectional framework highlights the power relations that exist to define categories like race or gender (Crenshaw, 1991). Khader (2013) argues that there is not a ranking between the three factors. She explains that the intensification analysis deny or obscure some effects of transnational commercial surrogacy, for instance they do not take into account the racist stereotypes against women of colour in the analysis (Ibid). The intersectional approach is important because it emphasizes on the use of qualitative methods to explore the “real-life” experiences of an individual in a specific social location (Burgess-Proctor, 2006). In addition, feminist intersectionality recognizes any social locations of inequality as dynamic, historically grounded and socially constructed by power relations that operate at micro and macro levels (Ibid: 37). Hence, the intersectional approach seems very appropriate to the specific case of transnational commercial surrogacy because it considers specific social locations and thus acknowledges the differences between each surrogates' experience. Moreover, the cornerstone of the intersectional approach is the pursuit of justice (Ibid), which is the aim of several scholars who wrote on transnational commercial surrogacy (e.g.; Gupta, 2006; Bailey, 2011; Pande, 2011; Karandikar *and al.*, 2014).

The feminist intersectional framework is inscribed in a broader feminist post-colonial literature about transnational commercial surrogacy. Indeed, Amrita Banerjee (2014) argues that a feminist intersectional framework of gender, race and global capitalism is needed to *seriously* understand women's lives and to reveal new sites of violence surrounding the practice of transnational commercial surrogacy. Feminist post-colonial scholars base their analysis of transnational commercial surrogacy on the simple fact that the vast majority of couples looking for surrogates are Westerners or non-residents Indians, despite this practice being prohibited in many Western countries (Karandikar *and al.*, 2014; Banerjee, 2014). For instance, after reported the literature existent on the topic of commercial surrogacy in the West as being exploitative to birth mothers, Karandikar *and al.* (2014) ask “When considering that gestational surrogacy has been labelled as potentially financially exploitative to birth mothers in the Global North, should surrogacy then be alternately interpreted as liberating for Indian women because they have no other sources of income?” (p.231). Indeed, Western commissioning parents have mentioned that the money given to the surrogate will probably change her life and her family's, and that it would not be in her interests to keep the baby because she could not afford it and the baby is white so it will be weird for an Indian woman to have a white baby (Banerjee, 2014). This illustrates how Western

commissioning parents, often, based their choice to hire an Indian surrogate on racist stereotypes<sup>1</sup> of the Indian woman who is in deep poverty, and it shows the importance of the racial difference (Banerjee, 2014; Khader, 2013).

Feminist post-colonial literature on transnational commercial surrogacy has emphasized mainly the idea of (in)justice (Pande, 2011; Bailey, 2011). Indeed, scholars have mostly demonstrated the unfair power relations between the Western intended parents and the surrogate mothers (Bailey, 2011; Pande, 2011; Banerjee, 2014; Karandikar *and al.*, 2014). More generally, medical anthropologists consider biotechnologies as a new form of colonialism because these have been made by the “West” and exported to the “rest” (Lock and Nguyen, 2010: 146). The feminist post-colonial framework seems in this specific case very relevant to understand transnational commercial surrogacy, because it is both at the same time a systemic and a micro-level approach, as most of them use an intersectional approach to the case. Even though the intensification analysis used by Western feminist on the issue of transnational commercial surrogacy considers race as an important factor for analysis, feminist post-colonial perspective puts race in the context of post-colonialism, thus through a historical and socio-cultural lens (Bhambra, 2007a, 2007b).

---

1

This by no means that all the Western commissioning parents are racist, simply that the discourses produced by many commissioning parents about transnational commercial are based on racist stereotypes.

## Methodology and theoretical framework

### 1) Methodology

This dissertation employs a critical feminist post-colonialist epistemology to develop a theoretical account and critique of the current framing of debate about transnational criminology illustrated by the example of transnational commercial surrogacy. Based on a large literature review, this dissertation will use an inductive methodology. Indeed, this dissertation is questioning how we might advance criminological agenda in a transnational world in motion using the example of transnational commercial surrogacy to highlight the theoretical and analytical tools available for future transnational criminology.

Due to time and space constraints, this dissertation will not contribute empirically to the research on transnational commercial surrogacy, despite many areas of this issue having yet to be analysed (Inhorn and Gurtin, 2011; Hudson *and al.*, 2011). The lack of empirical research is one of the criticisms that could be levelled at this dissertation. Indeed, the lack of empirical fact, might lead the reader to assume that this dissertation is less valid. However, the dissertation presented here, is theoretical, which means that it tries to contribute to the theoretical body of literature existent on transnational commercial surrogacy by challenging the discipline of criminology which does not seem analyse this specific topic. I argue that this theoretical work is a necessary prerequisite to empirical research, however. Much current research in the field of transnational criminology first of all proceeds from unexamined assumptions about the universality of the concepts used by criminology; and second of all, even where research has begun to question underlying concepts works from a Western-centric, and often middle class feminist-centric, perspective in identifying its problematic aspects. This project seeks to locate transnational commercial surrogacy as a problem requiring attention to the specific places where its participants live and to its cross-national implications; at the same time it also attempts to locate this practice (or rather to explain and challenge its absence) from the emergent field of transnational criminology.

The second critique that could be levelled at this dissertation is the epistemology underpinning it. Critical epistemology and particularly feminist epistemology has been criticized for its lack of objectivity (May, 2001). Indeed, critical scholars have acknowledged that the researcher can be affected throughout his/her research by various aspects and that objectivity is a myth (Ibid). However, critical and feminists scholars have argued for a self-reflexive section which refers to the idea that no research is objective, and the author is always working from particular assumptions and biases that might not be conscious or visible. Self-reflexivity alerts the reader that the author might

have been influenced by this. For instance, Nancy Scheper-Hughes (2004) who conducted an ethnographic research on traffic of human organs explains in her paper that she took the side of the kidney sellers to whom she wants to give a voice; she also explains her political orientation and why it is important to be politically engaged to conduct a research. The inclusion of a self-reflexive paragraph in a research is considered to be a sign of “honesty, and authenticity with one's self, one's research, and one's audience” (Tracy, 2010: 842). In other words, self-reflexivity is acknowledging one's goals and biases which played a role during the research process (Ibid).

Although this is a small piece of research presented for a postgraduate dissertation, I will try to briefly introduce my biases and goals to the reader. I am a French woman postgraduate student in criminology. I am politically oriented to the far left, I believe that capitalism has done more harm than good and increases inequalities between people. I am writing this dissertation from the Western world where I have always lived, so I imagine this constitutes a bias as I am talking about Southern women. I am a feminist, I believe in gender equality. I am anti-imperialist, anti-racist and against all forms of discrimination. As a criminology student, I do feel concern with matters of social justice which I think are part of the field of criminology. Indeed, violence whether psychological or physical, and harm are central concerns in the field of criminology, and so too, then should social justice be a variable that matters in the discipline as it has an impact on crime and victimization (Richie, 2011). Finally, Scheper-Hughes (2004) referring on Pierre Bourdieu's writings, argues for a militant and politically engaged anthropology “given the gravity of the world situation” (2004: 59) – due mostly to globalization of a neo-liberalist economy. I agree that the social researcher is socially, culturally and politically oriented and that he/she has a role to play to create new social structures for international actions (Ibid). Hence, from my low position as a postgraduate student I hope this dissertation will contribute to alert academics to issues of social (in)justice in order to challenge the current social structures, and to diminish the actual social inequities.

## 2) Theoretical framework

### A) Transnational commercial surrogacy: A feminists matter

This issue of transnational commercial surrogacy is undoubtedly a feminists matter (e.g.; Gupta, 2006; Banerjee, 2010; Pande, 2011). Indeed, it is an issue that concern mostly – if not only – women, gender considerations are central, it creates inequalities between women regarding of their social/cultural/geographical position, it nourishes the debates about agency/victimisation, and free-choice/self-determination, and it is about commodification and/or exploitation of women's bodies.

In the global North cultural context, women are mothers and should act like one (Raymond, 1993). When a woman is not able to conceive a child after one year, this inability is considered to be “a life threatening illness” (Ibid: 14) called infertility. Therefore, Western women (and couples) do whatever they can to have a child through new reproductive technologies such as gestational (commercial) surrogacy, to fulfil a feminine/mother standard. At the same time, surrogacy is by definition a form of gendered work/labour (Pande, 2009a). Surrogacy emerges in a context where women are relegated to their supposedly natural work that is breeding (Raymond, 1993). Moreover, the development of biotechnologies such as in-vitro fertilisation (IVF) alongside the development of the neo-liberal economy, transformed the definition of being a surrogate – a substitute – to a gestational carrier/provider because she does not have any genetic ties with the baby (Vora, 2009), the woman is now a productive body (Gupta and Richters, 2008). Furthermore, there are further stereotypes about femininity. For instance, Indian surrogates are taught by the clinic staff to not consider surrogacy as a business because this would make her a 'bad' woman (Narayan, 1995).

Biotechnologies have objectified women's body parts – especially her reproductive capacities. This could have been done because of the underpinning patriarchal ideology that dominates the global North, where women are required to “lend themselves to alienation in consumption, and to exchanges in which they do not participate” (Irigaray, 1985/1997: 175). The division of women's bodies created by new technologies of reproduction alongside the development of a neo-liberal economy has led to a commodification of these reproductive capacities. In 1986 Corea alerted that the development of new reproductive technologies will create a gynocide, women will not be needed as these technologies will manage to create artificial wombs (Corea, 1986). Although this sounds a bit provocative or extreme, there are cases of brain-dead 'mother' who was kept alive through life support system until the term of her pregnancy to give birth to a baby through caesarean-section, after the baby is born the doctors stopped the support system (Oakley, 1987).

Furthermore, biotechnologies are deeply underpinned by a patriarchal ideology (Tyson-Darling, 2008). Indeed, scientific knowledge has been – and somehow remains – the realm of men (Ibid). Technology and science often serve gendered interests; they are never value-free (Ibid). Women's bodies that are valued for their reproductive potential, might in turn require some regulations (Sharp, 2000). Therefore, new reproductive technologies may appear as a way of controlling women, thus reinforce gender hierarchies (Satz, 2010). Indeed, in this industry of reproduction, the physician-manager is in control not the “woman in the body” (Gupta and Richters, 2008: 247). Moreover, in some ways gestational surrogacy could be understood as the come-back of paternal rights in new forms (Pateman, 1988). Indeed, the definition of patriarchy has evolved with the history to move from paternalism (the role of the father over his sons) to relations that are less familial (Ibid). It seems that the recent development of gestational surrogacy is coming back to the



paternalistic definition of patriarchy as in most of the cases the embryo is created with the intended father's sperm and an eggs donor (Ibid).

Finally, transnational commercial surrogacy is a feminists matter as it unarguably challenges the feminist solidarity both amongst scholars and activists (Gupta, 2006). While feminism is the sustaining fight for gender equality, this specific issue of transnational commercial surrogacy may divide on different positions numbers of feminists especially surrounding questions of self-determination of women over their bodies and free-choice (Ibid).

To sum up, transnational commercial surrogacy is definitely a feminists matter because it highlights inequalities not only between men and women, but also between women themselves. Nevertheless, this short section highlights too that transnational commercial surrogacy is not a practice that could only be analysed with a gender-only lens; rather it calls for a complex framework that puts in relations gender with other factors of power/domination.

## B) Brief description of a post-colonial perspective and its relevance for transnational commercial surrogacy

### a. Colonialism and post-colonialism

Post-colonialism emerged through authors and scholars as a denunciation of colonisation and the legacies of European colonialism (Loomba, 2005). It could be defined as a body of literature and thoughts that critiques Western colonialism and its entrenchment in social, political, cultural, and economic structures. It aims to recognize the effects of colonisation on both the colonised and the colonisers (Cuneen, 2011; Go, 2013). One example of post-colonialism today is the persistence of practices and regulation of global economies and societies which were in place in the nineteenth-century during the colonial period through current organisations such as the World Bank and the World Trade Organisation which today put in place development and economic policies (Towghi and Vora, 2014).

Critiques towards colonisation emerged in the beginning of the twentieth century with authors such as Aimé Césaire who develop the concept of negritude in order to condemn and protest against the image of the Black man in the European imagination (Breton, 1947/1983). Although several authors have criticised colonialism by European countries, the institutionalization of a so-called post-colonialist perspective as a field of study started later.

The institutionalization of post-colonialism as a discipline begun with the work of Frantz Fanon, a French Martinique author who wrote with a Marxist approach about colonisation and decolonisation, and in the Anglo-American academic world, with Edward Said and his famous work, *Orientalism* (Loomba, 2005; Go, 2013). Said used the concepts of knowledge/power from

Michel Foucault to explain that the knowledge which circulated in Europe about the “Orient” was profoundly ideological and worked alongside a colonial power (Loomba, 2005). Said revealed that the “Oriental” was described through biological and psychological factors (Said, 1978/2000). Furthermore, Said also explained that the “Orient” was, for European colonisers, something to be feared of and to be controlled (Said, 1976/2000).

Control is an important concept when one talks about colonialism and post-colonialism. Indeed, European colonialism controlled lands and people and made them flow to the profit of the colonial country (Loomba, 2005). Colonialism was established alongside capitalism in the West of Europe (Ibid). The control of colonised people was a way to create a new workforce to exploit in the benefits of the colonial country (Ibid). In order to control the colonised people, European colonisers used science like biomedicine to “objectifying, classifying, and quantifying the human body” (Lock and Nguyen, 2010: 82). The development of biomedicine is intrinsically linked with colonisation (Ibid).

Furthermore, gender and sex have a strong importance in the colonial and post-colonial practice and discourse (Loomba, 2005). Indeed, “female bodies symbolise the conquered land” (Ibid: 129). In the imagination of European, non-European women were represented as a version of “Amazonians” and sometimes as a deviant form of femininity (Ibid). During the colonial period women served as the backbone of the plantation economies (Ibid). Today formerly colonised women serve as a cheap force for transnational sex trade and are exploited by health and fertility experiences – conducted by and for the West (Ibid).

#### b. Relevance of post-colonial theory for transnational commercial surrogacy

This brief overview of what is colonialism and its close links with the capitalist development, subjection of women and the use of biomedicine, was important to understand the relevance of a feminist post-colonial perspective on the topic of transnational commercial surrogacy. Indeed, there are some continuity between the colonial past of one country such as India, and the Western demands (Vora, 2013a). For instance, commissioning parents who go to India are for the most part American or British because lots of people in India speak English – at least the clinic staff and doctors – due to their former domination by the British Empire (Pande, 2011). The commissioning parents are for the most part from Western countries, and are middle and upper class people (Karandikar *and al.*, 2014). Furthermore, racist stereotypes are commonly mentioned by commissioning parents (Bailey, 2011; Khader, 2013). According to Loomba (2005), during the colonial period racism “was a conduit through which the labour of colonised people was appropriated” (2005: 107). Today, in a post-colonial context, this use of racism could also be

applied especially to transnational commercial surrogacy.

Moreover, the neo-liberal economic globalization (Gupta and Richters, 2008) has had a great impact on surrogacy to push it beyond national Western boundaries to Third World countries, like India where commercial surrogacy is less regulated and cheaper than in the US states where commercial surrogacy is allowed (Gupta and Richters, 2008; Inhorn and Gurtin, 2011). Transnational commercial surrogacy and biotechnologies in general, became an industry continuously growing (Sharp, 2000).

In addition, a feminist literature has also argued that in many ways transnational commercial surrogacy is exploitative for women (Pande, 2011; Gupta, 2012; Banerjee, 2014). Most of the scholars who wrote about transnational commercial surrogacy, in India especially, inscribe their research into a feminist post-colonial perspective. This perspective challenges the assumption that Southern/Eastern women are victims, rather it allows another lens that transcend the dichotomy between agents and victims to consider more comprehensively the contexts within which people from the South take their decisions (Khader, 2013; Banerjee, 2014). The use of an intersectional analysis of surrogates' experiences is an important tool for a feminist post-colonial perspective because it entails how women's agency and resistance could work in a context of multiple oppressions (Khader, 2013). Otherwise, Southern surrogates are only considered as victims whereas empirical research on Southern surrogates' experiences show that they do see themselves as helping a childless couple, and their own families (Pande, 2009b, 2010a, 2010b, 2011). Not considering Southern people as victims is one of the key critiques of a post-colonial theory. Therefore, the intersectional analysis (co-constitution of different factors such as race, gender, class, sexuality and so on) is a useful tool for feminist post-colonialism to criticise the universality of knowledge about gender, women and patriarchy (Mohanty, 2003).

Many examples could illustrate the relevance of a post-colonial perspective to analyse transnational commercial surrogacy (e.g: control over Southern surrogates; commodification of women's bodies and so on), however the three mentioned above make the illustration more clearer as these three factors – capitalism, racism and the use of women's bodies—are continuing since the colonial period. Moreover, many scholars have written through a Western feminist perspective and applied their findings in the West to women in the South. Post-colonial perspective does not only criticise the universality applied so far to surrogacy, it also adds another lens of analysis of the experiences and the contexts of the Southern surrogates where they are not only in “worsen” conditions than the Northern (Khader, 2013).

### C) Post-colonialism, sociology and criminology

#### a. Sociology and post-colonialism

As it has been mentioned earlier, the institutionalization of post-colonialism as an academic field is quite recent (Loomba, 2005). Post-colonial theory has managed to question the validity of the knowledge so far produced (Go, 2013) and to make the history and legacy of European imperialism visible (Loomba, 2005). It has challenged and influenced numerous of academic fields such as literature, history and anthropology (Go, 2013). However, some social science areas remain quite careful to add a post-colonial perspective; it is the case of sociology and especially criminology (Cuneen, 2011; Go, 2013).

In Europe one of the key post-colonial sociologist is Gurinder Bhambra who has influenced sociological knowledge with post-colonial theory (Go, 2013). Bhambra criticises the universality of knowledge produced by Euro-American academics (Bhambra, 2007a). Moreover, the knowledge produced by sociologists was at the high point of the Western empire (Bhambra, 2007b). As a consequence, the texts published during that time were written through European hegemony (Ibid). Bhambra (2007b) explains that post-colonialism is a “missing revolution” within sociology (2007b: 872). Indeed, she argues that there were the feminist revolution, the queer revolution but post-colonialism has been marginalized (Ibid). Although, sociology acknowledges race as a significant aspect of experiences with gender and sexuality, it is understood in traditional pre-existing terms within sociology (Ibid). On the contrary, Bhambra (Ibid) argues for another framework of analysis of the concept of race understood in the context of post-colonialism (Ibid). Colonial experiences have intensified the relationships between cultures and societies, thus it has had an influence on social interactions between people (Bhambra, 2007a). A lack (even absence) of considerations of the past has had implications for the social theories developed to manage the situations we live in today (Ibid). One of the reasons why post-colonialist accounts are not taken much in consideration by sociology, is because race and post-colonialism are associated with the social movement of decolonisation which has been considered by Europeans as existing outside sociology because the processes were not associated with the “modern social” (Bhambra, 2007b: 874). Indeed, classical sociology associated Western societies with modernity, progress and homogeneity, on the contrary non-Western societies were the marginalized “Other” static and backwards (Go, 2013: 32). As a consequence, sociology completely overlooked post-colonialism (Bhambra, 2007a, 2007b; Go, 2013).

The benefits of a post-colonial sociology are numerous especially because imperialism persists today, although in some aspects they are irreconcilable (Go, 2013). For instance, a post-colonial sociology could provide more adequate categories of analysis (Bhambra, 2007a). Moreover, a post-colonial sociology offers a different ontology (Go, 2013). Sociology is based on substantialism which insists that sociological actors are essences and are static agents (Ibid). A post-colonial

theory could “*reconnect*” social relations that have been covered up in classical sociology (Ibid: 40 – italic in the text). Indeed, the post-colonial theory is based upon a relational ontology where relations constitute the essences at the first place (Ibid). In that sense Bhambra argues for connected histories to deconstruct dominant discourses and to open to new and different perspectives (2007b) to understand how modernity has been made and re-made (Go, 2013).

#### b. Post-colonialism, imperialism and criminology

A post-colonial sociology would display the imperialist unconsciousness of standard sociology and would avoid a reproduction of the wider culture of Northern dominance (Go, 2013). The imperialist legacy of sociology has had obviously an impact on criminology. Indeed, Agozino (2004) argues that imperialism could be seen as a criminological project. The discipline of criminology emerged at a time when colonial administrations imprisoned “most parts of the earth” because the field of criminology was meant to discipline and control the “Others” (Ibid: 350). As a consequence the criticisms exposed earlier against sociology could/should have been expanded to criminology (Ibid). Moreover, the field of criminology did not only ignore and serve colonialism; it also mostly ignored non-Anglophone Western countries (Aas, 2012). Thus, social theory produced from the North Atlantic Anglophone countries is thought to have a universal validity (Keim, 2010 cited in Aas, 2012). Criminological knowledge is also accused of Occidentalism (Cain, 2000). Orientalism means to romanticize and differentiate the Oriental, at the opposite Occidentalism “presumes the 'sameness' of key cultural categories, practices and institutions” (Ibid: 239). Both the discourses have a hegemonic tendency (Ibid). The Occidentalist discourse is linked to the critique about the universal validity of criminology. It states that all the criminological categories such as age have the same socio-cultural meaning in all countries (Ibid). On the contrary, categories depend on the socio-cultural environment, thus the Occidentalism leads to a misunderstanding of the criminological situation in a country (Ibid). Moreover, the differences found between one country and the criminological theories are denied and considered to be a form of resistance (Ibid).

On the contrary to sociology, criminological knowledge is quite a recent enterprise and since its early years, criminology is constantly challenged by political changes, risks and so on, and tries to respond to them (Garland and Sparks, 2000). Intellectual challenges for criminology are sometimes difficult and discomfiting so criminologists try to ignore them (Ibid). The neglect of colonialism is due to the fact that theory has made anti-colonial struggles not relevant and European concepts self-sufficient (Aas, 2012). However today, colonialism, post-colonialism and imperialism are pressing issues that need to be considered by criminologists (Ibid). For instance, globalisation and neo-liberal imperatives have changed the fundamental tradition of governmentality, there are now non-

state actors and various actors that play a role and that need to be considered, however they do not fit in the Western view of reality (Ibid). As Nan Seuffert puts it, “colonialism haunts globalisation, and is exceeded by it” (Seuffer, 2006: 133, quoted in Henne and Troshynski, 2013: 456).

A post-colonial theory in criminology is thus urgent (Cuneen, 2011; Aas, 2012). It would have an influence in various areas of criminology such as state-crime, incarceration and prisons, human rights (Cuneen, 2011), governance, social justice (Agozino, 2004), social theory, transnational criminology, its epistemology (Aas, 2012), and its methodologies (Henne and Troshynski, 2013). Criminologists should thus situate themselves and question this position in a global geo-political context otherwise they would not be able to analyse crimes such as armed violence or genocide (Aas, 2012).

Some criminologists have already been alerted by these needs for theoretical innovations within the discipline for instance Scraton in 1990 called for history of colonialism courses for students (Agozino, 2004). Feminist criminology has also been sensitive to colonialism and post-colonialism because of the multi-racial feminist movement in the 1970s (Cain, 2000; Burgess-Proctor, 2006). The multi-racial feminist developed the intersectional approach to analyse multiple intersecting inequities such as gender, race, class, and sexuality without prioritizing any of the factors (Burgess-Proctor, 2006). This approach has started to inform feminist criminology in the 1980s during the feminist third-wave (Ibid). Although this approach is adopted by several feminist criminologists, they still prioritize gender as the core of oppression (Ibid) within a context of patriarchy, class privilege and racism (Chesney-Lind and Morash, 2013). Hence, challenges persist for feminist criminology to acknowledge and recognize colonialism, post-colonialism and imperialism as an analytical variable (Burgess-Proctor, 2006; Henne and Troshynski, 2013). “In order to do this it is necessary in addition to 'clear the underbrush' also of more 'progressive' occidental thinking” (Cain, 2000: 250). Feminist criminology needs to consider in a transnational context, that previous interactions of globalisation have shaped complex subjectivities and social relations (Henne and Troshynski, 2013). The point is to not generalize experiences and categories of women but to make use of other women's experiences, abstraction is needed (Cain, 2000).

## **Why is transnational commercial surrogacy interesting for criminologists?**

There is a large body of literature on the issue of transnational commercial surrogacy within the fields of law and feminist studies (eg.; Scott, 2009; Pande, 2011; Deomampo, 2013a; Halewood, 2013), however it has not yet been studied by criminologists. This was a surprise to me when I started looking into this topic. For instance, commercial surrogacy is illegal in many countries such as the United Kingdom and France (Brunet *and al.*, 2013), and it also is a matter of gender, race and class inequalities, violence against women, and exploitation of women's bodies (Pande, 2011; Bailey, 2011; Gupta, 2012; Deomampo, 2013a; Vora, 2013a). This dissertation argues that transnational commercial surrogacy could be a good example to illustrate the recent shifts and recent wish to open up criminology to new theoretical and analytical tools (Burgess-Proctor, 2006; Aas, 2007, 2012; Richie, 2011; Henne and Troshynski, 2013).

Globalisation has had, and still has, a huge impact on the production of a criminological knowledge (Aas, 2007). Indeed, global issues question the concept of society at the core of the criminological knowledge (Ibid). Globalisation challenges also the state-centred system of criminology and governance, which is why criminologists have been somewhat careful with globalisation studies (Ibid). Moreover, globalisation implies also to question the “situatedness” and “positionality” of knowledge and the geopolitical context of criminologists' analytical interests (Aas, 2012: 12). This is linked to the critique formulated earlier about the lack of post-colonial enterprise within the field of criminology (Agozino, 2004; Cunneen, 2011). The cross-border connections today shape contemporary life and have an influence on one's perceptions of community, identity and culture (Aas, 2007). The cross-border connections disturb the national framing of the criminological knowledge (Aas, 2012). These connections show that the world is getting more and more interdependent but they also display the inequalities and divisions around the world (Ibid). As a consequence to understand in depth these divisions it is essential to study the dynamics and legacies of post-colonialism and imperialism (Ibid).

Moreover, globalisation challenges the notion of governance (Ibid). Indeed, the possibility for people to cross the borders easily through tourism challenges the governance of crime. For instance, sex tourism challenges the regulation of crimes as in a country Y buying sexual services is banned but in country Z it is an industry and very cheap, the tourist from country Y will go to country Z to buy sexual services, it will thus have impacts on the local population, the place and the country's economy (Aas, 2007). The impacts could be, in this example, increasing violence against women, sex trafficking and so on. As a consequence, it might challenge the notion of what is a crime and

how to regulate it in a globalised “world in motion” (Ibid: 284).

Furthermore, recently there has been an increasing interest for human rights by criminologists (Murphy and Whitty, 2013). The dramatic event of 9/11 has been a catalyst for an increasing engagement of criminology towards human rights so far colonised by law and legal studies (Ibid). Regarding the responses to terrorism and to terrorists by the American state after the event of 9/11 increased the focus on human rights by criminologists especially in the area of incarceration (Ibid). The focus on human rights is also linked to an emerging criminology concerned with post-colonialism which has for aim to recognize the abuses of colonised and enslaved people (Cuneen, 2011). Furthermore, recently some criminologists have criticised the legalistic tradition of criminology and wanted to move away from law and lawyers for a better “democratic politics' of criminological engagement” (Loader and Sparks, 2011 cited in Murphy and Whitty, 2013: 586). This would allow an understanding of human rights through a political frame rather than only legal (Ibid).

In addition, recently some criminologists have challenged the intellectual goals and methodological approaches of the discipline of criminology (Richie, 2011). Beth Richie (2011) argues for an intellectual commitment to social justice. Indeed, the focus and purpose of the discipline of criminology is both to “explore crime and criminal justice and to keep an eye on broader matters of social justice” (Hoyle and Bosworth, 2011: 541). Richie argues that the discipline should contribute to the creation of a more just society, thus criminologists should be concerned with theories of social justice as political philosophers might be (Richie, 2011). She defines social justice as “a range of conditions that would expand opportunity for those who have been constrained by their social position or a lack of access to institutional privileges” (Ibid: 213). Social justice as a criminological variable would allow criminologist to ask theoretical question such as “What role does the broader social conditions play in crime and victimisation rates where the practice of withholding benefits both causes and results from social inequality?” (Ibid: 214). Criminology is an academic field that studies “protection, desistance from crime, and freedom from threats and suffering”, hence it has to engage itself into broader questions about the creation of a society where everybody can have access to these benefits (Ibid: 216). As a consequence, criminological knowledge that incorporates social justice in its agenda should probably include as well a set of theoretical concepts to address issues that go across national boundaries (e.g transnational commercial surrogacy).

Feminist criminology is also challenged on its methodological approach and on the priority given to gender as the only factor of oppression in a global world (Burgess-Proctor, 2006; Henne and Troshynski, 2013). Feminist criminology calls attention to the context of patriarchal privilege, class privilege and racism and argue that the intersection of the three makes the effects of gender



oppression worse (Burgess-Proctor, 2006; Chesney-Lind and Morash, 2013). Chesney-Lind and Morash (2013) hope that feminist criminology will soon become global, as there is an increasing interest internationally towards women's victimisation. However, the priority given to gender is criticized by other feminist and by feminist post-colonialist (Mohanty, 1988; Burgess-Proctor, 2006). Although feminist criminology argues for the use of the intersectional framework of analysis (Chesney-Lind and Morash, 2013), the priority is given to gender and the concept of race is not understood in a post-colonial context (Burgess-Proctor, 2006). Feminist criminology should rethink its discipline which is being precarious in a global world (Henne and Troshynski, 2013). Indeed, feminist criminology should question its world-views embedded in the Western part of the world in order to consider women's experiences of crime and victimisation and to pursue social justice (Ibid; Burgess-Proctor, 2006). In order to do so, there is an urgent need for a consideration of post-colonialist theory (Henne and Troshynsky, 2013), to use the intersectional framework with the three elements of race-class-gender and to include other locations of inequality, and to consider that the intersectional approach is not additive rather, all the elements are dynamic that function at the same time at both the micro and macro levels (Burgess-Proctor, 2006).

The study of transnational commercial surrogacy by criminologists could be an example of the application of the shifts and critics that have been exposed earlier to the discipline of criminology. This issue is global, it deeply engages questions of social justice, human rights, and it highlights the pertinence of a post-colonialist perspective. Feminist criminology could bring – and receive – a lot to/from the issue of transnational commercial surrogacy as it is deeply gendered, it challenges the Western considerations of women's subjectivities and patriarchy with the use of the intersectional framework, and it contributes to the debate about agency/resistance versus victimisation. Transnational commercial surrogacy is a growing issue that should, hopefully will, be analysed by criminologists through the lens of its recent theoretical and analytical shifts.

## **The relevance of Foucauldian concepts to the issue of transnational commercial surrogacy**

Criminological knowledge has been greatly influenced by the French philosopher Michel Foucault. Indeed his book *Discipline and Punish* made a huge impression on criminology (Garland, 1997). Foucault's ideas provided a theoretical framework to analyse various aspects of the criminological enquiry such as techniques of punishment and control (Ibid). Foucauldian concepts also influenced critical criminology such as feminist criminology with his conception of power/knowledge. However, he has been criticised by critical theorists. Despite the use of its concepts by feminists in various field, Foucault never mentioned the core concept of feminist theories: patriarchy (McNay, 1992). It is the same for post-colonial perspective. Edward Said referred to the profound connections between knowledge and power to produce a vision of the “Oriental” (Loomba, 2005). The analyses of the power of discourses produced by the West about Third-World people and particularly women have been deeply influenced by Foucault (Mohanty, 1988; Loomba, 2005). However, Foucault never referred to the colonial expansion by the Europeans, hence he has been criticised for being Euro-centric (Loomba, 2005). Despite these criticisms Foucault's ideas are useful for feminist theories, post-colonial studies, and central to the field of criminology (Sawicki, 1991; McNay, 1992; Garland, 1997; Loomba, 2005).

Foucault's ideas of bio-power, discipline, discourse and power/knowledge relationships have been used in the context of transnational commercial surrogacy (Gupta, 2006; Pande, 2010a). In this context, Foucauldian ideas mixed with feminist and post-colonial perspectives, give an insight of the different power exerted over the surrogate mothers. This section attempts to draw out those themes of Foucault's work that are most relevant for understanding the meaning of transnational commercial surrogacy, while recognising that Foucault himself never specifically addressed this topic. In so doing, it hopes to highlight the connections that can be made between the criminological tools of analysis and the practice of transnational surrogacy in order to point the relevance of this issue for the criminological agenda.

### 1) Bio-power and bio-politics

In *History of Sexuality Vol.1* and *Discipline and Punish*, Michel Foucault did a genealogical analysis of the body, which means that he not simply gave a history of the body, rather he explained how the production of knowledge through the object of the body develops over time, and in relation to other developments of knowledge (eg: psychology, sociology), disciplines and power strategies

to control the body. In these two books Foucault also introduced the concepts of bio-politics and bio-power (Smart, 2002). He revealed that the body is an object of knowledge and a target to exercise power (Ibid). Foucault explained that the body is now politically and economically useful due to the development of capitalism in Europe which renders it docile and productive (Ibid). More particularly in *History of Sexuality Vol.1* Foucault did a genealogical analysis of sex (Foucault, 1976). In this book, Foucault explained how sex has become since the eighteenth-century a matter of government, administration and management. Foucault explained that sex and sexuality became a scientific notion which means that there is a need for intervention (ie: therapy and normalization) (Foucault, 1976). Sexuality has a central role according to Foucault, because it is very useful and allows much different kind of strategies to develop a dispositif of sexuality (Ibid). A dispositif is a heterogeneous mixture of mechanisms of disciplines and controls, knowledges, practices and agencies that interact with each other to create large strategies of knowledge and power (Ibid). A dispositif of sexuality is a system which penetrates in depth the body and controls the population in a more global form (Ibid). For instance, one strategy of the dispositif of sexuality is the socialisation of procreative behaviour, which is linked to economy and the Malthusian couple (limitation of procreation for poor couples) (Ibid). This dispositif of sexuality is one illustration of a greater regulation and discipline over the population, the body and the demography in a context of a bio-politics of the population (Ibid). The dispositif of sexuality is an example of the era of a bio-power which could be defined as the optimisation of “the capabilities of the body simultaneously enhancing its economic utility whilst ensuring its political docility” (Smart, 2002: 88). Indeed, this bio-power is intrinsically linked to the development of capitalism in the West because it could not have been developed without a control effected through particular technologies and knowledges (ie: positivist law) over the population and an adjustment of the population to the economic processes (Foucault, 1976, 2004). The main route to population reproduction and production is sex, which is why it became a political issue (Foucault, 1976).

Furthermore, this concept of bio-power has been re-used by feminists who explained that not only the era of bio-power helped the development of capitalism, it was also “indispensable to patriarchal power” (Sawicki, 1991: 68). Although, Foucault did not mention patriarchy as a form of power, he explained through the strategy of hysterization of women developed in *History of Sexuality Vol.1* that women were understood through their sex and in need for therapy (Foucault, 1976). As a consequence, feminist theorists have used his ideas (e.g.; Sawicki, 1991; McNay, 2002). According to Sawicki (1991) bio-power provided the tools to place “women's bodies into the machinery of reproduction” (p.68) that is why she argued that bio-power helped the development of the patriarchal power.

Biomedicine is a very relevant illustration of the bio-power era. Indeed, they “change what it is to

be biological organisms, by making it possible to reconfigure – or hope to reconfigure – vital processes themselves in order to maximize their functioning and enhance their outcomes” (Rose, 2007:18). Moreover, biomedicine “molecularized” human beings in order to transport, exploit and commodify these parts (Ibid). As a consequence, biomedicine created new objectives and hopes to aspire to (Ibid).

New reproductive technology such as transnational commercial surrogacy is indeed a transformation of the body into parts – of primary importance here of course is the womb – which allows new hopes to aspire to for sterile and infertile couples who want a child (Sawicki, 1991). In addition, transnational commercial surrogacy is an industry, it follows the same path than huge multi-national companies that go abroad to look for lower costs of labour (Gupta, 2012). Transnational commercial surrogacy is an example of what Foucault called “the insertion of bodies into systems of utility and capitalism” (Ibid: 29-30).

Moreover, as bio-power is invested in all aspects of life through regulation and control (Foucault, 1976), transnational commercial surrogacy appears as a kind of birth politics. Indeed, as Bailey (2011) argues it tells us something about which babies and pregnancies are socially valued. Furthermore, biomedical approaches were at times, freighted with eugenicist ideas of “improving the 'quality' of the 'native races'” (Lock and Nguyen, 2010: 147). The bio-power era is a way of ensuring the reproduction and perpetuation of the race (Foucault, 1976). According to Foucault the dispositif of sexuality supported the racist ideology to protect the blood purity and the triumph of race (Ibid). The post-colonial critique towards transnational commercial surrogacy draws on this claim in arguing that it is a way of reproducing Western population and culture while exploiting the forces of the Southern women (Bailey, 2011; Gupta, 2012; Karandikar *and al.*, 2014).

## 2) Discipline

Discipline is obviously linked to bio-power, it is defined as “a technique of power which provides procedures for training or for coercing bodies (individual and collective)” (Smart, 2002: 80). There are various instruments of discipline such as hierarchical observations, normalizing judgement – extra-legal – and examination – objectification and classification (Ibid). The Foucauldian concept of discipline is not linked to physical coercion; rather it subjects the body, its movements, capacities and gestures to power (Foucault, 1976; Smart, 2002). Moreover, the era of bio-power transformed the legal society into a normative society (Foucault, 1976) where there is instead of a penal laws, a 'penalty of the norm' (Foucault, 1975). The law did not disappear rather the law acts as a norm and the institution of justice is integrated within a dispositif of regulation that rolls up many kinds of activities, practices, materials and ideologies such as medicine, and

administration (Foucault, 1976). Thus the discipline is located in and works through the norms of society. For instance, the hysterization of women appears as a disciplinary technique over women's bodies because there is a medicalization of their bodies and their sexual behaviour (Ibid). This takes place because the norm is that women have to be responsible for the care of their children, the nuclear family and the salvation of the society as a whole (Ibid). Amongst the consequences of this normative society are: the creation of new habits; the attachment to people of specific identities; and the creation of new desires and goals of femininity attributes such as being a mother at all prices (Foucault, 1976; Sawicki, 1991). Indeed, through techniques of the self, individuals “affect their own bodies, souls, thoughts and conduct so as to form and transform themselves” according to the social norms (Smart, 2002: 105).

Discipline is one of the key features of transnational commercial surrogacy. Indeed, the disciplinary technologies used in the practice of transnational surrogacy simultaneously render women's bodies more useful and more docile through techniques of surveillance and examination (Sawicki, 1991). Indian surrogates are constantly under surveillance by the clinic staff and doctors, and by the commissioning parents who have a control over their bodies during the pregnancy. For instance, commercial surrogacy is not socially valued in Indian communities, rather it is considered to be a 'dirty' work like prostitution (Pande, 2009a; 2010b). As a consequence, most of the Indian surrogates in Pande's research (Ibid) spent the nine months of pregnancy in clinic hostels with other surrogates. However, this is not only due to the stigma attached to surrogacy within Indian communities; it also makes commissioning parents happier as they have a complete control and surveillance over the pregnancy (Khader, 2013). Deomampo (2013b) explained using geographical theories how surrogates' mobility was limited in terms of space unlike the mobility of Western commissioning parents. Surrogates are isolated from work, home and family during the time of the pregnancy because they are staying in the clinic hostels (Ibid). Moreover, when the surrogate signs the contract with the intended parents she does not have the self-determination of an independent contractor as she has signed her willingness to submit to the practitioners and the intended parents (Saravan, 2010). Once the surrogate signed the contract she acknowledges that her health is less important than the one of the foetus/baby, his well-being takes precedence over the health of the surrogate (Ibid).

Moreover the surveillance and control do not only apply to surrogates' activities but also a strict diet is sometimes asked to surrogates during their pregnancies (Vora, 2013a). For instance, some commissioning parents have chosen surrogacy rather than adoption to make sure that their child will be vegetarian from conception due to the control they can have over the surrogate mother (Ibid).

Disciplinary techniques are also used through discourses by clinic staff members to train the surrogates as care-workers (Vora, 2009, 2013a, 2013b; Pande, 2010a). The clinic staff persuades the

surrogates that their uterus is an empty space in a woman's body when she is not pregnant, hence surrogacy is simply renting out this space for someone else's baby, just like renting out a spare room in a house (Vora, 2013b). This discourse is also linked to the persuasion that baby is not theirs (Ibid). However, at the same time surrogates should not simply consider commercial surrogacy as work because they need to nurture the foetus and care it during the pregnancy (Pande, 2010a). This is what Vora (2013b) called the “alienating discourse of medical science and reproductive technology” (p.72).

Furthermore, another disciplinary discourse used by the clinic staff members is the idea of a godly gift to commissioning parents from the surrogates (Pande, 2011). Clinic staff members explain to surrogates that surrogacy is like a god's gift to them so they should not be business-minded and greedy (Ibid). This is linked to the Western idea of altruistic surrogacy. Indeed, the idea of gift is essential for Western commissioning parents who emphasize on helping someone rather than business because they do not want to refer to children as commodities (Whittaker and Speir, 2010; Vora, 2013a). In reality, Indian women become surrogates because of necessity of survival, and so the discourse about love, gift and altruism is a vocabulary from the global North which is hard to apply to Southerners' experiences (Pande, 2011; Karandikar *and al.*, 2014).

### 3) Power/knowledge relationships

The power/knowledge relation is one of the main ideas developed by Foucault which has been re-used by many academics in various fields. For instance in the field of criminology this idea helped draw attention to “the impact of new knowledges and technologies upon the power relations between governmental actors” especially in the field of crime control (Garland, 1997: 188). The idea of power/knowledge links and its relations to the body has also been used by feminist theories to explain some aspects of women's oppression (McNay, 1992).

“Power and knowledge directly imply one another; ... there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (Foucault, 1977: 27 cited in McNay, 1992: 27). According to Foucault, power is everywhere; it is coming from everywhere and everyone (Foucault, 1976). Power is not possessed by someone or an institution; rather it is exerted by it (Foucault, 1975). Power is a complex strategically situation which includes a multiplicity of force relations, it is directly linked to resistance, and it is transmitted through and by the powerless (Ibid). Power is not static; on the contrary it evolves according to history in a specific society that is why power is linked to knowledge and the production by each societies of a regime of truth (Foucault, 1976). For instance in *History of Sexuality Vol.1* Foucault explained that sex and sexuality were before the

eighteenth-century the occupation of Christianity and moral (Ibid). The development of science especially medicine and psychology have shifted this conception and sex became a subject of therapy (i.e.; hysterization of women) (Ibid).

The former section exposed some of the disciplinary techniques applied over surrogates in the context of transnational commercial surrogacy. These techniques are linked to this relationship between power and knowledge. Feminists have argued that surrogacy keeps women in a state of systematic subordination and being defined only as a reproductive instrument (Raymond, 1993). Indeed, under multiple oppressions such as poverty/necessity and patriarchy Southern women create a “bio-available” population ready to become surrogates (Whittaker, 2011: 111). For instance, one of the mandatory conditions to become a surrogate is to have the agreement of the surrogate's husband (Karandikar *and al.*, 2014). Hence, a woman's body belongs to herself as well as her husband's, this illustrates the patriarchal oppression that surrogates are facing (Ibid), and how transnational commercial surrogacy is an expression of bio-power which in turn further entrenches this mode of power.

Furthermore, there are racist stereotypes surrounding the practice of transnational commercial surrogacy, this constitutes a form of power over Southern surrogates. There is a reproductive hierarchy between women from the West and from the South (Roberts, 2009). Western parents have the 'right' to have children and Western women are mother-material, whereas in most places in the South women are controlled by birth policies and/or do not have health care facilities which lead to a high level of child mortality (Ibid). In this context, a discourse of the 'freedom' and 'choice' to procreate does not make any sense. These differences illustrate the inequalities of power that can exist between women from the global North and women from the global South. It also explains why some academics have considered transnational commercial surrogacy as a form of exploitation and injustice (Bailey, 2011; Pande, 2011; Panitch, 2013; Vora, 2013a and b; Kirby, 2014).

Moreover, as Foucault explained power and resistance are linked with each other (Foucault, 1976). There are various sites of resistance within the practice of transnational commercial surrogacy. One of them is the possibility for same sex couples or single parents to hire a surrogate and have a child (Sawicki, 1991; Rudrappa, 2012). Although, this is not the case in all the clinics, it appears as a form of resistance against the traditional heterosexual family.

Studies have mostly displayed forms of resistance from a surrogate perspective (Pande, 2009a and b, 2010a, and b; Khader, 2013; Vora, 2013a). Indeed, some studies have demonstrated how surrogates develop forms of kinship with the foetus during the pregnancy despite no genetic ties between them (Pande, 2009b). Surrogates explained that it may not be their eggs but it is still their blood circulating in the foetus body (Ibid). This is a form of resistance against the discourse produced by clinic staff members who explain to surrogates that they have no ties with the baby.

Moreover, surrogates between themselves develop forms of kinship and sociality during the time they spend together in clinic hostels (Vora, 2013a). They support each other and they expressed a feeling of sisterhood especially because of the stigma attached with commercial surrogacy in India (Ibid). Sometimes, surrogacy is a way of showing resistance against patriarchy (Deomampo, 2013a). For instance, for some surrogates commercial surrogacy is a way of empowering women against an abusive husband and to create financial opportunity to change their lives by divorcing this husband after the end of the surrogacy contract (Ibid).

This chapter uses some Foucauldian ideas—discipline and discourse, power and knowledge relations, and bio-power particularly as they are used in the field of criminology and feminist theories—to show why they are relevant for the study of the practice of transnational commercial surrogacy. In so doing, it hopes to point out connections that can be made between the criminological agenda and the issue of transnational commercial surrogacy.



## Resisting the discipline of criminology

Previously in the chapter II: Methodology and theoretical framework (p.13), I have briefly explained how transnational commercial surrogacy could illustrate well the recent theoretical shifts taken by some criminologists (i.e., towards post-colonial considerations, focus on social justice, intersectional framework and so on). Hence, it is necessary to apply the issue of transnational commercial surrogacy to some of these shifts to illustrate the relevance of this practice to the criminological agenda. This chapter will be divided in three sections. The first one will ask if commercial surrogacy is a crime, who is the offender and the victim (if there is a victim), and if it is a crime what type of crime it is. Furthermore, the Dutch rapporteur on Human trafficking and sexual violence against children made a parallel between human trafficking for organ removal purposes and commercial surrogacy which also uses and commodifies body parts (National Rapporteur on Trafficking in Human Beings, 2012). Hence, the second section will ask if commercial surrogacy is a form of human trafficking. Finally, the third section will use the concept of 'criminal iatrogenesis' developed by Cohen in 1988 which explains how in a globalised world, crime control policies and practices in the global North can have harmful effects on the global South populations (Bowling, 2011).

### 1) Is transnational commercial surrogacy a crime?

When I first thought of doing my Master dissertation on transnational commercial surrogacy, I talked to some of my friends who study in the same program about this idea in order to get their comments and advices. The first question they asked was if surrogacy is actually a crime. It was not the first question I asked myself when I chose this topic as this issue is more about harm and social justice, but I should not forget the basis of criminology which is “the study of the aetiology, social meaning, and construction of crime” (Zedner, 2011: 271). As a consequence, it seems necessary to have a section asking why some harms have the label of 'crime', but others do not. Moreover, it is interesting to understand what could be the consequences that flow from this label and if the unjust applications of transnational commercial surrogacy in Third-World countries could be prevented if this issue was labelled as a crime.

In Europe more specifically in the European Union, surrogacy is banned by most of the countries (Brunet *and al.*, 2013). However there are some exceptions. The UK for instance, only permits altruistic surrogacy – where commissioning parents only cover surrogate's health care fees—to heterosexual and same sex couples, via non-profit organizations which make in contact together

intended parents and surrogates-to-be (Ibid). On the contrary, the US does not have a federal law regulating surrogacy instead it is a state matter. The state of California, for instance, has allowed commercial surrogacy – where intended parents hire a surrogate, it is like a paid-work.

Most of surrogacy agreements or contracts, today, are about a gestational surrogacy which means that the embryo is created and inseminated to the surrogate. Gestational surrogacy could be practised or with the eggs of the commissioning mother or with the surrogate's eggs. However, gestational surrogacy is more often practised with the intended mother's eggs or via an egg donor as in that case the surrogate cannot claim parental recognition on the child (Haberman, 23/03/2014). Indeed, it used to have several legal cases of parental recognition. The most famous one in the US is the Baby M. case in 1986 in New Jersey (Ibid). In that case, the commissioning parents hired a surrogate using her eggs and the intended father's sperm to carry and give birth to a baby. It was explicit in the contract both the parties signed that the surrogate mother had to give away the baby immediately after the birth to the commissioning parents. However, it did not go this way as the surrogate kidnapped the baby and claimed legal rights over the child. In the end, the judges gave custody to the father and allowed visits to the surrogate/the biological mother.

Nevertheless, criminology as a discipline goes beyond the legal definition of what is and is not a crime rather; there is a need to consider the normative construction of a crime in order to understand the ideology underpinning it (Zedner, 2011). Indeed, the criminalisation of commercial surrogacy gives some insights about the role and the authority of the state over its citizens (Ibid). Two questions will thus be asked: What makes commercial surrogacy a crime? And: What might be the consequences of criminalising surrogacy?

#### A) What makes commercial surrogacy a crime?

The Baby M. case provoked a strong concern of the American population over surrogacy due to the large media coverage of the trial (Markens, 2007). There is a strong link between media coverage and legislative work (Ibid). During the Baby M. trial, many people gathered to protest against surrogacy as they considered surrogacy as baby-selling (Haberman, 23/03/2014). As a consequence, judges in New Jersey condemned commercial surrogacy as criminal because they assumed it was a baby-selling (Ibid). This argument still persists in intended parents' mind. For instance, commissioning parents who go to India to hire a surrogate mother consider essential that the surrogate sees surrogacy as a gift, as helping someone rather than a business (Vora, 2013a). This idea of gift, even in commercial surrogacy, is essential because it would be inappropriate for a woman to be a surrogate for financial reasons, it would make her a 'bad woman' (Narayan, 1995). The notion of gift is applied in both the Northern surrogates and the Southern surrogates.

Testimonies of Western surrogates emphasized on the idea that they are helping a childless couple (Haberman, 23/03/2014).

On the other hand, other academics, especially feminists, have emphasized on the commodification of women's bodies rather than of the baby, on exploitation of women and on the idea that gift does not exist (Derrida, 1991/1997; Pateman, 1988; Sharp, 2000; Satz, 2010; Vora, 2013a). Indeed, scholars have demonstrated that the growing biotechnology industry and especially new reproductive technology like gestational commercial surrogacy increases the commercialisation of female body and its parts, women are targeted because of the value of its reproductive potential (Sharp, 2000). Commercial surrogacy has transformed the female body into a productive body (Gupta and Richters, 2008).

Furthermore, the French philosopher Jacques Derrida has argued that the idea of gift is a myth (Derrida, 1991/1997; Derrida and Kamuf, 1992). He explains that the gift is linked to economy (Ibid). Indeed, economy implies the notion of exchange, circulation, and return, economy is a circle (Ibid). The gift is linked to economy in a sense that the gift breaks the circle of exchange and economic circulation, because if there is gift there is no reciprocity, it does not circulate, the gift is aneconomic (Derrida and Kamuf, 1992). If there is any kind of retribution, whether it is a good or goods or a symbolic recognition of a gift, the gift is annulled (Ibid). Indeed, a symbolic retribution is giving back a symbolic equivalent (Ibid). Hence, as soon as someone as the intention to give, one will gratify oneself with a symbolic recognition (Ibid). Moreover, if someone perceives the nature of gift, and the meaning of the gift, it annuls the gift as recognition becomes gratitude (Ibid). It is more striking when the recipient of the gift gives back immediately to the donor something (Ibid). Derrida explains that a gift “does not *exist* and does not *present* itself” (Derrida, 1991/1977: 130). Thus, if a gift is held as gift by someone, there is no gift (Ibid). There is gift only if there is no gift (Ibid). Derrida explains that the discourse on the gift is impossible because it means missing the object of the gift (Derrida and Kamuf, 1992). In the case of surrogacy, if the commissioning parents believe that surrogates are 'offering' them their services and a child as a gift, and that the surrogate mother is *giving* them the gift of life, they both recognize this exchange and thus annul the gift. Moreover, in the case of (transnational) commercial surrogacy the commissioning parents immediately give back to the surrogate mother with money, hence they annul the gift. In other words, the rhetoric of gift is somehow hypocrite.

Moreover, critiques against commercial surrogacy have also given the argument of the disaggregation of motherhood (Stanworth, 1987; Raymond, 1993; Vora, 2009; Satz, 2010). The ideology underpinning the criminalisation of commercial surrogacy is that it defines motherhood through biological and genetics factors; therefore motherhood is not a social relationship (Stanworh, 1987; Satz, 2010). The surrogate is simply a substitute, not a mother; she is called a gestational

provider/carrier because she does not share any genetic materials with the baby (Vora, 2009). As a consequence gestational commercial surrogacy challenges the definitions of motherhood and family (Stanworth, 1987; Markens, 2007; Satz, 2010).

To sum up, the ideology of the criminalisation of commercial surrogacy in many parts of the world is that it commodifies children and women's bodies, and it challenges the sacrosanct nuclear family and the definition of what it is to be a mother/parent.

#### B) What might be the consequences of criminalising commercial surrogacy?

As it has been explained above, commercial surrogacy is permitted in some countries/states like India and California. Of course, one of the reasons commercial surrogacy is allowed in some countries is linked to the profits generated by the development of the biotechnology industry which represents millions of dollars of profits to the clinics and the intermediary agencies. Moreover, in low-income countries such as India, the development of transnational commercial surrogacy is seen as an advantage as it creates new jobs opportunities, and retains some medical specialists in the countries (Whittaker, 2011).

Besides the financial opportunities and economic advantages of (transnational) commercial surrogacy, the pro-surrogacy have the same arguments than pro-choice activists (Raymond, 1993). Indeed, the liberal rhetoric of free-choice, reproductive freedom and self-determination are often expressed by academics that argue in favour of the practice of commercial surrogacy (Raymond, 1993; Markens, 2007; Gupta and Richters, 2008). These arguments have been criticised by many feminists and post-colonial scholars as these concepts are Western-centred and reflect the patriarchal dominance (Gupta and Richters, 2008; Bailey, 2011; Vora, 2013a). Academics who are in favour of (transnational) commercial surrogacy argue for a regulation of this practice. Indeed, these scholars do not argue for a criminalisation of transnational commercial surrogacy in Third-World countries because they use the free-choice and self-determination set of discourses. At the same time, both pro and against transnational commercial surrogacy argue that this issue as it is practised today in Third-World countries is exploitative. Academics in favour of this practice argue that a regulation of this issue is the only solution that could highlight the empowering effects of transnational commercial surrogacy on Third-World women (Panitch, 2013; Kirby, 2014).

However there are some problems with regulations. If surrogacy whether it is commercial or altruistic is criminalised who then should be condemned (Narayan, 1995)? The intended parents because commercial surrogacy is financially exploitative of women? Or the surrogate who is not allowed to rent her reproductive capacities? Or the clinics because they operate as brokers. Moreover, what kinds of punishment are appropriate for the crime of surrogacy? Prison, fines, or

therapy? If the surrogate used her eggs, will she be 'forced' to be the mother of the baby? What about the intended mother who desires a child at the first place? What happens if the baby is born and if one or two of its parents have to go to prison? These questions only concern national legislation, but in a global world, commercial surrogacy as a growing industry pushed the Western national boundaries to go to the global South where there is less legal constraints and where the 'work-force' is cheaper and affluent (Gupta and Richters, 2008; Inhorn and Gurtin, 2011; Whittaker, 2011).

Today there is no international legislation about transnational commercial surrogacy. Commissioning parents coming from a country where (commercial) surrogacy is illegal, who hire the services of a surrogate abroad do not face any sanctions. They might face some constraints if their home country does not want to give the nationality to the child born abroad by surrogacy. However, in Europe this will tend to be very rare as the European Court of Human Rights have recently condemned the French government because it did not want to give the French nationality to twins born through commercial surrogacy in California (Dupont and Johannes, 26/06/2014). The Court considered it was against the best interests of the children (Ibid).

To conclude this section, commercial surrogacy has often been compared with prostitution, as some academics agree that there are some similar structures between the two social phenomena (i.e.: commodification of women's bodies; structures of inequalities; discourse of free-choice and self-determination) (Widdows, 2009; Donchin, 2010). Furthermore, both practices are stigmatised by the population. In the case of commercial surrogacy, the surrogate mother in the global North will be considered a 'bad' woman if she is doing it for financial motives (Narayan, 1995). Whereas the Indian surrogate is stigmatised by her community because commercial surrogacy is associated with sex work (Pande, 2009a; 2010a). This comparison is even truer in terms of criminalisation. In both cases, the law is different and changing in every country, it is hard to decide which party should be condemned and so on. Even if prostitution is not considered to be a crime in all the countries, human trafficking for sexual exploitation is considered illegal internationally. Hence, to push further the comparison between prostitution and commercial surrogacy it could be interesting to ask whether transnational commercial surrogacy is a form of human trafficking.

## 2) Transnational commercial surrogacy: a form of human trafficking?

The national Dutch rapporteur on trafficking in human beings and sexual violence against children, Corinne Dettmeijer-Vermeulen, questioned in 2012 whether transnational commercial surrogacy was a form of human trafficking (National Rapporteur on Trafficking in Human Beings,

2012). She makes the parallel between human trafficking for what she called 'classical' organs removal such as kidney, lungs and liver, and commercial surrogacy because it involves other types of body parts (Ibid). Indeed, the rapporteur explains that organ sellers and surrogate mothers from the global South have some social determinants in common such as poverty, debt and illiteracy (Ibid).

Human trafficking is defined as “the use of force, fraud, and/or coercion to transport persons either within countries or across international borders for the purpose of labour and/or sexual exploitation” (Troshynski, 2012: 341). The key features of human trafficking are exploitation and profits for the traffickers (Ibid). Hence, two questions are to be asked, is transnational commercial surrogacy exploitative? And, as if there are profits to make from this exploitation to whom is it profitable?

Exploitation is linked to a form of coercion and dominance over someone to make this person do something. It has been explained in this dissertation that surrogates' parents and/or husband play a great role to 'push' women to become surrogates (Pande, 2009a; Karandikar *and al.*, 2014). Indeed, commercial surrogacy represents for the surrogate's family great financial opportunities to send their children to school or to buy a house (Pande, 2010b; Vora, 2013b). Indian surrogates are often recruited by surrogacy brokers who bring them to the clinic to convince them to become a surrogate (Pande, 2010b). These intermediaries do not use violence to convince Indian women to become surrogates, rather they use a set of discourses that represent gestational surrogacy as the rent of an empty space in a woman's body – the womb – and compares it with an additional room for rent in a house (Vora, 2013b). Some brokers also use the rhetoric of a godly gift, and god's decision to choose someone to become a surrogate mother (Pande, 2011). Moreover, there is exploitation if the contract is not fair for one of the parties (Panitch, 2013). The transnational commercial surrogacy contract is unfair to the surrogate for various reasons. First, the contract is written in English, and most surrogates are illiterate and/or are not fluent in English, hence they sign a contract which have been briefly explained by the clinic staff without having properly read it (Pande, 2010a). Moreover, most of the Indian surrogates do not have the financial resources to hire a lawyer to review the contract and to protect them in case of health complications after the pregnancy (Bailey, 2011). Furthermore, numbers of scholars have considered transnational commercial surrogacy in India as a form of post-colonialism (Bailey, 2011; Khader, 2013; Vora, 2013a; Karandikar *and al.*, 2014). This body of literature explains that the development of transnational commercial surrogacy in Third-World countries is a form of continuity of the colonial era (Vora, 2013a). Indeed the practice of transnational commercial surrogacy in the South uses many racist stereotypes about Southern women (Bailey, 2011). The different practices of surrogacy in the global North and in the South illustrate well the exploitation of Third-World women. For instance the surveillance is permanent

before and during the pregnancy in India as surrogates stay in the clinic's dormitories, and are submit to a strict diet decided by the commissioning parents, whereas Western surrogates do not have this permanent surveillance and control over their bodies (Pande, 2009a; 2010b; Khader, 2013).

The next question to ask is who is exploiting surrogates and if this exploitation is profitable for them. This double question is problematic in various ways. First, Indian surrogates themselves acknowledge their exploitation but they still engage in commercial surrogacy (sometimes more than once) because this represents a great financial opportunity for them and their families, and in some ways commercial surrogacy is empowering for women (Deomampo, 2013a).

There is the financial profit for the clinics, the staff, the brokers, and the doctors. The business of transnational commercial surrogacy in India is estimated at \$445 million, and will probably grow up to \$6billions in the future (Panitch, 2013). The cost of a procedure of commercial surrogacy in India is estimated (everything included: surrogate's fees, flight tickets, hotels and so on) around \$25.000, only 1/5 of this sum is actually going to the surrogate mother (Bailey, 2011). Commissioning parents also make somehow a few profits from this exploitation, by saving money as the costs are cheaper in India than in Western countries where commercial surrogacy is allowed like the US. However, the first motivation of commissioning parents is not profits but a baby, even if to get this child they have to go through exploitation of a woman's body. Therefore, even if transnational commercial surrogacy is exploitative for women's bodies, it is not financially profitable for the two groups of 'exploiters', as a baby is not economically valued, it is not a profit. In addition, the commissioning parents are at the same time traffickers, and consumers of transnational commercial surrogacy in Third-World countries. Hence, this specific issue is hardly to fit in the category of human trafficking.

Scholars often talk about fertility travel/tourism, reproductive tourism or cross-border reproductive care (Inhorn and Gurtin, 2011). Transnational commercial surrogacy in Third-World countries has much in common with sex tourism than human trafficking. Indeed, Andrea Whittaker calls it "the new sex trade" (Whittaker, 2011 cited in Inhorn and Gurtin, 2011). This parallel with sex tourism seems more appropriate to transnational commercial surrogacy in the South. Indeed, this concept acknowledges the idea of a criminogenic situation, without making it a transnational crime. The concept of fertility tourism highlights the negative effects of transnational commercial surrogacy in the Third-World such as harm and social injustice without criminalizing the practice. Labelling transnational commercial surrogacy in Third-World countries as a fertility tourism, could provoke a social change as "First-World couples can become more critical of how they travel and what they consume in the context of reproductive tourism, there might be some scope to alter what they do in the context of the relation, which then can eventually transform it" (Banerjee, 2010: 122).

### 3) 'Criminal iatrogenesis' applied to the issue of transnational commercial surrogacy

The concept of 'criminal iatrogenesis' was developed by Cohen in 1988 in a paper called "Western crime control models in the Third-World: Benign or malignant?" Cohen re-used the concept of medical iatrogenesis from Illich to apply it to criminology, more specifically to the effects of Western crime control policies and practices on the global South (Cohen, 1988/2009). He explains that there is an irony or a paradox in the action of Western organizations and institutions. Cohen gives the example of the export of drugs to the Third-World by multinational companies (Ibid). Their first motivation is to cure people, however at the same time conscientiously or not, they are doing more harm than good such as creating drug dependencies (Ibid). In the case of crime control, Cohen's argument could be linked to what Maureen Cain (2000) calls Occidentalism. Both Cohen and Cain explain that criminologists tend to apply social theories from the West to any other societies in the South. The consequence of this ideology of cultural "sameness" (Cain, 2000: 239) is that the application of Western crime policies to Southern countries did not work and sometimes generated social harm and violence (Cain, 2000; Cohen, 1988/2009). This constitutes a paradox because these transfers of policies were well-intended at the first place (Cohen, 1988/2009). Bowling (2011) gives the example of the drug enforcement policies in the US and Britain. He explains that the prohibition of drugs like cocaine and cannabis have created an illegal market of drugs (Ibid). The means to tackle drug trafficking have led police forces to use informers, thus this created a mistrust amongst the criminal organisations which resulted in violent armed conflicts in distributing countries (Ibid). Moreover, ironically police interventions increased the development of new cartels; the most striking example is the destruction of Medellin cartel in Colombia, which resulted in the creation of even more violent criminal groups in South America (Ibid). To sum up, drug policies in the West, even if they were well-intended at the first place, have created various negative effects in developing countries such as armed violence and social harm (Ibid). It is an example of an iatrogenic practice (Ibid).

The concept of criminal iatrogenesis is interesting in the case of transnational commercial surrogacy. Indeed, it illustrates that in a global world criminalisation of a practice in one country will not actually stop this practice, it will simply displace the 'problem' (as if this is a problem) in other countries. The issue is usually displaced in Third-World countries, which were formerly colonised by the West, where the population is poor, and without a strong state and institutions. Cohen gives the example of the tobacco industry (Cohen, 1988/2009). He explains that the global North has strong regulations and constrains over the sale of cigarettes because of the high risks for the health (Ibid). As a consequence the tobacco industry moved to the South where the market is less regulated and there are less institutional warnings about the dangerous risks of smoking (Ibid).



This have had negative effects on Southern populations as they started to smoke more than in the global North, and cigarettes smoked in the South contained twice the cancer-causing agents permitted in the West (Ibid).

Commercial surrogacy follows the same pattern. As Karandikar *and al.* (2014) asks: “When considering that gestational surrogacy has been labelled as potentially financially exploitative to birth mothers in the global North, should surrogacy then be alternately interpreted as liberating for Indian women because they have no other sources of income?” (2014: 231). It has been argued by many scholars that the intended parents are crossing the borders to escape the legal restrictions established in their home countries (Whittaker, 2011; Inhorn and Gurtin, 2011; Nelson, 2013). Hence, as for the tobacco industry, the commercial surrogacy industry establishes itself in countries like India, where there are many opportunities to increase their profits with less legal constraints than in the West. Furthermore, the transnational commercial surrogacy industry in Third-World countries have negative effects such as a high exploitation of women's bodies (Pande, 2011; Khader, 2013; Vora, 2013b), the increase of a private health system less accessible for a large part of the population (Whittaker, 2011), the increase of inequalities between women in developing countries and women in the global North, and it sustains the imperialist, somehow racist, ideology of the West (Bailey, 2011; Banerjee, 2014). Transnational commercial surrogacy in Third-World countries, like India, could be understood as an iatrogenic practice.

This chapter hopes to have highlighted some of the links that can be made between transnational commercial surrogacy and the field of criminology, some of the existent gaps within the field, and how criminology still struggles to accommodate certain conceptual issues. The world is not only global but transnational; hence what happens in a country X is more likely to have consequences for countries Y and Z. It is striking with the example of transnational commercial surrogacy and its negative effects on Third-World women that transnational criminology should be concerned with reduction of harms and transform its theories of crime and criminal justice. Indeed, the field of criminology appears as a discipline very much rooted in particular national and cultural contexts and histories – especially the West Anglo-Saxon world. Therefore, in light with recent critiques against criminology (Cain, 2000; Agozino, 2004; Aas, 2007; 2012; Richie, 2011) this chapter hopes to resist the discipline of criminology, by analysing a transnational issue of social justice, and reconsidering the Western definitions of some concepts.

## Conclusion

It has been argued in this dissertation that transnational commercial surrogacy in Third-World countries is a very relevant example to illustrate the gaps within the field of criminology, the struggles that criminology have to accommodate with certain concepts, and to expand the recent willingness to transform the criminological agenda in order to be equipped to face the new challenges of our times (Garland and Sparks, 2000). Indeed, the neo-liberal economic model and globalisation have transformed our world and the societies that form it. Therefore, the field of criminology has to change its agenda, and to open up its boundaries to phenomena that change what might be counted as crime or criminality, and criminal justice system practices and responses to it. For instance, the emergence of non-state actors such as terrorist organisations like Al-Qaeda, the development of new technologies of communication and information like the Internet, and the development of biotechnologies, all have an impact on criminology as an academic field. In order to respond to these social transformations, criminology has been interested in theories it tended to ignore and considered “primitive” like post-colonialism (Cohen, 1988/2009: 172), to incorporate analytical frameworks from other disciplines like intersectional framework to analyse all sources of oppression (Burgess-Proctor, 2006), and to expand its intellectual commitment to social justice (Richie, 2011).

In the light of the critiques mentioned above, transnational commercial surrogacy in Third-World countries appears to be a relevant contemporary issue that could be an important ground for criminologists to expand their research agenda in accordance to the recent global social transformations. This dissertation has shown that criminology as an academic field already has some important analytical tools to analyse transnational commercial surrogacy such as the Foucauldian concepts of bio-power, discipline and power/knowledge relations, and the concept of 'criminal iatrogenesis' developed by Cohen. However, criminology still struggles with other approaches such as the absence or ignorance of post-colonial perspectives, the misuse of the feminist intersectional approach, the struggle over the accommodation of some concepts such as free-choice and self-determination, and the ignorance of issues of social justice. This marginalisation of such theories reflects criminology's own colonial and sexist tendency.

This dissertation hopes to have highlighted some gaps within criminology, and how transnational commercial surrogacy in Third-World countries could be linked to the field in light of the recent willingness to expand the criminological agenda. This dissertation appears as a form of resistance of the discipline – understood in a Foucauldian sense—of criminology very much rooted in the specific cultural and historical contexts of the Anglo-Saxon world. Furthermore, transnational

commercial surrogacy in Third-World countries is receiving a lot of attention from the media due to various cases of surrogacy done in the global South where the practice is largely unregulated or less-regulated than in the global North. For instance, recently, the BBC reported the case of an Australian couple who hired a surrogate in Thailand. The surrogate mother gave birth to twins but the commissioning parents did not want to take one of the babies who has the Down's syndrome (BBC online, 3/08/2014). The questions of regulation, and consequences on women and women's bodies are common in the press (e.g.; Haberman, 23/03/2014; Dupont and Johannès, 26/06/2014; Lewin, 5/07/2014).

Therefore, it is important for criminologists to analyse this topic together with academics from other fields such as philosophy, in order to avoid having only a legal analysis of that case.

## Bibliography

- Aas, K.F. (2007)** “Analysing a world in motion: Global flows meet 'criminology of the other'” *Theoretical Criminology*. Vol.11(2): 283-303.
- Aas, K.F. (2012)** “‘The Earth is one but the world is not’: Criminological theory and its geopolitical divisions” *Theoretical Criminology*. Vol.16(5): 5-20.
- Agozino, B. (2004)** “Imperialism, crime and criminology: Towards the decolonisation of criminology” *Crime, Law and Social Change*. Vol.41: 343-358.
- Bailey, A. (2011)** “Reconceiving surrogacy: Toward a reproductive justice account of Indian surrogacy” *Hypatia*. Vol.26(4): 715-741.
- Banerjee, A. (2010)** “Reorienting the ethics of transnational surrogacy as a feminist pragmatist” *The Pluralist*. Vol.5(3): 107-127.
- Banerjee, A. (2014)** “Race and transnational reproductive caste system: Indian transnational surrogacy” *Hypatia*. Vol.29(1): 113-128.
- BBC News (2014)** *Calls for clearer surrogacy rules after Thai Down's case*. 3<sup>Rd</sup> August 2014. Online: <http://www.bbc.com/news/world-asia-28627374>. [Accessed on 10/08/2014].
- Bhabra, A. (2007a)** *Rethinking Modernity: Post-colonialism and the sociological imagination*. New York: Palgrave MacMillan.
- Bhabra, A. (2007b)** “Sociology and post-colonialism: Another 'missing revolution'?” *Sociology*. Vol.4(5): 871-884.
- Bowling, B. (2011)** “Transnational criminology and the globalisation of harm production” in Bosworth, M. and Hoyle, C. (eds.) *What is criminology?* Oxford: Oxford University Press.
- Breton, A. (1947)** “Un grand poète noir. Préface de l'édition de 1947” in Césaire, A. (1983) *Cahier d'un retour au pays natal*. Paris: Présence Africaine.
- Brunet, L., Carruthers, J., Davaki, K., King, D., Marzo, C. and Mccandless, J. (2013)** *A Comparative Study on the Regime of Surrogacy in EU Member States*. European Union Parliament.
- Burgess-Proctor, A. (2006)** “Intersections of race, class, gender, and crime: Future directions for Feminist criminology” *Feminist Criminology*. Vol.1(1): 27-47.
- Cain, M. (2000)** “Orientalism, Occidentalism and the sociology of crime” *British Journal of Criminology*. Vol.40: 239-260.
- Chesney-Lind, M. and Morash, M. (2013)** “Transformative Feminist criminology: A critical re-thinking of a discipline” *Critical Criminology*. Vol.21: 287-304.
- Cohen, S. (1988)** “Western crime control models in Third-World benign or malignant?” [Reprinted in Cohen, S. (2009) *Against Criminology*. New Brunswick, N.J: Transaction.].
- Corea, G. (1986)** *The Mother Machine: Reproductive technologies from artificial insemination to*

*artificial wombs*. London: The Women's Press.

**Creenshaw, K. (1991)** "Mapping the margins: Intersectionality, identity politics, and violence against women of color" *Stanford Law Review*. Vol.43(6): 1241-1299.

**Cuneen, C. (2011)** "Postcolonial perspectives for criminology" in Bosworth, M. and Hoyle, C. (eds.) *What is criminology?* Oxford: Oxford University Press.

**Derrida, J. (1991)** *The time of the king. From given time*. Excerpt printed in Schriff, A.D. (1997) *The Logic of gift: Towards and ethic of generosity*. London: Routledge.

**Derrida, J. and Kamuf, P. (1992)** "Given time: The time of the King" *Critical Inquiry*. Vol.18(2): 161-187.

**Deomampo, D. (2013a)** "Transnational surrogacy in India: Interrogating power and women's agency" *A Journal of Women Studies*. Vol.34(3): 167-188.

**Deomampo, D. (2013b)** "Gendered geographies of reproductive tourism" *Gender and Society*. Vol.27(4): 514-537.

**Donchin, A. (2010)** "Reproductive tourism and the quest for global gender justice" *Bioethics*. Vol.24(7): 323-332.

**Dupont, G. and Johannès, F. (2014)** "GPA: La France condamnée par la Cour Européenne des Droits de l'Homme" *Le Monde*. 26<sup>th</sup> of June 2014. Online: [http://www.lemonde.fr/societe/article/2014/06/26/gpa-la-france-condamnee-par-la-cour-europeenne-des-droits-de-l-homme\\_4445630\\_3224.html?xtmc=gpa&xtcr=3](http://www.lemonde.fr/societe/article/2014/06/26/gpa-la-france-condamnee-par-la-cour-europeenne-des-droits-de-l-homme_4445630_3224.html?xtmc=gpa&xtcr=3). [Accessed on 22/07/2014].

**Foucault, M. (1975)** *Surveiller et Punir. Naissance de la Prison*. Paris: Gallimard.

**Foucault, M. (1976)** *Histoire de la Sexualité I: La Volonté de Savoir*. Paris: Gallimard.

**Foucault, M. (2004)** *Naissance de la Biopolitique. Cours au Collège de France 1978-79*. Paris: Seuil/Gallimard.

**Go, J. (2013)** "For a postcolonial sociology" *Theory and Society*. Vol.42(1): 25-55.

**Garland, D. (1997)** "'Governmentality' and the problem of crime: Foucault, criminology, sociology" *Theoretical Criminology*. Vol.1(2): 173-214

**Garland, D. and Sparks, R. (2000)** 'Criminology, social theory and the challenge of our times' in D. Garland and R. Sparks (eds.) *Criminology and Social Theory*. Oxford: Oxford University Press.

**Gupta, A. (2006)** "Towards transnational feminisms: Some reflections and concerns in relation to the globalisation of reproductive technologies" *European Journal of Women Studies*. Vol.13(1): 23-38.

**Gupta, J.A. (2012)** "Reproductive biocrossings: Indian egg donors and surrogates in the globalized fertility market" *International Journal of Feminist Approaches to Bioethics*. Vol.5(1): 25-51.

**Gupta, J.A. and Richters, A. (2008)** "Embodied subjects and fragmented objects: Women's

bodies, assisted reproduction technologies and the right to self-determination” *Bioethical Inquiry*. Vol.5: 239-249.

**Haberman, C. (2014)** “Baby M. and the question of surrogate motherhood” *The New York Times*. 23<sup>Rd</sup> March 2014. Online: [http://www.nytimes.com/2014/03/24/us/baby-m-and-the-question-of-surrogate-motherhood.html?\\_r=1](http://www.nytimes.com/2014/03/24/us/baby-m-and-the-question-of-surrogate-motherhood.html?_r=1). [Accessed on the 22/07/2014].

**Halewood, P. (2013)** “On commodification and self-ownership” *Yale Journal of Law and the Humanities*. Vol.20(2): 131-162.

**Henne, K. and Troshynski, E. (2013)** “Mapping the margins of intersectionality: Criminological possibilities in a transnational world” *Theoretical Criminology*. Vol.17(4): 455-473.

**Hoyle, C. and Bosworth, M. (2011)** “Mapping the borders of criminology: Concluding thoughts” in Bosworth, M. and Hoyle, C. (eds.) *What is criminology?* Oxford: Oxford University Press.

**Hudson, N., Culley, L., Blyth, E., Norton, W., Rapport, F., and Pacey, A. (2011)** “Cross-border reproductive care: A review of literature” *Reproductive BioMedicine Online*. Vol.22: 673-685.

**Inhorn, M.C. and Gurtin, Z.B. (2011)** “Cross-border reproductive care: a future research agenda” *Reproductive BioMedicine Online*. Vol.23: 665-676.

**Irigaray, L. (1985)** “Women on the market” in *This sex which is not one*. Excerpt printed in Schriff, A.D. (1997) *The Logic of gift: Towards and ethic of generosity*. London: Routledge.

**Karandikar, S., Gezinski, L.B., Carter, J.R., and Kaloga, M. (2014)** “Economic necessity or noble cause? A qualitative study exploring motivations for gestational surrogacy in Gujarat, India” *Affilia: Journal of Women and Social Work*. Vol.29(2): 224-236.

**Khader, S.J. (2013)** “Intersectionality and the ethics of transnational commercial surrogacy” *International Journal of Feminist Approaches to Bioethics*. Vol.6(1): 68-90.

**Kirby, J. (2014)** “Transnational gestational surrogacy: Does it have to be exploitative?” *The American Journal of Bioethics*. Vol.14(5): 24-32.

**Krolokke, C.H. and Pant, S. (2012)** “‘I only need her uterus’: Neo-liberal discourses on transnational surrogacy” *Nordic Journal of Feminist and Gender*. Vol.20(4): 233-248.

**Lewin, T. (2014)** “Coming to U.S for baby, and womb to carry it. Foreign couples heading to America for surrogate pregnancies” *New York Times*. 5<sup>Th</sup> of July 2014. Online: <http://www.nytimes.com/2014/07/06/us/foreign-couples-heading-to-america-for-surrogate-pregnancies.html>. [Accessed on 10/08/2014].

**Lock, M. and Nguyen, V. (2010)** *An Anthropology of Biomedicine*. West Sussex: Wiley-Blackwell.

**Loomba, A. (2005)** *Colonialism/Postcolonialism*. Second Edition. Oxon: Routledge.

**Markens, S. (2007)** *Surrogate motherhood and the politics of reproduction*. Berkeley, California: University of California Press.

- May, T. (2001)** *Social research: Issues, methods and process*. Third Edition. Buckingham: Open University Press.
- McNay, L. (1992)** *Foucault and Feminism: Power, Gender and the Self*. Cambridge: Polity Press.
- Mohanty, C.T. (1988)** “Under Western eyes: Feminist scholarship and colonial discourses” *Feminist Review*. Vol.30: 61-88.
- Mohanty, C.T. (2003)** “‘Under Western eyes’ revisited: Feminist solidarity through anti-capitalist struggles” *Signs*. Vol.28(2): 499-535.
- Murphy, T. and Whitty, N. (2013)** “Making history: Academic criminology and human rights” *British Journal of Criminology*. Vol.53: 568-587.
- Narayan, U. (1995)** “The ‘gift’ of a child: commercial surrogacy, gift surrogacy and motherhood” in Boling, P. (eds.) *Expecting trouble: Surrogacy, Fetal abuse, and New reproductive technologies*. Boulder, Colorado: Westview Press.
- National Rapporteur on Trafficking in Human Beings (2012)** *Human trafficking for the purpose of the removal of organs and forced commercial surrogacy*. The Hague: BNRM
- Nelson, E. (2013)** “Global trade and assisted reproductive technologies: Regulatory challenges in international surrogacy” *The Journal of Law, Medicine and Ethics*. Vol.41(1): 240-253.
- Oakley, A. (1987)** “From walking wombs to test-tube babies” in Stanworth, M. (eds.) *Reproductive Technologies. Gender, Motherhood and Medicine*. Cambridge: Polity Press.
- Pande, A. (2009a)** “Not an ‘angel’, not a ‘whore’: Surrogates as ‘dirty’ workers in India” *Indian Journal of Gender Studies*. Vol.16(2): 141-173.
- Pande, A. (2009b)** “‘It may be her eggs but it’s my blood’: Surrogates and everyday forms of kinship in India” *Qualitative Sociology*. Vol.32(4): 379-397.
- Pande, A. (2010a)** “Commercial surrogacy in India: Manufacturing a perfect mother-worker” *Signs*. Vol.35(4): 969-992.
- Pande, A. (2010b)** “‘At least I am not sleeping with anyone’: Resisting the stigma of commercial surrogacy in India” *Feminist Studies*. Vol.36(2): 292-312.
- Pande, A. (2011)** “Transnational commercial surrogacy in India: Gifts got global sisters?” *Reproductive BioMedicine Online*. Vol.23: 618-625.
- Panitch, V. (2013)** “Global surrogacy: Exploitation to empowerment” *Journal of Global Ethics*. Vol.9(3): 329-343.
- Pateman, C. (1988)** *The Sexual Contract*. Cambridge: Polity Press.
- Raymond, J.G. (1993)** *Women as wombs: Reproductive technologies and the battle over women's freedom*. North-Melbourne, Australia: Spinifex.
- Richie, B. (2011)** “Criminology and social justice: Expanding the intellectual commitment” in Bosworth, M. and Hoyle, C. (eds.) *What is criminology?* Oxford: Oxford University Press.

- Roberts, D.E. (2009)** "Race, gender, and genetic technologies: A new reproductive dystopia?" *Signs*. Vol.34(4): 783-804.
- Rose, N. (2007)** *The Politics of Life Itself: Biomedicine, Power and Subjectivity in the twenty-first century*. Princeton, New Jersey: Princeton University Press.
- Rudrappa, S. (2012)** "India's reproductive assembly line" *Contexts*. Vol.11(2): 22-25.
- Said, E. (1976)** "Arabs, Islam and the Dogmas of the West" *The New York Times Book Review*. 31 October 1976. [Excerpt reprinted in Macfie, A.L. (2000) *Orientalism: A reader*. Edinburgh: Edinburgh University Press.]
- Said, E. (1978)** *Orientalism*. London: Pantheon Books. [Excerpt reprinted in Macfie, A.L. (2000) *Orientalism: A reader*. Edinburgh: Edinburgh University Press.]
- Saravan, S. (2010)** "Transnational surrogacy and objectification of gestational mothers" *Economic and Political Weekly*. Vol.65(16): 29-29.
- Satz, D. (2010)** *Why some things should not be for sale: The moral limits of market*. Oxford: Oxford University Press.
- Sawicki, J. (1991)** *Disciplining Foucault: Feminism, Power and the Body*. New York: Routledge.
- Scheper-Hughes, N. (2000)** "The Global traffic in human organs" *Current Anthropology*. Vol.41(2): 191-224.
- Scheper-Hughes, N. (2004)** "Parts unknown: Undercover ethnography of the organs-trafficking underworld" *Ethnography*. Vol.5(1): 29-73.
- Scheper-Hughes, N. and Wacquant, L. (2002)** *Commodifying Bodies*. Thousand Oaks, California: SAGE.
- Scott, E.S. (2009)** "Surrogacy and the politics of commodification" *Law and Contemporary Problems*. Vol.72: 108-146.
- Sharp, L.A. (2000)** "The commodification of the body and its parts" *Annual Review of Anthropology*. Vol.29: 287-328.
- Smart, B. (2002)** *Michel Foucault*. Revised Edition. New York: Routledge.
- Stanworth, M. (1987)** "Reproductive technologies and the deconstruction of motherhood" in Stanworth, M. (eds.) *Reproductive technologies. Gender, Motherhood and Medicine*. Cambridge: Polity Press.
- Towghi, F. and Vora, K. (2014)** "Bodies, Markets, and the Experimental South Asia" *Ethnos: Journal of Anthropology*. Vol. 79(1): 1-18.
- Tracy, S.J. (2010)** "Qualitative Quality: Eight "Big-Tent" Criteria for Excellent Qualitative Research" *Qualitative Inquiry*. Vol.16: 837-851.
- Troshynski, E. (2012)** "Human trafficking" in Dekeseredy, W.S. and Dragiewicz, M. (eds.) *Routledge Handbook of Critical Criminology*. Oxon: Routledge.



- Tyson-Darling, M.J. (2008)** “Gender and Justice in the gene age: The challenges presented by reproductive and genetic biotechnologies” in Molfino, F. and Zucco, F. (eds.) *Women in Biotechnology: Creating interfaces*. Springer.
- Vora, K. (2009)** “Indian transnational surrogacy and the disaggregation of mothering work” *Anthropology News*. February 2009.
- Vora, K. (2013a)** “Experimental sociality and gestational surrogacy in the Indian ART clinic” *Ethnos: Journal of Anthropology*. Vol.79(1): 63-83.
- Vora K. (2013b)** “Potential, risk and return in transnational Indian gestational surrogacy” *Current Anthropology*. Vol.54(7): 97-106.
- Whittaker, A. and Speir, A. (2010)** “‘Cycling overseas’: Care, commodification, and stratification in cross-border reproductive travel” *Medical Anthropology*. Vol.29(4): 363-383.
- Whittaker, A. (2011)** “Cross-border assisted reproduction care in Asia: Implications for access, equity and regulation” *Reproductive Health Matters*. Vol.19(37): 107-116.
- Widdows, H. (2009)** “Border disputes across bodies: Exploitation in trafficking, prostitution and egg for stem cell research” *International Journal of Feminist Approaches to Bioethics*. Vol.2(1): 5-24.
- Zedner, L. (2011)** “Putting crime back on the criminological agenda” in Bosworth, M. and Hoyle, C. (eds.) *What is criminology?* Oxford: Oxford University Press.