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NORDIC JOURNAL OF MIGRATION RESEARCH

Special Issue Article • DOI: 10.2478/njmr-2019-0037 NJMR • 9(4) • 2019 • 461-479

GOVERNING PARENTAL DESIRES AND VULNERABILITIES: *Affectiv e Biopolitics in the Context of Norwegian Citizens' Repro-Migration*

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Received 10 October 2018; Accepted 27 September 2019

Abstract

In the early 2010s, transnational surrogacy was a hotly debated topic in Norway following Norwegian citizens' repro-migration. One of the oft-repeated policy proposals in the debate was to criminalise transnational surrogacy in the same fashion as the purchase of sex. However, instead of introducing a prohibition, the Parliament, in 2013, voted in favour of an addition to the Biotechnology Act, clarifying that private individuals could not be punished for participating in surrogacy abroad. Of concern to me in this paper is how transnational surrogacy came to be handled in a manner that facilitated, rather than stopped, this type of repro-migration. I examine the legislative process that led to the current regulation of transnational surrogacy, with particular attention to *the aff ective biopolitics* of repro-migration. I fi nd that reproductive vulnerability and desire circulated in the debate, which fi nally resulted in an exemption of the Norwegian repro-migrants from punishment.

Keywords

transnational surrogacy • repro-migration • affe ctive biopolitics • r eproductive desires • reproductive vulnerability •

Introduction

In the spring of 2013, the Norwegian Parliament voted in favour of an addition to the penal provision in the Norwegian Biotechnology Act, clarifying that private individuals should *not* be punished for seeking out or using services not legal according to the law. The vote put to rest – at least temporarily – a question that in the previous years had been much debated: namely, whether those travelling abroad to access methods of assisted reproduction that are not legal in Norway, notably surrogacy, were liable to punishment upon return to Norway.

The Norwegian parliamentary vote illustrates a state response to new and globally available reproductive opportunities (e.g. Browner & Sargent 2011; Melhuus 2012) and to citizens' cross-border reproductive travels, conceivable as a type of 'repro-migration' (cf. Nahman 2011). In particular, it illustrates the state of Norway's response to *transnational surrogacy*, which constituted the pretext of the Parliament's vote that spring. Around 2010, transnational surrogacy hit the headlines and caused public debate in Norway (see Andersen 2013; Kroløkke 2012; Stuvøy 2016), following the travels taken by Norwegian women and men to have a child born to them by a surrogate ~~mother~~[1] in a different country, often in the USA or India,[2] and to later migrate the newborn child to Norway (see Førde 2017; Stuvøy 2018).

Of concern to me in this article is how transnational surrogacy came to be regulated by the Norwegian Parliament in a manner that facilitated, rather than stopped, this type of repro-migration. This outcome, I contend, was not a given; in the Norwegian debate on transnational surrogacy, one of the oft-repeated policy proposals was to criminalise the use of surrogacy abroad, using, as a template, the 2009 prohibition of the purchase of sex both in Norway and abroad for Norwegian citizens. The question seems therefore to be why the use of surrogacy abroad was exempted from punishment – and what that might tell us about 'reproduction in a time of migra-politics' (cf. Thompson 2018) and about biopolitics (cf. Foucault 1990) in what has been referred to as an 'age' of international migration (Castles, Miller & Ammendola 2014). Examining how reproduction, migration and politics come together is, I contend, pertinent at a moment when the making, (re)unification, deportation and separation of children and parents[3] take place alongside one another.

My argument here regards the *affective biopolitics* of repro-migration. In the analysis, I trace the lawmaking process that resulted in the vote on the penal provision in the spring of 2013, examining how affectively loaded notions of *reproductive vulnerability* and *reproductive desire* circulated in the process that led to impunity for those desiring a child but failing to do so without assistance. Vulnerability, I show, was explicitly discussed in the political process as a reason both to punish and not to punish, depending on whose vulnerability was put in motion. Additionally, I introduce the notion of reproductive desires to capture how the repro-migration of Norwegian citizens was affectively ascribed with meanings in ways that made it inappropriate to punish these citizens. This, I argue, calls for attention to *whose* vulnerability and desires may effectively be put to work in a political process intent to regulate cross-border activities.

I start by positioning this article within the scholarship on cross-border reproduction and theorise transnational surrogacy as a type of repro-migration taking place within a context of affective biopolitics.

Reproduction across borders and state orders

Since the breakthrough of in vitro fertilisation (IVF) in the 1970s, reproduction has undergone radical changes, not only for how assisted reproductive technologies (ARTs) have altered

our imaginations of how babies and parents are made and kinship is formed (e.g. Franklin 2013; Strathern 1992; Thompson 2005), but also for shifting *where* reproduction takes place, calling for a perspective on the geography of reproduction (Deomampo 2013; Schurr 2018). Conventionally associated with the bedroom, the household and, also, the nation-state, reproduction may now take place across borders, illustrating a broader tendency of globalisation (Browner & Sargent 2011) and a moment 'characterized by accelerated mobility and migration of people, bodies, (reproductive) substances, technologies, knowledge and expertise' (Kroløkke *et al*. 2016: 1).

Consequently, much scholarly attention has, in recent years, been devoted to cross-border travels undertaken for the purposes of reproduction, variously referred to in the scholarly literature as *reproductive, fertility or procreative tourism* (e.g. Deomampo 2013; Kroløkke 2016), a type of *cross-border reproductive care* (Inhorn & Gürtin 2011), *reproductive exile* (Inhorn & Patrizio 2009), or, as proposed by Michal Nahman (2011), *repro-migration*. These different conceptualisations illustrate different emphases as well as conflicting ideas in the scholarly literature.

In this article, I refer to the cross-border travels undertaken by Norwegian citizens as a type of 'repro-migration', even if, as should be noted, these travels are rarely referred to in terms of migration within a Norwegian context. To Nahman, the notion of repro-migration affords an opening to explore how the border crossings undertaken by those seeking to become parents connect with other kinds of global (im)mobilities (cf. Nahman 2011: 627), where she concentrates on the traffic of human eggs and the providers of these eggs, referring to this as a type of reverse traffic that 'heightens [...] the inequalities among differently situated women globally' (Nahman 2011: 626). Following Nahman's lead, my own usage of repro-migration is motivated by an ambition to avoid the misconception of considering different migration situations as hermetically sealed from one another (cf. Bhabha 2014: 9). Instead, I insist on thinking of them as parallel movements of people alongside one another. Thus, although focusing on the issue of transnational surrogacy, I use the notion of repro-migration to open up conceptual space to query how the movements of differently situated people are enabled or hindered.

Of particular concern to me is, moreover, the effort to situate transnational surrogacy within the realm of the state, all the while undoubtedly a phenomenon that crosses borders and challenges state jurisdiction. The state, qua its prohibitions, may be understood as shaping people's repro-migration; for instance, Norwegian anthropologist Marit Melhuus describes the Norwegian Biotechnology Act as 'limit[ing] people's choice as to how they wish to procreate within the borders of the nation-state, while at the same time prompting people to travel abroad in order to obtain treatments not permitted in Norway' (Melhuus 2012: 3). While I am somewhat unconvinced by the causal inference – that the law (alone) is what causes people to travel – it should be noted that the Norwegian Biotechnology Act prohibits (gestational) surrogacy.[4] This has been significant for Norwegian citizens seeking out surrogacy abroad as a way to become parents (see Stuvøy 2018).

While several countries prohibit surrogacy, the question of punishing those who travel abroad – which was one of the main issues in Norway and the one discussed in this article –

is somewhat less prevailing, even if this is a discussion also found elsewhere (see e.g. Lozanski 2015; Van Hoof & Pennings 2011).[5] As already noted in the Introduction section, the Norwegian politicians voted in 2013 to exempt private individuals, egg and sperm donors as well as research participants from punishment, thereby stating that repro-migration is not a punishable offence according to Norwegian law. This, I contend, invites an exploration of how reproduction, migration and politics come together in this state response to transnational surrogacy.

The affective biopolitics of repro-migration

To say that migration is political is almost redundant in current times, in particular in Western Europe and the USA, where immigration has become a matter of governmentality (cf. Fassin 2011). Likewise, reproduction is a deeply political issue (Briggs 2017; Ginsburg & Rapp 1991), as may be illustrated by the struggles around abortion (e.g. Solinger 2013). The political salience of reproduction has become no less with the emergence of ARTs, which has allowed for new ways of making, enhancing and selecting life (e.g. Gammeltoft & Wahlberg 2014). This 'life-management' is often conceptualised as a matter of biopolitics (cf. Foucault 1990, orig. 1976), a term that denotes how life has become central to government.

On that note, the Norwegian Biotechnology Act may be considered a principal 'technology of government', as argued by Melhuus, who refers to how laws 'both reflect dominant social concerns and values are normative, in the sense that they seek to regulate and/or improve current practices' (Melhuus 2012: 3). Sharing Melhuus' interest in the legal processes shaping the Biotechnology Act, my interest here is on how these legislative processes reflect what may be referred to as 'affective economies' (cf. Ahmed 2004).

In recent years, the significance of affect for the workings of government, politics and policy has been subject to increased attention, as exemplified in notions of 'affective governance' and 'emotional states' (Jupp, Pykett & Smith 2017; McKenzie 2017). Of significance to my orientation towards affect is, moreover, the increasing attention internationally and within Nordic scholarship on how migration is governed through affects such as love and intimacy, leading to the inclusion and exclusion of specific forms of intimate migration (Bissenbakker & Myong, 2019).

Approaching affect here, I draw on Sara Ahmed (2004), who challenges the idea that emotions are private, belonging to and emanating from within the individual. Making an analogy to Marx's theory of capital, Ahmed suggests that 'emotions work as a form of capital', where affect is 'produced only as an effect of its circulation' (Ahmed 2004: 120). This encourages exploration of the performativity of emotions and how emotions work to 'create subjects and relations, how they can mobilize, be mobilized, stick and become stuck onto something' (Bissenbakker Frederiksen 2012: 8, my translation). I have translated this into an exploration of how, and with what effects, affect circulated to construct the Norwegian parents and repro-migrants as liable or not liable to punishment. Yet more concretely, I

examine how reproductive vulnerability and desire circulated as affects in the legislative process in question.

Reproductive vulnerability and desire

In the legislative process that led to the current legislation on repro-migration in Norway, vulnerability was explicitly referenced, as I will show in the later analysis. Vulnerability is, moreover, a key issue of concern in surrogacy research, even if not always theorised in such terms. Concerns over commodification of babies and of women's bodies, as well as social control and exploitation of women, have haunted surrogacy ever since it emerged as an organised contractual arrangement in the late 1970s and early 1980s (e.g. Radin 1996; Raymond 1989). With the emergence of transnational surrogacy arrangements in the early 2000s onwards, such concerns have not grown less (e.g. DasGupta & Dasgupta 2014) and now include concerns for the vulnerability of potentially stateless or left-behind children (e.g. Darling 2017). Meanwhile, scholars have also pointed to the vulnerability of those experiencing medical or social infertility and seeking out surrogacy as a resort in their quest to become parents (e.g. Riggs & Due 2013).

Applying the notion of *reproductive vulnerability* here, I am indebted to earlier formulations of this concept, as found in the work of Damien W. Riggs and Clemence Due (2013) and Johanna Gondouin (2014). Whereas Riggs and Due (2013: 957) seem to conceive of reproductive vulnerability as a given that 'drives' people to travel abroad for surrogacy, Gondouin theorises it as an affect that is unequally distributed (Gondouin 2014: 111). Appreciative of the idea of unequal distribution, I find the work of Judith Butler (2004) on vulnerability to be serving as a resource to consider vulnerability and inequality together within an affective economy. Indicating how vulnerability is a shared human condition, Butler contends that people's grief and loss are differentially recognised. This, Butler writes, relates to 'certain exclusionary conceptions of who is normatively human' (Butler 2004: xiv–xv). This suggests that the circulation of affect depends on already-assumed ideas of value and personhood, affecting *onto whom* vulnerability is 'stuck'.

I find this useful in order to think not only about vulnerability but also about how the loss of fertility is recognised in the public sphere. The recognition of infertility as a loss relates, I suggest, to *reproductive desire* as an affect that renders culturally intelligible the attempts to overcome infertility. Introducing the notion of reproductive desire here, I am leaning on a long tradition of paying attention to the cultural and social configurations of reproductive desires, in particular following the emergence of ARTs (e.g. Strathern 1991). Notably, my concern here is not with how such constructs affect the individual experiences of infertility. Rather, I am interested in exploring how desire and vulnerability circulate in a concrete legislative process.

Methodology and empirical material

In the analysis, I examine the legislative process that led to the vote on the penal provision on 27 May 2013 and the second confirmatory vote in 3 June 2013. This process started with the official hearing brief published in November 2012, meaning that I have confined myself to examine the state's response to transnational surrogacy as it was formulated between November 2012 and June 2013 (see Figure 1).

The empirical material that I am analysing consists of the consultative paper, the hearing submissions and the law proposal subject to the aforementioned vote in Parliament, as well as the statement from the appropriate committee in the Parliament and the minutes from two parliamentary debates. Text, I posit, is an important source to examine the affective economies in which some affects – as they are formulated in words – are 'stuck' to some people or practices. Thus, in the ensuing analysis, I trace the process from the publication of the consultative paper in November 2012 to the passing of the changes in the penal provision on 27 May 2013.

Time line

- **8 November 2012:** Consultative paper published.
- **21 November 2012:** Question time in Parliament.
- **8 January 2013**: Deadline for hearing submissions.
- **22 March 2013:** Law proposal *Prop. 95 L (2012–2013)* presented in Parliament.
- **16 May 2013**: Statement from the Standing Committee on Health and Care.
- **27 May 2013**: Parliamentary meeting and vote.
- **3 June 2013**: Second vote, no debate. Law passed.
- **21 June 2013**: Law implemented.

Figure 1. Timeline of the legislative process

Proposing exemption from penal liability

On 8 November 2012, the Ministry of Health and Care Services in Norway distributed for comments a consultative paper entitled, 'Changes in the Biotechnology Act – the Penal Provision' (2012). The consultative paper proposed an addition to the penal provision to clarify who should not be encompassed by the penal liability. While the ministry emphasised that it should still be punishable to intentionally infringe or contribute to the infringement of the Biotechnology Act or regulations given by the law, it was argued in favour of exempting three specified groups from this penal liability by introducing an addition to the penal provision. These specified groups were as follows: (A) private individuals who seek or use

services that are in breach with this law; (B) the one who donates egg, sperm or fertilised eggs; and (C) research participants.

The background for the addition was, according to the consultative paper, the uncertainty that had been raised with regard to the scope of the penal provision. Specifically, references were made to two occasions when the Legal Division of the Ministry of Justice and Public Security had been asked to consider the applicability of the penal provision. One of these was already in 2000, when there was uncertainty regarding what 'contribution to infringement' covered; more concretely, the question was whether it would count as contribution if a doctor informed his/her patients about possibilities to get access to methods that were not legal in Norway by travelling abroad.

The next occasion concerned transnational surrogacy. Again, the question concerned the issue of contribution to infringement of the Biotechnology Act, but this time, it was both a question of *where* such contribution took place and *who* committed it: Would it be a punishable act if people other than health personnel, such as for example private individuals, contributed to the infringement of the Biotechnology Act while they themselves were in Norway, but the main act of infringement was undertaken in a country where it would not be liable to punishment (cf. Ministry of Health and Care Services 2012: 5)? The backdrop to the question was the repro-migration of Norwegian citizens to have a child born to them by a surrogate ~~mother~~ abroad.

These two requests to the Legal Division – in 2000 and 2010 – were used as grounds for looking into the penal provision. The timing of the consultative paper was, moreover, motivated by reference to an ongoing evaluation of the Biotechnology Act. In the hearing process, the timing was subject to attention by some of the more critical submissions, such as that by the Biotechnology Committee (2013), asking why the penal provision was treated separate from other issues in the ongoing evaluation instead of being treated as part of an integrated new law. The Norwegian Directorate for Children, Youth and Family Affairs (from now on: Bufdir) argued in their submission that while it was necessary to further consider the penal provision and its scope, it should be considered more thoroughly and in relation to emerging reproductive practices, pointing specifically to surrogacy.

While the consultative paper likewise mentioned surrogacy as a backdrop for the need to clarify the penal provision, it called to attention that the penal provision would be applicable in the case of also those other usages of biotechnology that are not currently legal in Norway, mentioning – in addition to surrogacy – also egg donation and ARTs for single women,[6] as well as prenatal diagnostics and pre-implantation diagnosis. The contextualisation of the penal provision within a broader spectrum of repro-migration may be seen as serving the purpose of making this less about surrogacy as such, while also contextualising surrogacy among other and less-controversial types of repro-migration. This was prominent in a statement by the then Minister of Health and Care, Jonas Gahr Støre (the Labour Party), during question time in Parliament just a couple of weeks after the issuing of the consultative paper. Asked whether he did not find it troubling that the proposed exemption would give impunity to people who travelled abroad for transnational

surrogacy, Støre replied by rhetorically asking whether critics truly considered punishing single women who travel abroad for ARTs:

> *It is tempting to return the question: Whether one should make criminally liable women who receive assisted fertilization in Denmark, there are between 700-1000 of them a year, upon return to Norway? It is the same problem at hand: it is prohibited according to Norwegian law and it is done to a large extent. Should one then imprison, arrest and prosecute these women?* (Støre in the Storting 21 November 2012b).[7]

In his comment, Støre framed repro-migration as a commonplace phenomenon, pointing to the extent to which people travel out of Norway to reproduce in different ways. The imagined subjects in Støre's comment were the Norwegian citizens with a desire to become parents and who temporarily migrate in order to fulfil such a desire.

Støre drew particular attention to women as someone risking imprisonment. He, thereby, countered attempts to discuss the penal provision as a question of whether or not to punish those who potentially exploit women (i.e. the surrogate ~~mothers~~). In a country where gender equality and the 'women-friendliness' (cf. Hernes 1987) of policies have been central in policy-making in the past decades, the rhetoric around women's position in transnational surrogacy resonates with central concerns in Norwegian politics (see Stuvøy 2016). By drawing attention to women as repro-migrants, Støre seemed to be suggesting that these migrants were not best considered as privileged people exploiting others, but as subjects who were potentially vulnerable.

A vulnerability argument for and against impunity

In the consultative paper, vulnerability was put forth as a key argument against punishing those who travel abroad for reproductive methods such as surrogacy:

> *Private individuals who while abroad make use of services that are not allowed in Norway, may be in a vulnerable position upon return to Norway. This will particularly be the case for those who return as pregnant or with children.* (Ministry of Health and Care Services 2012: 7f)

In this formulation, vulnerability was linked to repro-migration and to the return to Norway after such repro-migration. Particular emphasis was put on the vulnerability associated with being pregnant or newly fledged parents to a child. Reproduction in general, and pregnancy and the early days of one's child in particular, was presented as a special – and vulnerable – time in someone's life and, therefore, not a time for punishment.

The formulation in the consultative paper made vulnerability a key topic in the hearing period, which lasted from the publication of the consultative paper in November 2012 until 8 January 2013. In this period, the proposed changes in the penal provision were the subjects of debate in the Question time in Parliament on 21 November 2012, and a total of

19 consultative bodies provided their comments.[8] Of the 19 submissions, seven consultative bodies' comments were negative to the proposed changes.[9]

Among those voicing their criticism of the proposed changes, The Church of Norway commented in its submission that while they '*would not voice a proposal to change the practice in terms of punishment so that people in a difficult and vulnerable position is punished*', they '*fear that a principle of exemption from criminal liability for certain groups may undermine the Biotechnology Act as such*' (Church of Norway 2013). The idea that the repro-migrants were vulnerable, as suggested in the consultative paper, was referenced here without being challenged. Meanwhile, it was argued that these people's repro-migration represented a threat to the Biotechnology Act. As such, the issue at hand was presented as a tension between protecting the law and taking into consideration individual vulnerability.

Other submissions questioned more head-on the idea that the repro-migrants were particularly vulnerable. Contesting the validity of the vulnerability argument in the consultative paper, Bufdir wrote that '*this concern should not be given any considerable weight'* and pointed to *'other lawbreakers that are pregnant or have small children, but who are nonetheless punished with prison or fines'* (Bufdir 2013). Additionally, Bufdir challenged the way vulnerability was attached to the repro-migrants and pointed instead to the vulnerability of the children being migrated – or trafficked, as Bufdir suggested – in transnational surrogacy arrangements: '*The similarities between surrogacy and acts/ participation to acts defined as human trafficking, such as prostitution, removal of organs, forced labor and forced services [...] grant that also private individuals should be punished*' (Bufdir 2013).

Bufdir's comparison of surrogacy and human trafficking caused headlines in the news coverage of the hearing process and signalled disagreements between the bureaucrats responsible for issues concerning children, youth and family, on the one side, and, on the other, the bureaucrats in the Ministry of Health and Care Services, being the authors of the consultative paper. Moreover, Bufdir's submission illustrates how vulnerability was mobilised in the hearing process to argue both in favour of and against exempting those who travelled abroad for surrogacy from punishment. Whether vulnerability was used to argue against or for exemption depended on who it was 'stuck' to, i.e. a question of who was seen as being vulnerable in the context of repro-migration and, especially, in transnational surrogacy.

On that note, there was a discursive struggle regarding whether the Norwegian repro-migrants were vulnerable qua their travelling, as suggested in the consultative paper, or whether their travelling made them complicit in exploiting the vulnerability of others. In the Question time in Parliament shortly after the consultative paper was issued, the leader of the Christian Demoracts, Knut Arild Hareide, suggested the latter, saying: '*In a large and growing global market poor women are selling access to their own body. The buyers are rich people from our part of the world'* (Hareide in the Storting 21 November 2012a). In the quote, the repro-migrants emerge as rich and willingly travelling out of Norway into a market, which was emphasised as being large, growing and global. Thus, the repro-migrants

emerge as consumers and tourists, and not as someone in exile, forced to leave their country temporarily and vulnerable upon return.

Meanwhile, the surrogate ~~mothers~~ were presented in Hareide's quote as someone selling access to their own body, echoing a common depiction of prostitution. In his speech in Parliament that day, Hareide referenced earlier agreements between the ruling Labour Party and his own party to '*avoid that people become commodities*' (Hareide in the Storting 21 November 2012a). Hareide seemed here to be pointing back to 2008 when the Labour Party and the Christian Democrats jointly voted for the criminalisation of the purchase of sex, contrasting this to the proposal of giving impunity to those going abroad for surrogacy. Furthermore, Hareide's comment suggests an incompatibility between recognising the surrogate ~~mothers~~' vulnerability and a legislative proposal emphasising the vulnerability of the repro-migrants.

Lawmaking as a signal of (un)desirable reproductive acts

On 22 March 2013, the law proposal *Prop 95 L (2012–2013) Changes in the Biotechnology Act* was presented to the Parliament. In this final law proposal, the submissions in the hearing process were summarised and commented upon, before the Ministry of Health and Care Services, on behalf of the Government, gave their arguments in favour of not making any alterations to their original proposal. Referencing the legislative history of the penal provision, the ministry concluded that, in their view, '*it has not been the intention to punish participation in Norway from private individuals who make use of available treatment or services that are not legal in Norway*' (Prop. 95 L (2012–2013) 2013: 20). Thus, the ministry held forth that the proposed exemptions were in accordance with the intentions of the lawmakers when they first formulated the penal provision years earlier.

The proposal was first discussed by the Standing Committee for Health and Care Services in Parliament on 16 May 2013, resulting in a recommendation from the committee to the Parliament. In this recommendation, the majority – consisting of the Labour Party, the Progress Party, the Conservative Party, the Socialist Left Party and the Centre Party – gave their support to the proposed changes. The majority based their support to the proposal on the assertion that the proposed changes in the penal provision '*clarify current law*' (the Standing Committee on Health and Care 2013: 4).

Legislative history was, however, not the only point emphasised in the law proposal presented to the Parliament. The Ministry of Health and Care Services also commented that '*it is, as the Ministry sees it, neither desirable nor reasonable to punish participation from these [private] individuals*' (Prop. 95 L (2012-2013) 2013: 20). Here, both reason and the desire of the legislator were referenced to substantiate the changes in the penal provision, suggesting that it was also a question of what kind of (reproductive) acts the government wanted to punish and not.

The law proposal was challenged by members of the minority in the Standing Committee for Health and Care Services and in the later Parliamentary debate on 27 May. The minority consisted of the Christian Democrats and one member from the Centre Party,

Kjersti Toppe. In their comments, the minority referenced the need for a law that signal to private individuals that surrogacy is not legitimate and not ethically acceptable. This was a point also made by Toppe in her later speech in the Parliamentary debate, where she said as follows:

> *When one explicitly ascertains that there will be no consequences for private citizens who plan and travel to India to buy a surrogate child, it is my strong conviction that this is helping to legitimise such acts and make it easier to use surrogacy. I am strongly opposed to that.* (Toppe in the Storting 27 May 2013).

In the quote, Toppe emphasised the wilful acts – involving planning and travelling, as well as buying – that the reproductive travellers commit to, with 'no consequences', as she put it. Toppe further argued that the changes in the penal provision would diminish the law's effects in terms of shaping the general attitude in the public.

Likewise, Line Henriette Hjemdal from the Christian Democrats stated in the Parliamentary debate that her party opposed the proposition because '*it sends out completely wrong signals*' (the Storting 27 May 2013). Hjemdal proposed that surrogacy should instead be regulated in the same way as the purchase of sex, saying, '*We want to encourage*[10] *the Government to consider whether one ought not to apply the same line of thinking here as what one did with the Sex Purchase Act, which prohibits purchase of sex also abroad*.' (Hjemdal in the Storting 27 May 2013). The Sex Purchase Act,[11] to which Hjemdal referenced, was introduced in 2009 and penalises the buyer of sexual services with a fine or prison up to 6 months, purposefully not criminalising the selling of sex (see Skilbrei 2012). Characteristically, the law is extraterritorial, making it illegal for Norwegian citizens to purchase sex abroad.

The reference to the Sex Purchase Act in Hjemdal's proposal may be interpreted as having several functions. For one, there is a transfer value with regard to signal effect. One of the arguments used in the debate on the Sex Purchase Act was precisely the effect the law may have on people's attitudes by way of signalling the norms of Norwegian society (Skilbrei 2012: 254). Secondly, the Sex Purchase Act served as a template for how to regulate transnational surrogacy. Thirdly, Hjemdal's reference to the Sex Purchase Act suggested that surrogacy was comparable to the purchase of sex, and, by extension, that the desire to reproduce, like the desire for sex, is questionable under certain circumstances, such as when it is satisfied by means of money. This departs from how reproductive desire circulated in the majority's speeches in the Parliamentary debate, when the proposed changes were passed.

An affective vote on the wished-for child

On 27 May 2013, *Prop. 95 L (2012–2013)* was debated and voted upon in Parliament, gaining an overwhelming majority; 88 voted in favour and only eight voted against the changes in the penal provision. Notably, the full proposition up for voting that day contained

two different changes in the Biotechnology Act: one on the penal provision and another concerning access to ARTs for people living with the human immunodeficiency virus (HIV). The first speaker in the Parliamentary debate – Håkon Haugli from the Labour Party – started by commenting on the importance of both of these changes, before offering the following remark:

> *In the Labour party, we are happy that biotechnology has gradually been taken into use in Norway. Mona Susanne Tetlie was Norway's first born so-called test tube baby in 1984, and in 2006, she herself became a mom to a little girl at Oppdal nursery. She is one of many, many examples that new technology has created joy, new lives and families, and contributed to us becoming more [people] in Norway. It is fundamentally good that people have children*. (Haugli in the Storting 27 May 2013).

In Haugli's speech, this opening laid the ground for arguing in favour of the two proposed changes, both of which concerned people's reproductive opportunities, within or outside of Norway. Haugli pointed to the birth of the first child born using IVF in Norway, reiterating a widespread notion that childbirth is a joyous event and evoking the child as a 'happy object' (cf. Ahmed 2010). Haugli also made it clear that the two changes in the Biotechology Act concerned the nation and its future. Declaring that it is fundamentally good that people have children, Haugli may be seen as putting reproductive desire, as an affect, in motion.

Throughout the debate that day, speakers representing the majority expressed their assurance that the changes in the penal provision were the 'right' ones to make. Bent Høie, the speaker on behalf of the Conservative Party, said the following: '*I believe it is right to have a law on this issue that is [formulated] the way it is. The thought that one should introduce a law that prosecuted people who had children, after the child is born, would be wrong, in my opinion*' (Høie in the Storting 27 May 2013). Høie's emphasis on how it would be wrong to punish people for having children, especially after the child is born, suggested that reproduction as a human practice is beyond punishment, especially when it results in and consequently involves a child.

Similarly, Audun Lysbakken from the Socialist Left – one of the parties in the government at the time – suggested that the vote was in fact a vote on children's rights: '*[C]hildren's rights must come first. It is our task to ensure that the children will have a family life and an everyday life that is as similar as possible to that of others, and an assurance in their relation to their caretakers just like other children have*' (Lysbakken in the Storting 27 May 2013). In the quote, Lysbakken reiterated an ideal of equal opportunities regardless of origin, an ideal that has been a cornerstone in the Norwegian social–democratic welfare state. Additionally, Lysbakken shifted attention away from the adult repro-migrants to the child. As such, the affect in motion was not so much that of grown-ups' reproductive desires but rather the vulnerability of the child.

The child is seen as intimately connected to its parents, however, causing the vulnerability of the child to be what makes repro-migrants *as parents* vulnerable as well. In his speech, Lysbakken declared that '*we ought to dispose of any doubt regarding whether these families in any way can be prosecuted after returning to Norway. That would be the*

wrong way to reduce the use of surrogacy' (Lysbakken in the Storting 27 May 2013). Here, Lysbakken referred to the child and the adult repro-migrants as a unit – a family – who should be spared from any kind of punishment.

Notably, in the quote, Lysbakken also marked a stance against surrogacy, referring to an overall aim to reduce the extent to which Norwegian citizens enter transnational surrogacy arrangements. In his speech that day, Lysbakken expressed a concern for the surrogate ~~mothers~~ and their vulnerability, pointing specifically to '*poor women in poor countries*' (Lysbakken in the Storting 27 May 2013). According to the minutes from the Parliamentary debate, the surrogate ~~mothers~~ were mentioned on three occasions in the debate that day. They were, however, absent from the proposal and, by extension, not exempted from the penal provision. Conversely, while the egg and sperm donors and research participants were all mentioned in the law proposal that was passed that day, they were not mentioned during the final Parliamentary debate. The vote, then, emerged as a vote concerning the children and its Norwegian parents, whose vulnerability and desires were put in motion and gained recognition.

Conclusion

In this article, I have explored the affective biopolitics of repro-migration in the Norwegian State's response to transnational surrogacy by analysing the legislative process leading up to the most recent changes in the penal provision of the Norwegian Biotechnology Act. Exploring how and with what effects affect circulated in this process, I have pointed to two affective dimensions, namely vulnerability and desire.

Vulnerability was a key topic in the documents reflecting the legislative process, its arguments and its course of events. When emerging as a reproductive vulnerability and 'stuck' to those travelling abroad for surrogacy, it worked to frame punishment of the repro-migrants as an improper legislative response. What I refer to as reproductive desire was not in the same way explicitly at stake. Notwithstanding, in the analysis, I showed how reproductive desire circulated as something that was beyond questioning and, also, beyond punishment. There seemed to be a recognition of people's desire to reproduce, their vulnerability when they cannot get this desire satisfied and, also, their vulnerability when they finally do so outside the borders of the state.

The child – as the outcome of these citizens' repro-migration – emerged both as an embodiment of the repro-migrants' reproductive desire and as vulnerable in and of itself. The child's vulnerability, it may be argued, is a slightly different type of vulnerability than that of the repro-migrants, resting not on reproduction as a special time in an adult life but on children's need for care.[12] Yet, it worked partly to similar effects, making exemption from punishment for the parents – and the families – a preferable legislative response for the majority in the Norwegian Parliament.

As the attention to the child as vulnerable illustrates, the politicians and the different consultative bodies were not blind to the vulnerability of others in reproductive

arrangements such as transnational surrogacy. In the legislative process I traced in this article, vulnerability was put in motion to create not only sympathy but also antipathy towards the Norwegian repro-migrants: being buyers of something that should not be bought and, by extension, someone potentially harming others, such as women and children.

Notwithstanding, the obliteration of the surrogate ~~mother~~ in the exemption from the penal provision and the disappearance from the debate of other reproductive assistants, such as egg and sperm donors, seem worthy of note. Admittedly, that the surrogate ~~mother~~ is missing from the list of people exempted from the penal provision may reflect how the lawmakers imagined the surrogate ~~mother~~ to be foreign, living abroad and therefore not subject to Norwegian law.[13] Nonetheless, it seems evident that the Norwegian state has handled surrogacy in a manner opposite to what it has done with regard to prostitution, where the one buying is punished, while the one selling and offering their services is not. In surrogacy, it is the one satisfying their reproductive desire that is explicitly exempted from punishment, while the surrogate ~~mother~~ – the one doing the reproductive labour – is left without mentioning.

As such, the Norwegian State's response to transnational surrogacy calls for further examination of the way different types of desires and vulnerabilities are able to do work in a political process. In particular, it seems of importance to consider the question of *whose* vulnerability and desire is being put in motion and with what political consequences. This seems not least to be significant in the context of a phenomenon that crosses borders, at a moment when the border routinely is used as a tool to break up (some) families, through deportations and separations at the border, while also working to enable others to make new families. The affective economies of biopolitical (repro-)migration regulation demand our attention for how already existing inequalities are potentially deepened as affective value is accumulated in ways that affirm the vulnerability and desires of some but not others.

Notes

1. I write surrogate ~~mother~~ here to note the ambivalence concerning this woman and her reproductive contribution, as well as the problem of finding descriptive and politically responsible concepts in a conflicted terrain. Inspired by Derrida's (2016, orig. 1974) elaboration on the Heideggerian idea of *sous rature*, I cross out 'mother' since the term 'surrogate mother' is inaccurate and potentially problematic for the gendered ideas it conveys. Meanwhile, the term 'surrogate' appears instrumentalist in its connotations and, for this reason, the word 'mother' seems to be necessary and therefore remains legible.
2. Since 2013, few Norwegians have travelled to India for surrogacy, initially, due to the changed visa requirements issued by Indian authorities, and, later, due to a ban on commercial surrogacy for foreigners in India.
3. As argued by Thompson (2005), assisted reproduction makes not only babies but also parents.

4. The Norwegian Biotechnology Act, § 2-15, prohibits egg donation – stating that an embryo may only be inserted into the same woman from whom the egg was retrieved – and, by implication, prohibits gestational surrogacy. Additionally, the Children's Act, § 2, defines motherhood by reference to the woman who gives birth and states that contracts on surrogate motherhood are void. Consequently, traditional surrogacy arrangements are not upheld in the Norwegian legal system.
5. In 2011, Turkey became the first country in the world to explicitly prohibit all repro-migration, seeking to restrict third-party reproduction, including egg and sperm donation, as well as surrogacy (Gürtin 2011). Other countries have criminal sanctions that apply only for any intermediaries and/or medical institutions facilitating surrogacy (Allan 2017: 345).
6. In Norway, only married couples or couples in marriage-like unions are eligible for ARTs, meaning sperm donation is not available to single women in Norway.
7. All quotations from the empirical material are translated by me into English.
8. In total, there were 42 submissions handed in before the deadline, out of which 23 had no comments either in support or against the proposed changes.
9. The seven critical submissions were written by Budfir, Nannestad Municipality, Nord-Fron Municipality, The National Council of the Church of Norway, the Bishop of Tunsberg, the Bishop of Bjørgvin and the Biotechnology Committee.
10. Hjemdal used the term «utforde», which literally translates to 'challenge'. I have used the term 'encourage' in the English translation in order to better convey the meaning of Hjemdal's sentence.
11. The Sex Purchase Act refers, formally speaking, to a paragraph (§ 316) in the General Civil Penal Code.
12. I thank one of the anonymous reviewers for making this point clear to me.
13. The assumed impunity of the surrogate mother would have made some more sense if the egg donor had also been left out of the law proposal. Both surrogacy and egg donation are illegal in Norway, due to the very same paragraph in the Biotechnology Act. This means that to access any of these reproductive methods, Norwegians travel abroad. Consequently, the egg donor is often foreign and no more subject to Norwegian law than the surrogate ~~mother~~.

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