

**REFLEXIONES EN TORNO A LA PROPIEDAD DEL CUERPO EN CLAVE  
FEMINISTA**

**REFLECTIONS ON THE PROPERTY OF THE BODY FROM A FEMINIST  
PERSPECTIVE**

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**Resumen**

En el presente trabajo me propongo reflexionar sobre los aportes que ciertas teóricas feministas realizaron en torno a la noción de propiedad del cuerpo, analizando tanto las versiones críticas como las propuestas alternativas de aquellas que remarcan la necesidad de abandonar este concepto que proviene del paradigma liberal. En primer lugar, me centro en observar las reflexiones sobre la propiedad del cuerpo que elaboran distintas autoras desde una perspectiva teórica feminista. En segundo lugar, me pregunto por los significados que adquiere este concepto en el plano político, al estar presente en muchos de los reclamos y debates del movimiento feminista, como el derecho al aborto o la libertad de ejercer el trabajo sexual. La hipótesis que guía este artículo es que la teoría feminista resignifica este concepto, dando cuenta de las limitaciones que presenta y formulando nuevas claves para entenderlo. Sin embargo, más allá de las discusiones académicas, en el plano político esta idea tiene implicancias directas en los cuerpos de las mujeres, hay que tener en cuenta que se enmarca en un contexto de hegemonía neoliberal en el cual el lenguaje de la propiedad trae aparejado, en muchos casos, la lógica mercantil. En este marco, el reclamo de los movimientos feministas por la recuperación y el control de los cuerpos de las mujeres queda ceñido por la idea del cuerpo como propiedad privada

y derecho absoluto, para ser utilizado —sin impedimentos— para cualquier actividad, incluso lucrativa, sin dar cuenta del contexto de subordinación en el cual estas actividades se llevan a cabo. Enunciadas en estos términos, las demandas relacionadas a la auto-apropiación del cuerpo de las mujeres se acercan a posiciones teóricas y políticas del paradigma neoliberal.

*Palabras clave:* Teoría feminista, feminismo, propiedad del cuerpo, liberalismo, neoliberalismo

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### **Abstract**

This paper examines a number of theoretical contributions by feminist writers to the notion of “property in the body”, analyzing both critical versions and alternative proposals that highlight the need to retrieve this concept from the liberal paradigm. Firstly, I focus on conceptions of property in respect of the body that different authors have elaborated from a feminist theoretical perspective. Secondly, I explore the meanings that this concept has acquired at a political level, where it is present in many of the claims and debates by the feminist movement, such as the right to abortion or the freedom to engage in sex work. The hypothesis guiding this article is that feminist theory has re-signified the concept, identifying its limitations and formulating new approaches. Nevertheless, when placed in political arenas, this notion has direct implications for women’s bodies as it is framed within hegemonic neoliberal paradigms, whose lexicon of property is often coupled with commercial logics. Consequently, feminist demands for the recovery by women of control over their own bodies have had to face the burden of a

conception of the body as private property with an absolute right to be used in any activity, without restriction, even lucratively, and neglecting the contextual subordinations involved in such activities. In this manner, feminist demands for the self-appropriation of women's bodies are commonly in alignment with theoretical and political positions from the neo-liberal paradigm.

*Keywords:* Feminist theory, feminism, property in the body, liberalism, neoliberalism

## **Introduction**

Feminist studies have reflected from various different points of view on the rights of women to decide about their own bodies. In the late 1960s some sectors of the feminist movement started to focus their reclamations on the body and sexuality (Brown, 2014; Gatens, 1996). Thus women managed to include the need to decide freely about their own bodies in demands such as the right to use or not use contraceptives and the legalization of abortion. At first the aim was to separate sexuality from maternity, which was now conceived of as an option rather than an obligation for women, and an attempt was made to untie women from their reproductive capacity and to take account of the situation of domination that they found themselves in thanks to the accent commonly placed on the roles they were obliged to fulfil as wives and mothers.

As a result, several currents of feminism began to make demands related to the reappropriation by women of their bodies, in the belief that having the power to decide and having control over their own bodies would make their empowerment and emancipation possible. In this context, the right to an abortion was central, as it questioned the very foundations of the construct of women's sexuality as being directly related to procreation, and implied the right of a woman to choose maternity. Abortion meant

directly questioning the patriarchal oppression that limited women to playing a role assigned to them by their biological capacity to procreate. With repossession of the body, which when subject to the mandate of obligatory motherhood was a body for others, women took a step towards victory for their self-determination and liberty (Brown, 2014). The significance acquired by the demand for the right to abortion, equipped women with the capacity to decide about their own bodies, while at the same time pointing out the cultural mandate and the biological determinism to which they found themselves subject.

Several authors addressed this problem from feminist theoretical perspectives, under the notion of ownership of the body or self-ownership, in some cases making it clear that the liberal conception of the individual owner of his own person or his own body referred to male individuals and not to women (Pateman, 1995). Commenting on this, Carole Pateman (1995) questions the idea of self-ownership in classical liberalism, pointing out the exclusion of women from the category of individuals, and giving examples of the relations of subordination implicit in contracts in modern civil society. Following the same line of thought as Pateman, other theorists analyzed the idea of the body as property, reflecting on the consequences of using this term. On this point, the philosopher Anne Phillips (2011) wondered about the implications of thinking about the body using the language of property, in the light of new markets for body parts, surrogate maternity and prostitution. Thinkers like Moira Gatens (2008) emphasized the value of getting rid of the idea of self-ownership as being equivalent to autonomy, and of adopting other approaches to conceiving of relations that are free of subordination and subjugation. Other writers, like Donna Dickenson (2007) and Rosalind Pollack Petchesky (1995), have proposed taking up again the conception of property as applied to the body, from a feminist perspective, that is to say, one that sees the bodies of women in a favorable light.

Following these reflections, I propose in this work to examine the contributions made, from various different feminist theoretical perspectives, to the question of ownership of the body, analyzing the criticisms made by particular authors of this concept, which is derived from the liberal and now the neoliberal lexicon, and some of their proposals. My first objective is to center on the formulations of proprietorship of the body that were developed from a feminist perspective, studying anti-liberal conceptions as well as the critical responses that have kept up the use of this notion. Secondly, I ask about the meanings this concept has acquired on the political plane, where it is present in many of the reclamations and debates of the feminist movement, such as the right to abortion or the right to engage in sexual work. The hypothesis directing this article is that feminist theory has re-signified the concept of ownership of the body, has become aware of its limitations, and has formulated new keys to understanding it. However, beyond academic discussions, on the political plane this idea has direct implications for the bodies of women, taking into account the fact that it is set in a context of neoliberal hegemony, where the language of property is in many cases glued to mercantile logic. In this framework the demand for recovery and control of women's bodies made by the feminist movement remains restricted by the idea of the body as private property and an absolute right, to be used – with no impediments – for any activity, including those conducted for money, without awareness of the context of subordination in which these activities take place. Expressed in such terms, the demands related to self-appropriation of the body by women come close to theoretical and political positions in the neoliberal paradigm.

### **On the notion of ownership or self-ownership of the body**

The idea that individuals have a property right over their bodies goes back to the classical liberalism of the 17th century, particularly to the work of John Locke, in which the

philosopher explains the principle according to which men enjoy some sort of property right over themselves. In section §27 of Chapter V of the Second Treatise on Government, Locke (1999) argues as follows:

[...] Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his.

*[1660 text, can be found at <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>]*

However, this property right over one's own person is not absolute, as all men are the property of the Creator. As Locke says in §6 of Chapter II:

[...] for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure.

In other words, the English philosopher saw individuals as the creatures of an omnipotent being and thus obliged to their creator. According to Locke, the individual could make use of his own person, but only conditionally, as the work of his body and the labor of his hands were his in the same way as these belonged to God (Morresi, 2002). This implies that there are some actions that are not permitted for the Lockean individual, such as suicide, or selling oneself into slavery, for example, because the proprietorship of one's body is not absolute. The point is fundamental because writings by Locke's contemporaries such as those of the libertine philosopher Robert Nozick, start with the assumption that the right of a person over his own body is absolute and unquestionable. As noted by Alejandra Ciriza (2010), this conception "supposes a series of shifts of meaning: from the right of ownership applied to the body and its capacities comes the possibility of justifying its mercantilization" (p. 100). Following the last observation, the idea of ownership of the body in absolute terms provides an answer to contemporary

derivatives of this notion because Locke's philosophy, as Ciriza notes, was subject to the mandates of natural law, which "makes it impossible to think in absolute terms of the alienability of property" (2010, p. 100). Therefore, and agreeing with Ciriza, the conception of ownership of the body as a fundamental right of the individual discards certain interpretations of the Lockean theory of property<sup>2</sup>.

For neoliberalism, as the contemporary form of liberalism – especially in the libertarian current – self-ownership, as a right to the property of the body and its capacities, is one of the pillars supporting other rights<sup>3</sup>. The American philosopher Robert Nozick (1991) maintains that the rights of persons derive from a fundamental right: that of the self-ownership of individuals. In this sense, people are lords of themselves and can do with themselves anything they want to, as long as it doesn't damage the property of another individual. For Nozick, man finds himself without impediments to doing what he pleases with himself, as he is lord of himself in absolute terms (Morresi, 2002). Thus the rights of persons are of a restrictive character, as, although they can act freely, their action must respect the property of other individuals. Adopting these terms, the idea of property that extends to bodies or to self-ownership as an absolute right over oneself, justifies any contract, use or transaction that a person is disposed to undertake in respect of his own body, through the natural fact that it belongs to him.

Murray Rothbard, as a representative voice of the Austrian school of economics, holds to the idea that the natural rights of people derive from the absolute right that they have over themselves. In Rothbard's own words (1996, p. 46):

The most viable method of elaborating the natural-rights statement of the libertarian position is to divide it into parts, and to begin with the basic axiom of the "right to self-ownership." The right to self-ownership asserts the absolute right of each man, by virtue of his (or her) being a human being, to "own" his or her own body; that is, to control that body free of coercive interference. Since each individual must think, learn, value, and choose his or her ends and

means in order to survive and flourish, the right to self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestation.

*[English text from the Mises Institute, 2005, pp.33-34 [44-45]; can be found at [https://cdn.mises.org/For%20a%20New%20Liberty%20The%20Libertarian%20Manifesto\\_3.pdf](https://cdn.mises.org/For%20a%20New%20Liberty%20The%20Libertarian%20Manifesto_3.pdf) ]*

So as we can see that according to Rothbard, self-ownership of the body or the right to proprietorship of oneself is an essential feature of the human condition and therefore cannot be encroached upon, as that would imply considering those who do not have ownership of their bodies to be less than human. The author also maintains that the whole of the libertarian doctrine on the free market economy is based on the central idea that human beings possess a natural right to self-ownership of their bodies, which also provides the support for free contracts and free exchange. The reason why Rothbard argues in support of this model is more related to morality than to economic productivity. In other words, although he affirms that it is the most productive system known to man, the libertarians defend the model because it goes hand in hand with respect for the natural rights of human beings. Consistent with this, the libertarian theorist David Friedman (1989) justifies the free market morally, saying that the right to property is a human right and not a simple right to own property. This idea comes from considering, like Rothbard and Nozick, that every person is the owner of his or her own body and in possession of an absolute right over it. Therefore any impediment to the free use of one's body, the objects created by it, or any property that has been transferred to it, is seen by Friedman as a constraint on the human right to property.

For writers who hold to the libertarian scheme of things, like Nozick, Rothbard and even for Friedman, and start with the axiom that the right to self-ownership of the body is absolute, any violation of this property right is morally intolerable and goes

against human nature. However, what matters for the aims of this article is the central role held by the idea of self-ownership in these theoretical and political conceptions. The natural right of all persons over their own body is the starting point from which these authors go on to justify morally that any person can do what he wants with his body. In this sense people can claim the right to use their bodies for any activity, as long as it does not damage the property of another. To use the terminology of Nozick, from this fundamental right are derived all other rights or “indirect moral restrictions” that determine what people cannot do or what they are restricted from doing in moral terms (Morresi, 2008).

However, these moral restrictions, or rights expressed in negative terms, are related to actions towards other persons, and to not interfering in the life and decisions of other human beings. From this principle Nozick got the rest of his philosophical and political proposals, such as keeping the State to a minimum, which he developed in *Anarquía, Estado y Utopía* (1991), and is only understood if the State is restricted to guarding the indirect moral restrictions that individuals must respect so as not to violate the property rights of their peers. The idea of a minimum State or one that limits itself to being the guarantor of the self-ownership of the body implies that persons are without impediments to deciding to do what they please with their lives and their bodies, or, as Friedman says, being left alone to decide freely and to develop their personal projects (Friedman, 1989, p. 3).

This way of understanding the appropriation or free disposition of the body as an absolute property right is used, in some discourses, to justify the mercantilization of bodies, that can be exchanged and used for commercial ends without this operation implying a loss of liberty or self-ownership of the body. These notions, that are presented today as immutable and unmovable, and deserve to be studied in the context of their

appearance (Ciriza, 2010), form a part of some of the most characteristic demands of feminist movements, a fact that led to reflections by women writers who adopted a position with a feminist point of view. While the concept of ownership of oneself has its origins in classic liberal political theory, feminist theorists made contributions to, and produced reflections on, this idea, either from perspectives that proposed abandoning it, or with critical versions that vindicate some kind of theoretical and political utility in their use, which I shall develop in the next section.

### **Feminist criticisms of ownership of the body**

The sum of feminist theoretical writing, as of feminism as a political movement, does not form a homogeneous body of work, as it contains different perceptions and visions of the world. All the same, in spite of the differences between theoretical variations, most currents of feminism tend to value the notions of equality and liberty positively, and are in agreement about pointing out critically the condition of subordination of women, and in questioning the classic dichotomy between a public and a private sphere<sup>4</sup>.

Some currents of feminism early on used the notion of a person's right over himself under the notions of property and self-ownership of the body. Various sectors of the second wave of the feminist movement understood that women had to recover ownership of their own bodies, which would give them the full right to its use and the enjoyment of its faculties, in a way that was similar to certain socialist currents that affirm that workers are owners of themselves and of the fruits of their labor (Cohen, 1995). In this sense, in the 1960s and 1970s, some currents of feminism placed the accent on the body and sexuality, questioning the separation of public from private, politicizing the personal, and emphasizing the central importance of topics such as abortion, maternity, and sexuality, for gaining women's freedom and autonomy (Gutiérrez, 2010). So for these

feminist currents, control of their own bodies, and the capacity of women to decide, came to be seen as the engine for demands for emancipation; as Josefina Brown argues:

So it is that the accent has been placed on appropriation of the body. Control over the body and the capacity of women to take decisions about themselves, is seen as the element that will allow the emancipation of women and of others. Second wave feminists considered that the subjugation of women's bodies to complex mechanisms of prohibitions/permissions, was the nodal point around which patriarchal dominion was established. As a woman's body was much more social than a man's, it would be appropriated (or expropriated) as a function of its reproductive capacity, by the husband, the Church and the State (Brown, 2014, p.6).

In theoretical terms, a number of feminist thinkers approached this question on the basis of a critique of the patriarchal notion of the individual male property owner (Pateman, 1995) and the implications of considering the body as an object that the individual may have the use of (Phillips, 2011). Feminist political scientist Carole Pateman (1995) makes the concept of owning one's person one of the central threads of her analysis of liberal contractualism<sup>5</sup>. For the author of *El contrato sexual* (1995), the decision by which free and equal men choose to submit to authority, far from being a voluntary agreement, is a justification of relations of subordination. Here Pateman is criticizing the liberal concept of the individual, as it only refers to male subjects who find themselves in a relation of ownership of their person, and therefore it is only they who are qualified to make agreements freely, with women excluded from making such pacts. According to what the author analyzes, the individual owner of his person chooses to come to an agreement and enter a state of security in order to protect his own person and his goods, and for this

reason decides to abandon the previous state of nature in which he was without impediments and subject to no class of authority but that of himself.

However, Pateman does not consider contracts to be relations of exchange but of subordination, which necessarily imply transferring the autonomy of the individual or of self-rule. This means that every individual transfers a part of his property in the person; this action is just what Pateman calls the “political fiction of property”, as it is impossible to transfer the capacities of an individual in the absence of the “owner” (2002), so any contract that implies the political fiction of transferring property in the person, creates subordination.

With the individual as owner of his person, taken from liberal theory, as her guiding thread, Pateman shines a light on contractual relations, arguing that where the political fiction of property in the person presents certain relations as being free – referring especially to marriage and employment – relations of subordination are formed: “Further, the “exchange” that is built into marriage is not at all like exchanges of material properties, as marriage is a long term social relation between the sexes in which the wife owes her husband obedience in return for his protection” (Pateman, 1995, p.157). In this sense, women are subordinated to men in a sexual contract, and as distinct from the case of a contract of employment, where men who are owners of themselves transfer a part of the property of their person, women, who are not owners of their persons, cannot sell their labor, which for the author is the key to the subordination of the sexual contract.

Once the original contract has been agreed, the appropriate dichotomy between the private sphere and the public, civil, sphere is established – a dichotomy that reflects the order of sexual difference in a state of nature, which is also a political difference. Women do not take part in the original contract, but they also do not stay in a state of nature – that would frustrate the purpose of the sexual contract! Women are brought into a sphere that is and

is not a part of civil society. The private sphere is part of civil society but is separate from the “civil” sphere (Pateman, 1995, p.22).

The proposal made by Pateman shows women to be subordinated to their husbands and confined to the private sphere by means of the marriage contract, which in the same measure allows male individuals – owners of their person – to sell their labor in the public sphere, as the “work of the housekeeper – domestic labor – is the work of a sexually subjugated being who has no jurisdiction over the property of their person, which includes its labor” (1995, p.189).

So it is that when they become wives to be “protected” by their husbands, and as they are not considered to be the owners of their persons, women are completely subjugated to men in the private realm, as reproducers of life, and are excluded from the public or civil world.

Feminist philosopher Moira Gatens (2008) brings another perspective to reflections on appropriation of the body or self-ownership. Gatens argues that it is precisely the fiction of proprietorship of the person – which Pateman tells us about – combined with the alienability of the capacities of persons, that allows relations of domination and subordination in the private sphere appear to be legitimate. Therefore, from this point of view, a civil society that comes from the assumptions of contractualism would be incompatible with democratic citizenship. On this point the writer points out that Pateman does not consider the abolition of sexual subordination to be related to women’s attaining ownership of their bodies, or to the fact that property of the person in liberal terms is what makes such a subordination possible, along with a loss of autonomy or of the right to self-government (Gatens, 2008). Which leads us to ask: how can free and really just relations be formed, without the subordination of either of those taking part? Bearing in mind that, as Pateman says, not only does property of the person fail to

guarantee such relations, but the political fiction of property is what makes such subordination possible.

On the other hand, Gatens claims it is necessary to drop the association between self-ownership and autonomy, and proposes to attend to the “focus on capacities” of feminist philosopher Martha Nussbaum (2007). While she presents a universalist theory of human beings, she does not attack the particular cultural contexts in which people are immersed, and she goes beyond the conception of property of the person. According to Gatens, Nussbaum moves away from the association between autonomy and self-ownership and postulates that the central functional capacities of all human beings are capacities in combination<sup>6</sup>; hence, the ability of a person to work cannot be understood as a “given” property of that person, as every “internal” capacity of human beings implies the existence of “external” conditions appropriate for its application (Gatens, 2008). By extension, human capacities are necessarily combined with specific external circumstances, and cannot be viewed in terms of personal property as they require an external socio-cultural context to be able to develop in.

The particular realization of a universal human capability necessarily will be culturally specific. This is one consequence of closely tying the realization of the internal capabilities of an individual to the specificity of external conditions, which include that individual’s cultural context. It also highlights the way in which any human power, ability, or capacity is necessarily relationally realized (Gatens, 2008, p. 689).

On this basis, Gatens considers that Nussbaum opens up the promising possibility of thinking of human beings and their capacities not as divisible properties, but seeing each person as an end in itself. As political scientist Anabella Di Tullio, who has reflected amply on the relation between feminism and the liberal paradigm, puts it:

Nussbaum attacks the feminists who have criticized disdainfully those proposals in which every individual person appears as the focus of political thought, and she expresses her disagreement with those who suppose that this kind of approach ignores the problems of cities and communities, or necessarily implies male Westernizing views preaching self-sufficiency and competition instead of love and co-operation. Declaring that all feminists can share, in one way or another, the idea that every person is worthy of respect and recognition of his or her value as an end in itself, Nussbaum deduces that one should not look at totalities or averages but at each person (Di Tullio, 2016, p. 57).

Therefore, according to what Gatens proposes – adopting Nussbaum’s focus on capacities – and what was highlighted by Di Tullio, the capacities of persons cannot be seen as “personal property”, and every person should be recognized as an end in itself. One person cannot claim the proprietorship of himself or his capacities, because these need a social and cultural context in order to be developed, which undoes the idea of a mind/body capacities/body duality. Here Gatens sees an opportunity in the theoretical work of Martha Nussbaum to conceive of individual persons as being in possession of a body – in so far as they are corporeal entities – and historically contextualized.

Returning to Pateman and her conception that the property of the person is a political fiction, the philosopher Anne Phillips (2011) maintains that thinking of the body as property encourages a duality of self/body, which obscures the power relations involved in contracts that cede authority over the body. However, she notes that recognizing that you are yourself a physical incarnation also makes it harder to insist on clear distinctions between activities involving the body and others that are “only” mental. For her the question is whether there is something special about the body that means it should not be treated like any other item of property.

Following this line of thought, she reviews ideas of the self as a proprietary self, and of the body as property, and finds there are three crucial problems related to these conceptions. Firstly, there is a problem of language which means we can use the rhetoric of self-ownership of the body without making a claim to property rights; secondly an authentic claim of ownership does not necessarily mean the intention to exercise the full right to engage the body in any activity whatsoever, such as selling it or hiring it. The language of property, according to Phillips, brings in a distinction between the owner and what is owned, between my person and my body as an item of property. This very dualism suggests a disposition towards considering the body as being equivalent to other forms of material existence and that its parts are available to be sold. As examples of this duality, Phillips explains that both in prostitution and in surrogate motherhood, women distance themselves from their bodies; but when they do this they also speak of the difficulties that come with it. The author maintains that thinking of your body as something separate from yourself is hard to do and hard to keep up. Among those who sell bodily services the majority prefer not to describe their bodies as material resources.

What Phillips is proposing is not to say that speaking of the body as an item of property pushes people into thinking of it as an object that can be sold, or that just thinking of one's own body as one's own property has that effect. The problem with the language according to Pateman is that the political fiction of ownership of the person, the fiction that capacities can be separated or are alienable from the person, conceals the subordination that exists in exchanges. If we speak of being owners of our bodies or suggest that contracting the use of the body is no different to contracting the use of any material object, we are making a distinction between ourselves and our body. The difference is that, to use the example given by Phillips, when an automobile is rented it does not lose autonomy, but when a person agrees to work for another, it does imply a personal loss of

autonomy. And as Phillips points out, the problem lies in the fact that when we represent our agreements in terms of property, the vulnerability created by this relation becomes less apparent<sup>7</sup>.

Where the arrangement more directly involves the body, the vulnerability and potential self-alienation are heightened, and this is one point at which we may claim that “the body” is special. Sex workers commonly set conditions in their arrangements with clients: no sex without a condom, for example, or no anal sex, or no kissing. Much of the danger of their work, however, is that these arrangements may not be honoured, for the contract is not like handing over a piece of property for money, but temporarily at least, putting oneself in someone else’s power (2011, p. 732).

As the author shows in the case of sexual workers, to think of ourselves and our bodies in terms of the rhetoric of property causes problems, as this kind of language leads to thinking of the body as being like any other material object and creates a self/body duality that does not allow the relations of power and of subordination that Pateman gives an account of in *El Contrato Sexual* to be seen. To speak of the body in terms of property conceals the loss of autonomy and the vulnerability that are involved in these activities.

### **Recovering ownership of the body from a feminist perspective**

Adopting a point of view that is more favorable to liberalism, another scholar who focuses on the property of the body from a declaredly feminist perspective is Donna Dickenson (2007), who analyzes the notion on the basis of discussions brought in by new technologies and the use of bodies made by biotechnology. In her book *Property in the body. Feminist Perspectives* (2007), the author looks for fundamental principles for a theory of property that takes women into account. Starting from Pateman’s idea of the

sexual contract, Dickenson argues that what makes the sexual contract an instrument of domination is not that it is a contract but because it is sexual. For Dickenson, of itself the contract is neutral or even implicitly egalitarian. While the sexual contract implies a division between the sexes, as it is made between men who are subjects and considers women as objects, liberal contracting points towards self-ownership that is the same for both sexes.

The author considers that, with its aversion to liberal Lockean concepts like property and contracts, anti-liberal feminist theory has not always taken the trouble to keep the concepts separate from the context in which they arose; there are, however, many aspects of contract liberalism that rise above their legal and political underpinnings. Dickenson claims that, bearing in mind the crucial distinction between ownership of the body and ownership of the person, liberal political theory can provide us with important concepts, including that of the contract, with which to reclaim the body in circumstances that are concomitant with the use of new biotechnologies<sup>8</sup>. She does, however, criticize the liberal attempt to subsume all social relations under contractual relations, including for example the sale of bodily tissue on the basis of a contract.

Like Phillips, but to a lesser extent, Dickenson maintains that feminist theory alerts us to keeping in mind the imbalances of power hidden in contractual relations. Following this line of thought, she argues that although contractual liberalism has very useful aspects, its tendency to reduce social relations to transactions between individuals often blinds those who write in the liberal tradition and leads them to reduce everything to an individual transaction and prevents them from taking into account the relations implied.

In this regard, Dickenson proposes that the Hegelian model is more attractive to a feminist perspective on the property of the body. The author maintains that the attraction

of a model of social property, not centered on the individual, lies in its suggesting collective mechanisms of governance for the new biotechnologies, through the acquisition of the controls that make up property relations in genuinely communal bodies (Dickenson, 2007). Understood in this way, the Hegelian focus on property and the contract is neither liberal nor utilitarian, for the author<sup>9</sup>.

Hegel's ideas are liked by feminist thinking firstly because he saw the stages represented by property and contracts as being emblematic of the development of the individual, and, secondly, because in Hegel the only real existence is as a physically incarnated will; this form of realization is indissoluble and unified (Dickenson, 2007). The third useful aspect of Hegel to feminist thinking and opposition to the mercantilization of the body in the context of the growth of biotechnology, of concern to Dickenson, is the observation that society is not "contractual to the end". In other words, using Hegelian terms, "contract is merely a necessary but preliminary stage among many, in terms of social relations and mutual recognition. Contract reflects relationships, but not all relationships can or should be reduced to contractual ones" (Dickenson, 2007, p. 51). As a mechanism for the recognition of other wills, following Dickenson's reasoning, the contract is not generally a world in which women are subordinated and dominated, nor is it a fraternal link between men who are owners of their person as conceived in the theory of liberal contracting, according to Carole Pateman.

Rosalind Pollack Petchesky (1995), shares with Dickenson an interest in finding a notion of self-ownership from a feminist perspective. However, she proposes to re-signify and recover the concept for feminism, by shedding it of the meanings it has acquired from Lockean liberalism, without completely rejecting the term and its implications. With regard to the meanings that the idea of property in the body has acquired in the concrete demands of the feminist movement, she maintains that since the

1980s, women's struggles over reproductive rights, birth control and sexual freedom have discarded the language of "possessing" or "controlling" the body in the feminist lexicon.

Petchesky's assessment is relevant for the present study, as it recovers the notion of self-ownership as something indispensable for feminist conceptions of social democracy and of property in general. For her, the rhetoric of the demands for self-ownership by women of their bodies evokes meanings related to rights, to uses and to care, that are culturally a long way from the commercial idea of property that is taken for granted by international capitalism. Her proposal is to re-think the idea of self-ownership from a point of view other than that of liberalism, and re-signify it in terms of physical integrity and a radical conception of property in general. She goes on to argue that to redefine the concept in this way, it is useful to look at the variety of meanings that women in non-capitalist societies, radical democrats, and slaves, have given to the idea of owning their bodies, as well as the value given by feminists with a different colored skin to their bodies as an aspect of self-definition (Petchesky, 1995).

The meanings of self-ownership, or of owning the person, or even ownership of the body, have changed in the course of time, depending on the historical and cultural contexts of the day. According to Petchesky's suggestion, private property applied to objects during the period in which capitalism developed in Europe and this kind of property is different to common property that is related to the rights of individuals through their not being excluded from certain spaces or facilities. On this subject the author observes, following the discoveries made by the historian Natalie Zemon Davis, that when we go to the origins of modern European ideas about possessing our body, we find such ideas have less to do with property in the economic sense and more to do with demands for the protection of sexuality and personal safety from arbitrary interference (Petchesky, 1995).

In harmony with Pateman's argument, Petchesky is critical of John Locke's theory of property, as she considers that it played a crucial role in bringing about this change to an absolute, individual and explicitly male model of ownership of property. She agrees with the idea that feminists should criticize and abandon Lockean possessive individualism, to quote MacPherson (1962), but without completely rejecting the language of self-ownership, as that would be to reject physical integrity and the rights that preceded it; this is why she seeks to demonstrate that the idea of self-ownership or property of the person (she uses the terms indistinctly), originated in a European context among people who were opposed to market relations. The idea was woven in with notions of sexual autonomy, gender equality and community identities and with the values of democratic participation and radical political movements (Petchesky, 1995). For this reason, the author does not think it wise to reject language because it was constructed in a misogynistic manner, as such a rejection might mean giving up an entrenched position gained in the political struggle just because of the meaning the language has acquired. She notes that a different approach to concepts such as autonomy and self-appropriation has been taken by colored feminists in the United States, who have devoted themselves to the task of reappropriating these terms in order to redefine them.

### **Towards a critical appropriation of the concept and its political derivatives**

Most of the authors mentioned start with criticism of property in the body as understood in Lockean terms, because they think that conceiving of the body as an object in that way, conceals the relations of domination and subordination that derive from contracts made in civil society, as explained by Pateman and her followers, or from the sexual contract, according to Dickenson. The cornerstone of the analysis by Carole Pateman, and that the authors studied all agree to highlight, is that the notion of the individual as owner of his

person and therefore owner of the works of his body and his hands – as in the Lockean paradigm – creates the political fiction that people’s capacities and their bodies are separate parts and therefore alienable; and that in a contract, especially the contract that Pateman calls sexual, a free exchange is made for protection and security when really a relation has been established of subordination that necessarily implies vulnerability and ceding self-rule.

In particular, each of the authors appreciates the idea of property of the body in a different way; some of them use the terms property of the person, property of the body, and self-ownership indistinguishably, while others do distinguish the concepts and remark on the need to use one term rather than another. Both Pateman and Phillips insist that it is dangerous to use a language of property of the person, appealing to the distinction that they make between this notion and that of self-ownership. Pateman warns about the political fiction of this idea, so as to be able to take into account the relations of power and domination over women; Phillips lays an emphasis on the implications that derive from the language of proprietorship of the body, which encourages a duality of being separate from the body, and to the extent that contracts directly involve the body (as in surrogate motherhood or sexual work), there is an increase of vulnerability and subordination. For these reasons both authors dislike the language of property, and do not consider that women are empowered through the use of this kind of rhetoric.

On the other hand, writers like Donna Dickenson and Rosalind Petchesky, maintain that it is necessary to re-think the model of property of the body, from a feminist perspective, and not reject it completely, though staying away from Lockean liberalism, in Petchesky’s case. They both share a contextual view of the history of the idea of self-ownership, so they do not consider the concept is disposable, and to the contrary, insist on keeping it and re-defining it, as it can be beneficial to feminism. While Dickenson

looks favorably on a model of property close to that of Hegel, whose terms are not based on the individual but on relationships and society, and exclude the possibility of a separation between the self and the body, Petchesky proposes to think of the demands by women to own their bodies as being related to rights, to the care and integrity of the body, and to recovering meanings that counter the market logic of capitalism.

The proposal by Gatens is particularly interesting as its aim is to return to Martha Nussbaum – a feminist theoretician who moves in the liberal paradigm – and her focus on capacities, moving away from self-ownership, to think of the capacities of all human beings as a combination of capacities, in so far as these cannot be thought of as given properties that are therefore inalienable. Thus Gatens proposes that every capacity is combined with the presence of external conditions suitable for it to be able to develop in, so Martha Nussbaum's focus on capacities gives us an opportunity to take human beings and their capacities not as personal divisible properties, as every person is an end in itself. Nussbaum's proposal, taken up again by Gatens, is very useful to the extent that it creates the possibility of thinking that here might be just relations, and escaping from the idea of self-ownership of the body. However, although this can be solved on the plane of theoretical discussions, the political demands of feminism are in many cases framed in terms of self-ownership.

So it is that, as one part of the feminist movement used the idea of ownership of the body as the basis of a highly personalized civil right to be defended judicially (in court cases, and through the reform of regulations within liberal and patriarchal judicial frameworks), there was a change of meaning that brought the conception of self-ownership in certain sectors of feminism closer to the neoliberal perspective (Fraser, 2015). In effect, by considering the proprietorship of a woman over her own body as an absolute and irrevocable right of women as particular citizens, you get an approximation

to the positions of libertarian neoliberalism held by writers like Robert Nozick (1991: cf. Cohen, 1995). It is in this regard that she refers to Phillips and her concerns about using the language of property to refer to the body, because of the fantasy of a self/body duality that it implies. Furthermore what the language of property brings with it is an introduction to the logic of the market, in the context of a neoliberal hegemony. As the author points out, according to mercantile logic, bodily exchanges rest upon an unequal situation, an inequality in economic circumstances that leads some people, though not others, to offer intimate services or parts of their body for sale (Phillips, 2011).

As explained above, in the nineteen sixties and seventies the rhetoric of property was used by women to radicalize their demands around sexuality and the body, from the point of view of self-determination and the freedom of women to exercise a full sexual life that was no longer joined to reproduction (Brown, 2014). However, we can see that currently, in a clearly hegemonic neoliberal culture, the language of ownership of the body can veer towards meanings that apply to the market. So it is that many of the radical and emblematic slogans of feminism such as “my body belongs to me”, in a context where property implies the possibility of selling what is mine “freely”, have acquired meanings that are closer to the neoliberal idea of self-ownership than to ideas of self-determination and autonomy. In the case of the demand for the right to freely choose an abortion and not have to pay for it, as it does not involve an economic transaction but is a demand for women to have the right to decide, it does not enter into the logic of the market. However, if self-ownership is regarded as an absolute right, from which other rights derive, then it coincides with the libertarian notion of authors like Robert Nozick and therefore with the postulate defended by neoliberal theory that self-ownership is the basis from which other rights stem.

Another demand expressed by some sectors of feminism is the freedom to engage in sexual work. Here, returning to Phillips, it can be seen that the language of property may imply a greater intertwining with the neoliberal paradigm, because as an economic transaction, sexual work is immersed in the market. As Phillips maintains, their demand uses the language of property, and regards the body as a material resource, that can be used and sold on a temporary basis, which amounts to falling into the fiction of property that conceals the subordination involved in a relation of “free exchange”, like any other salaried work. Although many women argue in defense of the demand that the freedom to engage in sexual work implies a re-signifying of sexuality, in fact, because it is immersed in relations of property and the market, it cannot avoid being a relation of subordination and alienation of the capacities of the body (Phillips, 2011). While many of the demands expressed by sexual workers are designed to show up the situations of violence and inequality they find themselves in as workers without protection who are stigmatized by society, to the extent that self-ownership is understood as an absolute right over the body as an item of property, the unequal relations involved in these exchanges, presented as free relations between individuals, are obscured. Sexual work as an example of an exchange in which the body and its capacities are the property that is alienated, is not without relations of subordination, and as Pateman argues, what is presented as autonomy only conceals the conditions of alienation that are involved in contracts of this kind.

### **Final thoughts**

In the course of this work we have analyzed the theoretical proposals of feminist thinkers who have reflected on the idea of property in the body, their objective being to compare various points of view that try not to lose sight of the dangers of this concept and in some

cases the need to re-signify it. In this sense we have pointed out that to a large extent these authors use these ideas critically to maintain that it is a notion that feminism should be wary of, but on the other hand the idea of self-ownership has great potential in so far as it relates to the demands made by women historically. However, none of these writers uses the concept of property in the body in the way it is used by the neoliberal paradigm.

Nevertheless, we have shown that there was a shift in meanings associated with the use that certain currents of the feminist movement made of this notion, in the context of a markedly neoliberal cultural hegemony, that brought the conception of self-ownership in certain sectors of feminism closer to the neoliberal perspective. Which means that when a woman's proprietorship of her own body is taken to be an absolute right, there is an approximation to neoliberal positions as seen in the theoretical proposals of libertarian authors. We have noted that typical slogans of the feminist movement (such as "my body belongs to me, I decide" or "our bodies, our rights") and the demand for the free exercise of sexual work, in a context marked by neoliberal rhetoric, may undergo shifts of meaning to something quite unlike the meanings they held in the contexts where they arose, as we have explained in this work.

The feminist movement questions the structures of domination that women find themselves immersed in, by making a critique not only of the patriarchy but also, in many cases, of capitalism and the consequences this mode of production has for women's bodies. The challenges brought by the neoliberal hegemony, as a phase of the capitalist system, to the demands made by feminism go beyond questions of language; however, as Phillips says, when we refer to our bodies, language does matter, and it may lead to negative consequences for women, if it makes relations of subordination look like contracts between free and equal parties.

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<sup>2</sup> We say certain interpretations, because, as Ciriza goes on to say in her analysis of the notions of liberty and property in the work of John Locke, there are some readings that interpret the idea of ownership of one's own person and of the body as being equivalent to the possession of things, and that therefore see Locke as a defender of private property, making possession of one's body like possession of an object. Under the gaze of the author, this would be the perspective of writers such as MacPherson; however, there are other views, where the idea of belonging to oneself in Kantian terms or "in republican terms", is to have the autonomy to come to conclusions on the basis of one's own decisions, guided by reason (Ciriza, 2010, p. 103).

<sup>3</sup> The Argentinian political scientist Sergio Morresi (2008) offers a broad definition of liberalism in which certain characteristics are identified: the defense of private property, limits to the power of the State, and consent as the basis of a political society. According to the author, liberalism can be classified historically as classical liberalism, modern liberalism, and contemporary or neo-liberalism. Roughly speaking, the latter has at least four main branches: the Austrian school, the Chicago school, the Virginia school, and libertarianism (Morresi, 2008). Notwithstanding the diversity within neoliberalism, some central concepts common to the various currents can be identified: the pre-eminence of liberty understood in its negative sense, as the absence of external impediments (von Mises, 1996); the central position of the rule of law, as the fruit of agreement on interests and the guarantee of negative liberty (von Hayek, 1979; Gauthier, 1994); a conception of the individual as an autonomous ethical agent ruled by his own interests (Buchanan, 1975); and the vision of private property as an absolute and exhaustive right that covers not only objects but also the very bodies of persons (Nozick, 1991).

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<sup>4</sup> The classical distinction between the public sphere and the private has been analyzed in depth by feminist theory, through the consequences it implies for the participation of women in politics and as citizens (Ciriza, 2007).

<sup>5</sup> The author chooses to use the expression “property in the person” and not “self-ownership”, arguing that the latter conceals the political implications of “property”, that is to say: that the language of property in liberal terms shows relations of domination as being free (Pateman, 2002).

<sup>6</sup> The capacities common to all human beings are enumerated by Martha Nussbaum in *Las fronteras de la justicia: consideraciones sobre la exclusión* (2007). In her work, the author proposes a “focus on capacities”, taking up critically certain conceptions of Rawlsian liberalism, with the objective of providing a list of fundamental human capacities that should be taken into account for defining human dignity and justice.

<sup>7</sup> Phillips considers that when exchanges involve the body, vulnerability and subordination increase, and argues her point with two examples: sexual work and surrogate motherhood.

<sup>8</sup> According to Donna Dickenson, Lockean liberalism contributes to the protection of women in the new legal contexts that come with the arrival of new technologies for human bodies. In this respect she observes that John Locke distinguishes between persons and bodies, alluding to the fact that every individual has the property of his own person and of the work of his body and hands. So according to Locke, individuals would not be the owners of their bodies, because they are the creatures of an Omnipotence and have not made themselves. For this reason, the author distinguishes between property in the person which she equates to self-ownership, and property of the body.

<sup>9</sup> For Dickenson, contracts are valuable in themselves and from a Hegelian perspective, she conceives of them as the symbol of a shared will and mutual recognition by both parties (2007).