

## **‘Surrogates All Make that Choice to Help’: Surrogacy in the Neoliberal Reproductive Market**

*Zsuzsa Berend*

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### **1. Author information**

*Zsuzsa Berend*

Department of Sociology, University of California Los Angeles, US

### **2. Author e-mail address**

*Zsuzsa Berend*

E-mail: berend@soc.ucla.edu

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# *'Surrogates All Make that Choice to Help': Surrogacy in the Neoliberal Reproductive Market*

Zsuzsa Berend\*

Corresponding author:  
Zsuzsa Berend  
E-mail: berend@soc.ucla.edu

## **Abstract**

Recent scholarships on neoliberal practices document how, in varied settings, people who would benefit from regulation embrace the neoliberal logic. Drawing on ethnographic research on the largest US online surrogacy support forum I explore surrogates' discussions of choices and responsibilities. Surrogates maintain that infertile couples, whom they see as emotionally vulnerable, have no choice but to turn to surrogacy. Surrogates claim to be well-informed, intelligent, independent, and empathic woman who assume responsibility for the legal, relational, and medical aspects of pregnancy and reject standardization of 'surrogacy journeys'. They want more oversight of fertility clinics and surrogacy agencies but ultimately argue for individual accountability. Surrogates' discussions provide insights into the reasons why practitioners are, in many ways, in alignment with neoliberal ideas and practices: because they are compatible with collective definition of surrogacy as a private rather than a business relationship.

Keywords: neoliberalism, assisted reproduction, online communication.

## **1. Introduction**

This research aims to contribute to the understanding of the experiences, views, and practices of women who assist reproduction. They not only carry and birth babies for others but also facilitate the surrogacy process by collecting and sharing information about medical and legal issues. My data from a decade-long ethnographic research of US surrogates' communications on the largest public moderated surrogacy information and support forum,

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\* Department of Sociology, University of California Los Angeles

[www.surromomsonline.com](http://www.surromomsonline.com) (SMO)<sup>1</sup>, reveal that surrogates discuss and debate a range of issues that are important to them, including relationship with intended parents (IPs), pregnancy-related developments, and contracts. They also compare notes on ART professionals and voice their opinions about agencies, clinics, and regulatory practices.

While scholars often see surrogates as needing protection from exploitation and objectification, SMO surrogates tend to see themselves as informed and proactive equal participants in an ‘intimate journey’<sup>2</sup> whose goal is to create parents and families. Surrogates highlight their responsibility and agency in their quest for moral recognition and equality with IPs.<sup>3</sup> While surrogates are vehemently against commodification of reproductive services, let alone babies, they are suspicious of government regulation and promote individual responsibility and freedom of choice, often even to their own disadvantage.

SMO discussion threads reveal that surrogates see their contribution as morally praiseworthy and themselves as equal partners in the family-making endeavor. Accordingly, surrogates formulated an ethic of responsibility for the surrogacy ‘journey’. My findings point to four interrelated phenomena that explain surrogates’ approach to regulation. I argue that, as the outcome of ongoing discursive interactions, 1. surrogates define surrogacy as a private, intimate journey that creates parents and families; 2. they understand choices in ways that align with their quest for equality with IPs and contradict taken-for-granted notions about vulnerability and the role of money; 3. they emphasize individual responsibility for navigating regulatory hurdles and making the right decisions; and 4. based on these understandings, they support some oversight of agencies and clinics but maintain that overarching federal regulation, especially of surrogacy contracts, would be contrary to the ethos of surrogacy. By focusing on surrogates’ perspective, we gain insights into how and for what reasons practitioners, who could benefit from more consistent and comprehensive regulatory practices, are, in many ways, in alignment with neoliberal free market policies.

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<sup>1</sup> An Internet forum is an online discussion site where people can hold conversations in the form of posted messages. They differ from chat rooms in that messages are often longer, and are at least temporarily archived. Also, in moderated forums such as SMO, a posted message needs to be approved by a moderator before it becomes visible. Moderators may also close discussions that they deem inappropriate either in tone or content.

<sup>2</sup> All my quotations are from SMO.

<sup>3</sup> Surrogates and couples all use the term ‘intended parents’ and never ‘commissioning couple’, a term some scholars use.

## 2. Assisted Reproduction and Everyday Neoliberalism

### 2.1 *Debates about Surrogacy*

While some legal scholars (e.g., Epstein, 1995) and free market economists (e.g., Robertson, 1994) considered surrogates to be free, rational agents, primarily motivated by financial interest, feminist critics (e.g., Anderson, 1990; Chase, Rogers 2001; Danna, 2015; Harrison, 2016; Ketchum, 1992; Overall, 1987; Katz Rothman, 1989) tend to see surrogacy as the exploitation and objectification of impoverished women. Critics of third-party reproduction have often assumed that surrogates are 'financially destitute' women who are coerced by circumstances to carry for others (e.g., Harrison, 2016; Lieber, 1992; Ketchum, 1992; Overall, 1987; Katz Rothman, 1988).

A fruitful feminist approach describes and analyzes 'a myriad of micro-practices' (Sawicki, 1991: 81) in an attempt to understand reproductive technology as 'neither inherently liberating nor repressive', whose 'meaning derives from the social and political context in which it is embedded'. Ethnographically informed studies (Ragoné, 1994; Roberts, 1998a, 1998b; Teman, 2010) take meanings generated in their local context seriously. In the US social setting Ragoné (1994) was the first to explore surrogates' rhetoric of love and gift, and their expectations of ongoing friendship with their couple. Surrogates in Roberts' study (1998b) also emphasized 'how close they felt' to their couple. Decades later, new empirical studies find similar expectations and practices (Berend, 2016; Jacobson, 2016; Smietana, 2017; Ziff, 2017). These studies also find that surrogates understand their role as helping couples achieve their dream of parenthood rather than as simply paid service providers. Accordingly, they consider themselves partners in the baby-making enterprise and often accommodate their IPs beyond the contractual agreement. Surrogates often take it on themselves to 'nurture parents-to-be', reassuring IPs that they comply with their wishes, understand their anxieties, and try to alleviate them. Jacobson (2016) found that the surrogates she interviewed were deeply satisfied with and proud of their contribution. Military-spouse surrogates in Elizabeth Ziff's (2017) study emphasized their independence, strength, and willingness to sacrifice for people less lucky than themselves in order to help them become parents. Surrogates are also proud of their skills and abilities and think of their fertility as a resource; they derive a heightened sense of self-worth from surrogacy (Berend, 2016; Jacobson, 2016, Ragoné, 1994; Roberts, 1998a; Teman, 2010; Ziff, 2017).

Choice and individuality are entwined in Western thought; the individual is defined by the innate capacity of make choices. Choices, in turn, are seen as the expression of individuality (Strathern, 1992). Individual choice as the

cornerstone of personal agency has been a culturally influential idea in the US since at least the mid-19<sup>th</sup> century. Yet there are specific new developments; to better understand how choice and agency are interconnected in surrogates' discussions and how they relate to neoliberal ideas and policies, we need to examine surrogates' views about responsibility and regulation. For the purposes of this paper, I consider privatization, individual responsibility, and rejection of comprehensive regulation to be the relevant neoliberal ideas and practices.

## ***2.2 Neoliberalism in practice***

Neoliberal ideology has been hugely influential in shaping economic policy from the 1980s and also penetrated everyday thinking about choice and responsibility. Increased emphasis on individual self-sufficiency and ideas about the cumulative consequences of private choices for one's social situation have not been new to US understandings of social life, the latter often reduced to the sum total of individual actions (e.g., Jervis, 1998; Thompson, Grendstad, Selle, 1999).

The pervasive privatization of social problems has been documented in family life (e.g., Hochschild, 1989). Similarly privatized ideas have recently surfaced in debates about egg-freezing as a solution to conflicting demands of work and private family-planning decisions (Arenofsky, 2017). Many women say they were 'empowered' by egg freezing and felt that they had a choice about their fertility, work schedule, and freed them from the urgency of looking for a partner (e.g., Cha, *Washington Post* Jan 27, 2018; Rosenblum, *Bloomberg News* April 17, 2014). In a recent study (Greenwood, et. al., 2018) found that 88% of respondents who chose egg freezing perceived increased control of their reproductive decisions.

Raewyn Connell (2010: 27) argues that both positive imagery of 'the market' and negative imagery of 'bureaucrats, red tape, regulatory agencies' etc. contribute to the cultural legitimization of neoliberal practices. She also maintains that relationships of care, responsibility, and cooperation may serve as barriers to competitive markets (Connell, 2010: 36). Interestingly, surrogates discussions show that the logic of care and cooperation, even if they do not promote competition, can coexist with the privatization of responsibility in ways that are not antagonistic to neoliberal logics. Jesook Song's (2006: 54-55) conceptualization of neoliberalism as a 'sociocultural logic' that is 'enunciated by a variety of social actors' is a useful way to account for 'the agency of... lay people'. Such logic also informs parental decision not to vaccinate when they consider it their responsibility to weigh risks and benefits of their children's immunization (Reich, 2014).

Meg Luxton (2010) documented prevalent notions of individual responsibility for decisions in Canadian workers' narratives. She found that people who lost their job understood their situation as a 'private problem', the culmination of the choices they had previously made, and expressed a 'strong sense of individual responsibility for decision making' (Luxton, 2010: 172). Similarly, people 'attributed their success to their own efforts', thus reaffirming that those who were less successful had only themselves to blame (Luxton, 2010: 173). However, her findings also pointed to the coexistence of a belief in individual responsibility and a commitment to others (Luxton, 2010).

### 3. Methods

I chose to do research on SMO because it was the most prominent public moderated online surrogacy information and support forum. The data used in this article are part of a larger project and are mostly from the period 2007-2013 when discussions of individual responsibility and regulatory practices became more frequent. I was on the site as a researcher only, having no involvement in surrogacy other than my academic interest. I logged on four-five times a week and read new and ongoing threads. I was not a member, thus had no access to the private conversations in which women engaged through their profiles.

Treating SMO as my field site allowed me to learn and understand local meanings, concerns, explanations, and theories; it also enabled me to see consensus as well as change emerge from debates. SMO threads revealed the salient concerns that surrogates took up repeatedly in spirited debates. For this article, I coded and analyzed close to 200 discussion threads that had at least eight responses to the original post and offered substantive arguments about regulation, responsibility, relationships, and choice. Since this paper originates in a larger project, my longer immersion in SMO discussions enabled me to understand many concerns and views related to the topic of this article, thus my arguments in the following are informed by a wider engagement in the life of the forum. Not included in the data are lengthy SMO discussions that were not about surrogacy. Women regularly discussed jobs, husbands, family, parenting, news, and more; these threads helped me form a qualitative image of SMO members. Numerous threads contained brief and strictly factual advice or short congratulatory or commiserating messages; they added to my understanding of surrogates' views but are not included in the data.

I saved links to threads in thematic files and created sub-categories within files in order to organize the data. I treated SMO discussions as speech rather than text because surrogates were responding to one another in vivid and urgent ways, albeit in writing. Kozinetz (2010: 113) similarly argues that online

ethnography is not a study of texts online; rather, it studies people's technologically-mediated interactions. I used open coding and wrote analytic memos to puzzle out the theoretical implications.

Considering threads the unit of analysis allowed me to see communications in context, as posts-and-responses sequences, and to appreciate the emerging agreements about expectations, ideals, behaviors, and emotions. This interactionist approach shifts the focus from the individual to the formative effect of collective negotiations of practices and meanings. This research was informed by grounded theory, with its focus on building theory from data, and symbolic interactionism, with its emphasis on understanding the actors' viewpoints and on the centrality of the interpretive and interactional process (Corbin, Strauss 2008; Blumer, 1969). Because of my mostly passive presence on the message boards, I was able to observe the interactional dynamics without ever setting the agenda. Becker (1970: 30) noted that a 'volunteered statement' is less likely to reflect the observer's 'preoccupations and possible biases' than one that is a response to the observer's actions or questions. He pointed out that 'the observer's very question may direct the informant to giving an answer which might never occur to him otherwise' (Becker, 1970: 30). It was surrogates' own questions and responses to one another that drove SMO discussions; they were all 'volunteered statements'.

I made my presence known by informing the owner of the site about my research and posting about it on SMO. I was by no means the only such outsider reading the forum; journalists, filmmakers, researchers, and students looked for material for their purposes. Thirty five surrogates responded to my posts; I communicated via email with some for months, even years. I discussed SMO threads with them, asked broad questions about SMO stances and controversies, and received many illuminating clarification, stories, and also confirmations. Most of the responses were also 'volunteered statements' in that I left it up to my respondents to reflect on whatever the most important or relevant aspects of these discussions were for them.

SMO members are mostly lower-middle- and middle-class, white, married women between their mid-to-late twenties and late thirties, with two to four children. Many of them have more than a high-school diploma and work full time in pink collar jobs or in caring professions; some work from home or own small businesses and some are stay-at-home mothers.<sup>4</sup> Many surrogates are

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<sup>4</sup> There are no statistics on SMO membership. Judging from discussion threads of a variety of topics, many surrogates work full time as nurses, teachers, lab technicians, dispatchers, legal and accounting assistants, paralegals, IT managers, and office managers. Some of them own small businesses, and some others are stay-at-home

fairly socially conservative, except for their views about same-sex marriage and -parenting. Most claim to be 'pro-life' or 'pro-choice but anti-abortion', by which they mean that women should have the right to choose what they do with their bodies, including becoming a surrogate. Many women were active on SMO for years and did more than one surrogacy.<sup>5</sup> Heather Jacobson (2016) also found that the great majority of the thirty-one surrogates she interviewed were Caucasian, married mothers who had more than a high-school degree and worked full time. None of them were poor or on welfare. Marcin Smietana's (2017) findings reveal a very similar demographic picture. These research results are also consistent with earlier empirical findings (Ragoné, 1994; Roberts, 1998a, b).

Surrogates typically spent more time on SMO during their 'journey' but often contributed to discussions between surrogacies. It is impossible to say what proportion of the membership took part in these online communications. Site statistics show that many more people read posts than respond to them; reading SMO threads was also a way for many to engage in this online world. Discussions revealed that new and less frequent participants were often well informed about SMO debates, even if they joined such debates selectively. In 2013, when SMO was noticeably less lively, it had nearly 30,000 members<sup>6</sup> (surrogates and IPs), up from around eight hundred members in 2002. By around the end of 2013 discussions mostly relocated to Facebook groups, while SMO remained an important forum for information.<sup>7</sup> Given my data, I do not claim to be writing about all participants, all discussions, or all surrogates. I explicitly focus on ongoing discursive interactions among SMO surrogates rather than on individuals.

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mothers. The vast majority is white and married, and often has more than a high school degree.

<sup>5</sup> Posts contain information about members' date of joining SMO and number of posts; signature boxes below the post often contain the member's first name, family status, number of children, and number of surrogacies. E.g., 'Kathy, married to my soulmate, mom to three, GSx2' or 'GS to S. and A., preparing for journey #3, proud mummy to my two princesses'.

<sup>6</sup> In 2012 membership was around 6000. The reason behind the dramatic increase afterward is not clear; however, judging from the discussions, it may be due to some relaxation of membership criteria and more potential IPs joining SMO.

<sup>7</sup> People can search the site by keyword and find old discussion threads as well as factual information and advice.

## 4. Findings

### 4.1 Choices and Resources

Contrary to both most critics' contention and lay notions, SMO surrogates argue that couples who want children but cannot have them have *no* choice but to turn to surrogacy and often also to donor gametes. As a sympathetic post addressed to IPs said: 'You didn't choose to not be able to do this on your own'. Posts by intended mothers (IMs)<sup>8</sup> such as the following resonate with surrogates: 'Our surros WERE me, except that I had no choice'. In turn, surrogates are both proud and grateful to be able to have children and to have the choice to carry for others, as Diane explained: 'I was blessed to have these incredible little people who mean the word to me. Therefore I CHOOSE to help Intended Parents who are not so fortunate to have that GIFT to have children. ...Surrogates all make that CHOICE to help Intended Parents.' Kelly similarly linked choice and helping: 'we as surrogates choose to be surrogates. ...we are helping someone else.'

Surrogates take it for granted that unlike IMs, they can exercise choice because they possess the resource of fertility: 'I genuinely enjoyed being pregnant and had been blessed with three healthy children. I wanted to be able to share those blessings with a couple who could not have them without assistance'. Tiffany also connected resource and choice: 'I felt that I could be pregnant successfully again and I was. I wanted to be able to give the gift of parenthood to another couple and I did. ... I am willing to give whatever it takes to help another couple have a child'.

Surrogates often see their desire to help IPs on a continuum of helping behavior, from blood donation to volunteering and charity work, culminating in the 'ultimate giving' of surrogacy. Anne Dailey (2010: 187) argued that 'the process of choosing requires that an individual recognize the problematic line between the world as it is and the world as he or she wants it to be'. Many surrogates wanted to 'make a difference in the world' beyond their own families and thus help create a world that is closer to their ideal. 'My heart went out to couples who tried so hard and were unable to get what I was given (without trying). I felt it was my duty to give back in this way', wrote Christa. Surrogates see their ability to gestate and birth children as a private resource for making a positive public contribution, helping 'one family at a time': 'I can't do anything about evil, stupid, or incompetent people procreating, but I can counter the effect a bit by helping my IPs add to the population'.

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<sup>8</sup> Some IMs, mostly ones that already had their children via surrogacy, regularly engaged in conversations. Sometimes surrogates solicited stories from IMs.

Surrogates' contention that money is not the main resource, because it does not directly enable couples to have children, is supported by many IMs, who post their stories of expensive and failed fertility treatments and IVF cycles. Scholars documented the 'never enough' quality of assisted technologies and how they encourage people to 'never give up' and try more and new options (Franklin, 1990; Sandelowski, 1993). Surrogates frequently urged couples to 'keep trying' and posted about their resolve 'to make IPs parents'. Determination was often strengthened by failure.

SMO surrogates consider IPs to be 'such emotionally vulnerable people', lacking the needed resources to complete their family, and hurt by all the failures they had experienced.<sup>9</sup> The unquestioned assumption on SMO is that the inability to have children—or to have as many as one would like—is emotionally devastating. IPs are always described as 'desperate' people who 'had already been through so much'. Surrogates gratefully accepted accounts such as the following IM's, which echoed surrogates' contention that IPs are vulnerable, anxious, and need compassion: 'So many IPs are terrified and they let their fears overwhelm their common sense and compassion for treating others. ...SMs [surrogate mothers] need to understand that some IPs act on these fears and end up hurting their SMs when they really do not desire to do so'.

Dorothy advised a newbie not to get upset by the lack of communication with her IM: 'some IPs tend to be very guarded at the beginning due to their struggles and past letdowns. Whereas surrogacy is a happy exciting time for you it can be difficult for an IP'. Another surrogate added the following advice: 'Be gentle and encouraging, email her even if you were the last one to send an email... reassure her you want to get to know her and you aren't just going to disappear on her. Even then she may not trust you but you might help her open up enough'. When a frustrated surrogate complained that her IM was overly controlling, several women responded in ways similar to this reply: 'I really just had to understand that 99.9% of her control had been taken away so she had to exert it wherever possible. Honestly I would totally feel the same way if I were an IM'.

Threads emphasize that surrogates should redouble their efforts to alleviate IPs' anxieties. SMO discussions point out that medical science alone cannot remedy IPs' emotional hurts; it takes a selfless woman to restore their trust and hope. 'I wanted to be a surrogate because I had such a desire to help another couple have the same blessings I did. ... the joys I get from being a surro are

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<sup>9</sup> Experts support such views; University of Minnesota medical ethicist Susan Wolf said that people who want children so much are especially vulnerable patients. ([http://americanradioworks.publicradio.org/features/fertility\\_race/part3/section1.shtml](http://americanradioworks.publicradio.org/features/fertility_race/part3/section1.shtml), accessed October 2, 2017).

meeting amazing people, giving them hope', posted Emmy. Jenn articulated the connection between her resources – fertility, ability to gestate, and generosity - and her capability to heal: 'The idea that I can help create a family and to give a couple their fondest wish is just so amazing to me. ... my children are the light of my life ... I cannot imagine how devastated I would be [without them]. I would like to try and help heal some of that hurt [IPs' feel]'

Surrogates urge one another to be patiently reassuring: 'Most [IPs] have been through hell and back and are just waiting for something to go wrong because that is what they are used to. I think the best thing you can do is keep ... them included in the pregnancy as much as you can'. Joanie, an IM, agreed, advising surrogates: 'put your energies to helping them enjoy the ride'. Another IM explained that although she did not want to drive her surrogate crazy, 'my priority was keeping myself sane, not worrying about anyone else being uncomfortable by my nervousness. I suppose the guarded attitude is what got me through it'. These IMs' posts were warmly received by surrogates: 'My heart goes out to you all, I sense your guarded feelings and want you to know that we love what we do as surrogates'. Some surrogates, like Sandy, were grateful: 'Wow, thank you so much everyone. I am sitting here with teary eyes after reading the responses because I realize that this is so hard [for IPs] ... perhaps I am asking too much. I'm not meaning too, I am only wanting them to have a really wonderful experience and trying to understand how to help'.

If infertility is one of the greatest misfortunes, as surrogates believe, it is bound to have long-lasting psychological implications, including losing the ability to trust, for those who suffer from it. Charlotte Linde (1987: 351-352) argued that such explanations of behavior are popularized forms of originally expert theories that provide 'a means for understanding, evaluating, and interpreting experience'. Not only do surrogates imagine what it is like to be such a person, traumatized by losses, they also imagine that by being patient and communicative, and by bearing children for them, they can help IPs to let their guards down and trust again. This powerful fantasy of 'healing emotional wounds' promises that by mobilizing resources of both fertility and empathy, surrogates can restore IPs' psychological health that had been undermined by infertility and failures.

This 'imaginatively reconstruction', to use Lawrence Blum's (1980) phrase, of the pain of infertility is a joint endeavor on SMO; surrogates frequently write about the need to imagine what it is like to be 'in the IPs' shoes'. Surrogates' decisions to help infertile couples are informed by such imaginative excursions into experiences they never had; imagination helps shape courses of action and outcomes (Bogdan, 2013). IMs' solicited stories serve as confirmation of these imagined scenarios and add emotional fuel to calls for compassion. Neuroscientists, social psychologists, and philosophers have argued that

imagining oneself in other people's situation is the basis of empathy and compassion (e.g., Damasio, 1994; Decety, Jackson 2004; Ickes, 1997).

Empathy and compassion are purposely elicited in SMO discussions, and are inseparable from surrogates' stated conviction that children and family are the most important things in life and helping others is the right way to live. These notions helped shape the collective ethos of surrogacy on SMO. Surrogates and IMs collaborate in affirming the importance of children and the choice to have them but also their asymmetrical position in exercising choice. And while IPs clearly make choices about medical treatments, gamete donors, surrogates, and many related issues, their online self-presentations emphasize vulnerability and deprivation. Surrogates support and elaborate these portrayals, asserting that these financially stable, loving couples are 'deserving IPs'. Their desire for children and how much they are willing to pay to have them are proof that they are worthy of parenthood.<sup>10</sup> Conversely, surrogates posted about how 'unfair' it was that unwed teenagers have babies they did not even want. As Solinger (2001: 191) argued, motherhood has become a 'contingent right' for better-off women. However, surrogates do not make this argument based on the ability to pay for ART; they emphasize IPs' desire for children and the monetary sacrifices they make to have them.

SMO consensus holds that unlike IPs on the one hand, and Indian surrogates on the other, US surrogates have choices. SMO members maintain that Indian surrogates are poor, uneducated women who do not understand the medical and legal process and are oppressed by their family. 'I don't think these women are doing it because they want to; I think they are doing it because they have no choice'. Ironically, surrogates' assessment of Indian surrogacy is strikingly similar to critics' views of US surrogacy.

SMO members do not have much sympathy for fellow surrogates who 'got themselves into bad situations'. 'If a surro is taken advantage of in the US it's her own fault. There are plenty of ways to educate yourself about what you are getting into and if you as a surro jump into a situation because you are desperate then it's your own fault'. By 'desperate', surrogates generally do not mean financial need but overeagerness to carry for others without "doing one's homework".<sup>11</sup> SMO is a repository of medical and legal advice and also of cautionary tales about the perils of ignorance. Knowledge is presented as a valuable resource. Women share relevant surrogacy-related information, medical findings, and also personal experience with legal and medical

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<sup>10</sup> Haylett (2012) found that egg donors make a similar argument.

<sup>11</sup> 'Desperate surros' are the counterparts of 'desperate IPs'; both want to have a baby for the IPs.

professionals and agency staff. 'The more we discuss it, the better, and hopefully the more educated people will become'.

#### ***4.2 Private Journeys and Regulatory Hurdles***

In the context of inconsistent and patchy surrogacy regulation in the US, surrogates advise one another to use their knowledge and 'be proactive to move things along'. But why do these women take it on themselves to do more? The answer has to do with surrogates' collectively-formulated view that surrogacy is both a contractual and gift relationship. Payment, understood as 'compensation for pain and suffering', and gift go hand-in-hand.<sup>12</sup> Surrogates insist that giving life cannot be fully compensated; their willingness to help, their generosity and sacrifice are gifts. In turn, they see IPs' trust and appreciation as gifts to the surrogate. Surrogacy is defined as a mutually trusting and respectful bond and the contract is understood as a litmus test of the relationship. Surrogates claim that successfully navigating stressful contract negotiations is a sign of a future 'beautiful future relationship'.

Thus, there are many details of a surrogacy arrangement that surrogates do not want regulated but wish to work out with their IPs during contract negotiations. Procreation is by definition private, and assisted technologies, as surrogates and IPs see it, only increase the number of involved parties but do not alter the private nature of family life. Both surrogates and IPs frame assisted reproduction as a necessary measure in the pursuit of children but also as interference in private matters. 'I didn't want to share my pregnancy but had to', wrote an IM, and surrogates reassured her that they understood and very much appreciated her gift of trust. SMO members often ruminated about how hard it must be to 'trust a stranger with the most precious cargo' and how vulnerable it makes people to have to do so.

Surrogates view legislation as either helpful for achieving the goal of creating families or an obstacle to overcome in this quest. They do not, on the whole, look to legislation for setting the terms of surrogacy contracts. They follow news about surrogacy legislation, read up on clinics and agencies, compare notes, and share information and ideas about how to overcome hurdles. They also compare contracts, agencies, and clinics, and read fine print. They are proud of their knowledge and experience and generally agree that creating families is worth the extra effort.

Let us briefly review the regulatory context of US surrogacy and within it, SMO discussions. Surrogacy contracts are legal in some states, not in others,

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<sup>12</sup> Surrogates do not receive any money beyond reimbursements for expenses until confirmation of pregnancy. It often takes several cycles to achieve pregnancy.

and many states fall into a regulatory vacuum.<sup>13</sup> Seventeen states have laws permitting surrogacy, but they vary greatly in the details of what is allowed and what is restricted. In twenty one states, there is neither a law nor a published case regarding surrogacy. In five states, surrogacy contracts are void and unenforceable, and in Washington, D.C. surrogacy is banned. Seven states have at least one court opinion upholding some form of surrogacy. Traditional surrogacy (in which the surrogate is the genetic mother) and gestational surrogacy (in which she is not) are also treated differently in most states. New York, for example, has been considering new legislation to address the issues of regulation and protection, Illinois has already done so while Kansas tried to move in the opposite direction to criminalize surrogacy.

In this inconsistent regulatory context, surrogates, especially those who or whose IPs live in surrogacy-unfriendly states, often actively seek advice about how to steer around obstacles. Surrogates frequently take on the responsibility for figuring out how to evade legislative and other hurdles in order to 'make IPs' dreams come true', which is also their own dream of 'making IPs' parents'. Surrogates offer advice about pre-birth orders and donated genetic material because legislation differs by state. A common problem is getting around laws that prohibit compensation to the surrogate. SMO advice offers 'creative' ways to "get around" this in states that outlaw compensation'. Silvia posted her creative solution: 'Surrogacy is not illegal in NY, being compensated for it is... You can, however, deliver in another state. You'd better be sure that you are close enough to that state'. Another frequent advice was 'to write [the] contract up so that it didn't read "compensation" but rather it read that I was to be given a stipend for living expenses'.

Throughout all the juggling and navigating, surrogates maintain that all the relevant questions, including the number of embryos to transfer, reasons for terminating the pregnancy, as well as financial issues, need to be discussed by the parties themselves. 'In surrogacy, nothing is standard', they insist, even as they compare fees and contracts. A representative post sums up this line of thinking: 'The funny thing about comp ... is it's what YOU (and your family) decide you need... It will vary person to person'. Couples also have different

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<sup>13</sup> Surrogates and IPs negotiate the contract with the help of their own lawyers; IPs pay for legal expenses. The contracts, often over 60 pages long, detail fees, payment schedules, and list various restrictions – dietary, travel, etc. – on the surrogate. Contracts detail the parties' rights and responsibilities and provide increasingly detailed specifications of the conditions for termination of pregnancy. For a reasonable summary of the complicated and diverse practices, see: <http://www.thesurrogacyexperience.com/surrogate-mothers/the-law/u-s-surrogacy-law-by-state/>, accessed September 25, 2017.

financial situations; a good match is one in which the parties agree, SMO surrogates remind one another.

When surrogates defend the private relationships of surrogacy, they are implicitly rejecting standardized regulation. In countless discussions surrogates reject extensive regulation explicitly as well:

I am good at doing my own leg work. I listen to the red flags... legalizing surrogacy across the board in the United States could be both good and bad. It may stop people from being taken advantage of on both sides, but that means the government is involved and regulating... imagine all the extra hoops you'd have to jump through then... not all helpful. I'm sure some would be beneficial, like mandatory psych evals EVERY journey, etc... but with the gov't anything can happen.

A surrogate's highly unusual proposal about a centralized system of keeping medical records and evaluations of surrogates and IPs was received with hostility:

I think surrogacy should be legalized in all states and there should be some sort of oversight of the running of it (agencies, for example), but I think depersonalizing it to that extent would be a mistake. I have spent 3 years of my life within a personal journey with my IPs to conquer infertility. It would be highly distracting to have such a beautiful and personal process sterilized to that degree.

Surrogates who engaged in this online debate all riled against routinized evaluation and defended the private nature of surrogacy relationships: 'My character, personality, morals, beliefs, feelings and emotions define me. NOT someone's "assessment" of me.... Either get to know me and decide for yourself or go away'.

These discussions highlight not simply the acknowledgment that fees and conditions are both negotiable and negotiated but also that surrogates reject the definition of surrogacy as an 'industry' with 'standards'. For them, surrogacy is essentially a private arrangement between two families: 'The whole key to surrogacy is trusting one another'. 'I feel these journeys are like our marriages. It's all about trust and honesty'. Countless threads address the importance of carefully negotiating all the sensitive contract issues, even in states in which surrogacy contracts are not legally valid, in order to forge a good relationship and protect both parties.

### **4.3 Individual Responsibility and Assisted Practices**

The privatized notion of assisted reproduction, in which other people's choices and resources are mobilized for building IPs' families and 'healing' their emotional wounds, is formulated in an institutional context that privileges free-market models. The free-market model for clinics and agencies poses many difficulties, risks, and even dangers for both surrogates and IPs. Yet in SMO discussions surrogates do not call for comprehensive federal regulation. What they want is surrogacy-friendly legislation, stricter oversight for clinics and agencies but also, centrally, more individual responsibility. They urge fellow surrogates to bring their stories to the message board: 'I'm so glad that you are getting the word out and hopefully people will start talking, more info will come out, and then we can eventually get some regulation and lock up all of these shady agencies and REs [reproductive endocrinologists]!' These calls represent the view that responsible individual action has the potential to keep institutional actors in check.

There is not much federal or state oversight of assisted reproductive practices, although the federal government regulates drugs and medical devices and states license medical practitioners. The 1996 Congressional amendment, banning the use of federal funds in embryo-creation-related research, has legitimized and perpetuated the business model for assisted reproduction and a very lucrative business it is.<sup>14</sup> The American Society for Reproductive Medicine (ASRM) issues guidelines to fertility clinics, but the guidelines are not binding and there are no sanctions against those who violate them. Egg donation and surrogacy agencies are not regulated by the FDA. 'Pretty much ANYONE can open a surrogacy agency', as a prominent assisted reproduction attorney put it in a post on SMO.

Discussions about regulation of surrogacy agencies often point out that more oversight would be beneficial for protecting both parties. Nevertheless, surrogates tend to emphasize the importance of 'doing one's homework' of thoroughly comparing agencies:

if you go through an agency, it's because you want the support/protection/guidance ... I am not trying to give agencies a bad name, maybe there is 1 out of 50 that aren't the greatest, but that 1 has

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<sup>14</sup> <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/3/18/states-not-eager-to-regulate-fertility-industry> (accessed October 7, 2017). The fertility industry is a very lucrative 3-4 billion dollar business, according to some estimates [http://www.harriswilliams.com/sites/default/files/content/fertility\\_industry\\_overview\\_-\\_2015.05.19\\_v10.pdf](http://www.harriswilliams.com/sites/default/files/content/fertility_industry_overview_-_2015.05.19_v10.pdf) (accessed October 7, 2017).

mishandled money, or left a surro or IP hanging, feeling alone... no contact, no return calls, etc. ... When I chose my agency, I read, read, read about it, I contacted the agency several times before I sent in the application, ... and I am matched and on the road ...with awesome IFs from TX!

IMs' posts support the notion that surrogacy is a private arrangement and should be kept that way: 'Responsible IPs and surros do their homework, know the person they match with, and proceed wisely'. Another IM added: 'Regulating surrogacy would be a bad thing; legalizing it in every state would not. Surrogacy is not something [to which] a single set of standards can be applied'.

Some surrogates argued that it would be good to be able to have peace of mind without having to do extensive research on agencies: 'I would definitely like to see regulation of surrogacy agencies. Even if that means more oversight by the states. I decided to work with an agency for protection and this would offer even more'. Fellow surrogates agreed that agencies can be problematic but mostly offered private solutions, as the following response indicates: 'I have matched indy 3 times. I really don't like the "middle man"'. Many others chimed in, saying they will not use an agency in the future for similar reasons. Yet others pointed out the benefit of learning from one's mistakes and becoming better informed. 'LESSON LEARNED and I am with a fabulous agency, LOVE THEM.... But I agree that if I were to use a different agency EVER then I would be doing a whole lot of research'.

A surrogate mentioned that respectable lawyers 'are working diligently to help get some regulation passed [about escrow]. Hopefully we will see this happen sooner rather than later'. Her post was not received well: 'we need to be very careful when shouting for regulations. I think once regulations start, they will continue throughout surrogacy in general. IPs need to educate themselves and not use the agency for their escrow'. Some others reiterated that cheating is sadly part of human nature: 'There are always liars and cheaters... The only thing that'll work is faith and trust'.

An oft-debated topic, in which both individual responsibility and trust feature prominently, is embryo transfer practices.<sup>15</sup> Discussions highlight the dilemma that surrogates' empathy creates, and call into question the efficacy of 'faith and trust':

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<sup>15</sup> Often more than one blastocyst is expelled into the surrogate's uterus. Multifetal pregnancies are much more common in surrogacy as a result of this practice, and so are miscarriages, complications, and premature births. 'How many to transfer' threads multiplied over the years. The many heated debates featured bad personal stories and new medical findings, and resulted in changing views about these practices.

The very nature of being a surrogate calls for compassion and concern for others. With that compassion there comes a woman who is easier to coerce and pressure into doing something she wouldn't otherwise do. People high in mercy and compassion are wonderful people and make for good surrogates as well. ... a surrogate gets talked into transferring more for the sake of her IPs... I have been in the situation... on the transfer table while a doctor and my IPs were trying to talk me into putting 3 five-day blasts [blastocysts] from a proven donor.

Surrogates advocate private solutions, such as learning more about potential outcomes and discussing everything openly with IPs: 'I feel that ultimately it is my responsibility as to what is placed in my uterus', wrote Kelley, and others agreed. 'I think if the surro agrees ...on what the doctor recommends and the IPs ok, then she is taking responsibility also'. Tina agreed: 'You have to be your own advocate! I have a great relationship with my IPs and they know how many I will transfer. We all know BEFORE getting on the table what the max number is! Our clinic doesn't try to strong-arm us when it comes time to transfer'. Only in the eightieth post in this long thread did the notion of regulation come up for the first, and last, time:

Maybe one day we won't read stories here from surrogates who are facing HOM [higher order multiples] or reductions because the RE [reproductive endocrinologist] said to transfer 4 and they didn't know any better. But here's the thing. I truly believe that for that to happen... and this can be an ugly word around here... this industry will need better regulation. ... But regulation is a totally scary thought.

Even when surrogates support some regulation of embryo transfer practices, they feel responsible for 'making the IPs' dream come true'. The thought of 'letting down IPs' that placed their trust in the surrogate is a painful scenario for surrogates to contemplate, let alone live through. But many surrogates, much like Ann below, increasingly think of their responsibility not only to IPs but also for the lives they help create:

My compassion and giving nature will not get in the way of risking babies' lives by allowing an RE to strong-arm me emotionally and talk me into doing something that I know is a huge risk. If we all thought about the babies that are potentially put at risk by letting an RE make the decision of how many [embryos] we transfer, I think it could put a lot of things in perspective. Should I no longer be able to stand up to them, it's time to retire my hat as a surrogate.

Georgia responded:

Agreed!!! I also consider myself to be someone with a very compassionate and giving nature. I've passed up matches because of insisting on no more than two embryos no matter what. ... My IPs later said they were happy I was so dead set against anything more than two and that I had made sure they were doing their research.

Surrogates highlight the importance of standing firm, even in the face of expert opinions and emotional pressures, in order to guarantee the best outcomes for the babies. In the earlier days of SMO, surrogates often said they were willing to carry multiples if the IPs wanted twins or triplets. This stance, however, was called into question following many stories of bad outcomes, such as late miscarriages, premature births, stillbirths, and long stays for the babies in the intensive neonatal care unit. Experienced surrogates insist that the only successful way to resist pressure from both REs and IPs is becoming more informed about the issues. They conduct research much like non-vaccinating mothers in Reich's (2014) study and, like them, trust their own judgement more than expert advice. In numerous heated discussions, surrogates increasingly ask the question: 'Where does our responsibility lie to that child, as a surrogate?' Mona reminded everyone that multifetal pregnancies are risky for the babies and cause anxiety and emotional pain: 'I watched a few [surrogate] friends deliver early and all the pain they were in and it broke my heart'. While surrogates have good reasons not to trust market-driven expert advice, they primarily advocate for self-education rather than regulatory checks on fertility-clinic practices that sometimes include transferring more embryos than clinics openly admit.<sup>16</sup>

Surrogates are constantly surprised by IPs' willingness to selectively reduce multifetal pregnancies: 'I can't help it, but my jaw drops when people that are desperate for a baby are so quick to consider electively killing one because it is just not practical for them!' Advocating for the babies means being against selective reduction, but more importantly it also means being against transferring more embryos than is healthy for the babies. The only solution, surrogates say, is to make sure they are 'on the same page' with the IPs about embryo transfer and selective reduction and have it all spelled out in the

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<sup>16</sup> There are no statistics kept for only third-party reproduction, but in 2016 the Centers for Disease Control and Prevention reported that 'Multiple births from ART contributed to a substantial proportion of all twins, triplets, and higher-order infants born in the United States'.

([https://www.cdc.gov/mmwr/volumes/68/ss/ss6804a1.htm?s\\_cid=ss6804a1\\_e%20C](https://www.cdc.gov/mmwr/volumes/68/ss/ss6804a1.htm?s_cid=ss6804a1_e%20C)) The Pew Research Center reported that statistics show a dramatic increase in multiples from 2015 (<https://www.pewresearch.org/fact-tank/2015/12/11/twins-triplets-and-more-more-u-s-births-are-multiples-than-ever-before/>)

contract. Surrogates no longer debate if selective reduction is right or wrong; rather, they insist that the parties to any given match should hold the same views. This approach, according to surrogates, is the most effective way to prevent further dilemmas and complications.

In the final analysis, surrogates embrace individual responsibility for the journey more enthusiastically than they embrace regulation. The clearest domain in which this approach is manifested is responsibility for the babies after birth. Surrogates are wholeheartedly supportive of IPs' right to be parents, even in cases in which IPs did not live up to their contractual obligation to the surrogate. However, during my decade of reading SMO threads and corresponding with numerous surrogates, I have not seen a single argument for forcing responsibility for the baby on unwilling IPs. 'I found out on Monday that I am carrying twins. I also found out that my IM doesn't feel that she can care for twins.... This is devastating', wrote Amelia who was carrying for a single woman. Surrogates are baffled at such a development; they assume that people who were unable to have children are delighted to have their dream come true. 'What is with all the IMs lately?? This is the 3<sup>rd</sup> one I have heard of in a week that is just going to walk away from their child(ren)'. Many others expressed hope that after she recovers from the shock of having twins Amelia's IM will want the babies. This did not happen. In the ensuing prolonged discussions, however, no one suggested that Amelia should in any way force her IM to take responsibility for the babies. Amelia found new IPs for the twins while still pregnant, and everyone agreed this was a wonderful outcome.

No matter when and why IPs refuse to take the baby, SMO surrogates never make the argument that IPs should be contractually obligated to take a child they no longer want. IPs' 'legal protection for their parentage' is included in the contract; there is no equivalent provision for surrogates about legal protection *from* responsibility for the baby.<sup>17</sup> Surrogates assume that IPs are desperate to have a baby; they also assume responsibility when IPs do not and find adoptive parents for the babies.

## 5. Conclusion

SMO discussions help crystallize the notion that surrogacy 'journeys' are private and intimate relationships, even if relationship outcomes differ in practice. Some surrogates establish a long-term friendship with IPs, some others have a 'good journey' and receive occasional emails or cards after the birth.

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<sup>17</sup> Israeli state regulation protects surrogates; IPs have a legal obligation to assume responsibility for the baby (Teman, 2010).

Other outcomes are painful; there are IPs who are distant during the pregnancy, reframe the relationship as paid service, or cut ties after the birth. These outcomes, upsetting as they are for surrogates, are often seen as reminders to do more research, pay more attention to 'gut feelings', and notice red flags. Overall, SMO surrogates find the professionalized definition of surrogacy distasteful. When a woman complained that her IPs did not take her seriously as an expert on pregnancy, fellow surrogates understood why she found it hurtful but also advised her not to get too upset, given that she 'would not want to be one of those "professional" surrogates'.

Many SMO surrogates proudly do 'a lot of legwork' to overcome obstacles and much research to minimize risks. They generally advocate private measures to ensure good surrogacy journeys, insisting that women should be more informed, more knowledgeable, more circumspect, get to know the IPs better and be 'on the same page' with them. Thus, while surrogates are generally in favor of more oversight of intermediaries and surrogacy professionals, they do not want comprehensive surrogacy regulation, especially not of surrogacy contracts, which they take to be the codification of the parties' private agreement and the relationship itself. SMO surrogates embrace their moral responsibility for the journey, insisting that smart, independent, and resourceful women are more than capable of making informed decisions about surrogacy.

SMO members see their choices as reflections of moral agency. They insist that matching with the right IPs and negotiating the relationship are essential conditions for good outcomes. They also assert that each journey is as unique as the parties who join in the baby-making process. Thus, they uphold the moral rendering of surrogacy vis-à-vis suspicions and criticism about financial motivation and commodification, and highlight their uniqueness, strength, intelligence, and helping nature vis-à-vis notions of objectification and exploitation. In the pervasively privatized framing of US surrogacy, which surrogates mostly support and even promote, there is limited room for arguments for full regulatory protection, even though more would be needed for better outcomes.

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