

## Rules of Reproduction:

### Legitimizing Gestational Surrogacy through Narratives of Altruistic Motivation of Surrogates

#### **Introduction**

Traditional mothers (those who contribute their own genetic material to the baby they then carry and birth) are essentialized as being altruistic because it is “in their nature” to care for their children, with whom they are expected to bond deeply through the process of pregnancy and parenting. For example, in *Reproducing the Womb: Images of Childbirth in Science, Feminist Theory, and Literature*, author Alice E. Adams shares a personal anecdote about her mother’s health complications due to birthing Adams: “The thought that I had made my mother suffer, that I had, without even knowing it, almost killed the one person I most needed ... I knew, hearing that story, how thoroughly my life was tied to my mother’s. I learned (and have since tried to unlearn) that becoming a woman meant being always ready to sacrifice” (Adams 4-5). Adams points to the archetype of the inherently altruistic woman, particularly the mother, who is seen as the idealized form of woman. These self-sacrificing women do the uncompensated reproductive labor of “maintaining people both on a daily basis and intergenerationally” by both literally reproducing human offspring through childbirth and by reproducing social beings through parenting (Glenn 1).

Surrogacy splits the reproductive labor of mothering between multiple people. In her ethnography *Labor of Love: Gestational Surrogacy and the Work of Making Babies*, Heather Jacobsen explains how surrogacy “disrupts [the unity of motherhood] by dividing motherhood into distinct activities (donating an egg, gestating and birthing a baby, and parenting that child)”

(Jacobsen 5). However, each of these mothering activities is still linked by the expectation of altruism from those who engage in them, especially when separated out from the singular mother. Egg donors must undergo invasive medical procedures and the depletion of their finite egg supply. Parents, especially mothers, are expected to sacrifice their time, money, and often career pursuits in order to care for and raise their children. In this paper, I hope to illustrate the significance of altruism in the gestation and birthing forms of reproductive labor that gestational surrogates perform for the intended parents (IPs) of the children they give birth to.

Contemporary surrogacy is a complex arrangement between IPs, their surrogate and, surrogacy professionals—the doctors, lawyers, psychiatrists, surrogacy agency directors, etc. who make surrogacy possible. There are a few different ways that surrogacy can occur. It can be a traditional surrogacy, in which the surrogate provides both the egg and the womb for conceiving and carrying a fetus. In modern arrangements, the traditional surrogate most often becomes pregnant via artificial insemination rather than sexual intercourse with a male IP. Gestational surrogacy is the more common form of surrogacy. Gestational surrogacy differs from traditional surrogacy in that the surrogate provides no genetic material for the conception of the fetus; rather the IPs (or an IP and a donor, in the case of IP infertility, single IPs, or homosexual IPs) provide the genetic material, and the surrogate carries a fetus created by *in vitro* fertilization (IVF). As opposed to traditional surrogates, who are both genetic and birth mothers to the children they bear, gestational surrogates take on only the gestational and birthing reproductive labor that is associated with motherhood, leaving the genetic and social roles of motherhood to either the IPs or egg donors and IPs. In this paper, I will be analyzing only gestational surrogacy.

Another way surrogacy is categorized is whether the arrangement is commercial or noncommercial. In all surrogacy arrangements, the IPs are responsible for compensating the surrogate for costs associated with the surrogacy, such as the cost of IVF and doctors appointments. Whether or not this compensation qualifies as payment in the eyes of the law differs based on country and state, which means that in some places, even noncommercial surrogacy is considered commercial and therefore prohibited. However, in some places, including much of the United States, commercial surrogacy is legal or at least unregulated (which I will discuss in depth below), and surrogates are paid an additional fee. In the US, this can range from around \$10,000 to \$50,000, with experienced surrogates (those who have completed at least one successful—resulting in a live birth—journey) averaging higher fees than first-timers (Jacobson 59).

### **Gestational Surrogacy as Gift Exchange:**

In gestational surrogacy (both commercial and noncommercial), the surrogate's altruistic motivation is paramount for allowing surrogacy at all. IPs, agencies, many governments, and surrogates themselves go to great lengths to emphasize the altruism of the surrogates so that the surrogacy exchange cannot be identified as selling babies as commodities, which, in addition to being illegal, is also socially unsavory. In his introduction to *The Social Life of Things*, Arjun Appadurai defines a commodity as “any thing intended for exchange” (9). Appadurai then explains how gift exchange “link[s] things to persons and embed[s] the flow of things in the flow of social relations,” while also “conform[ing] to economic calculation,” thus making it a “particular form of the circulation of commodities” (10-11). Despite Appadurai's characterization of gifts as a type of commodity, legally and socially the gift of providing a

biological child to an IP is able to be obscured because of the complex nature of the social relations inherent in gestational surrogacy.

In gestational surrogacy, it is important that birth mothers do not bond with the babies they carry so that they will be able to give the baby back to the IPs once it is born. In her fieldwork, Jacobsen found that most gestational surrogates that she interviewed found it important to emphasize that “they did not share a genetic link with the embryos, fetuses, or babies” they carried, and therefore “wouldn’t have a hard time separating” (58). Jacobsen explains that the surrogates were expected to “not bond with [the babies] in what is thought to be a ‘motherly way,’ to not see themselves as the mothers of those infants, and to not engage in the infants social mothering” (46). In this sense, the surrogate’s social relationship with the child they bear for the IPs is actually weakened through the gift exchange. However, “the surrogate’s maternity status toward the surrogate child needs to be obliterated for commercial surrogacy to operate and flourish. Otherwise, surrogacy is an arrangement in which women are being paid to relinquish their maternal rights and sell their babies” (37). In this sense, although the surrogacy exchange centers around the fetishized baby (in alignment with Marx’s theorization of commodity fetishism), the social dissociation between surrogate and embryo/fetus/child is actually necessary in order for the exchange to be considered a gift exchange. Furthermore, the social relationship between IPs and surrogates is strengthened through the reciprocity of gift exchange. Referring to the work of Claude Levi-Strauss, Marcel Mauss, and Richard Titmuss, Jacobsen highlights the importance of gift relationships being reciprocal. This reciprocity is achieved either by the IPs acknowledging the surrogate’s gift as meaningful labor through payment in commercial surrogacy or love when the surrogacy is noncommercial.

Surrogates' altruism is implied in noncommercial surrogacy, yet it is still important as marking the exchange as gift. The authors of a Dutch study on a controlled experiment in legalizing noncommercial surrogacy contextualize that, "despite the ethical and religious ramifications, the Dutch government [which prohibited all surrogacy until 1994] was willing to allow non-commercial IVF surrogacy under strict conditions within this study" (Dermout 447). These strict conditions included the requirement that the women participating as surrogates have "ideological reasons for surrogacy, i.e. non-commercial, which usually means a sister, sister-in-law or good friend as surrogate mother" (444). This implies that surrogates must have not only an altruistic wish to give another set of parents an opportunity to have a biological child, but also that the surrogate ought to have a pre-existing relationship with the IPs. By emphasizing the relationship between surrogate and IP as necessary to even participate in the surrogacy arrangement, this study sets up the exchange as a gift exchange which strengthens existing social ties, rather than a commodity exchange of a baby.

In such noncommercial surrogacy, it is already difficult to frame the process as a commodity exchange because there is not a direct transfer of funds between IP and surrogate, however because "non-commercial surrogacy implies that the prospective parents compensate the surrogate mother for her expenses, e.g. costs of IVF, pregnancy, delivery (if not covered by health insurance), adoption procedure, insurance, costs of lawyers etc." the surrogacy could be perceived as an exchange of baby for material benefits like health care and cost of living, and thus a commodity exchange (448). While many of these expenses are solely the result of the surrogate pregnancy, most IPs would not want their surrogate to be at risk of exposure or malnutrition while she was carrying their child, and therefore might be compelled to consider

basic needs like food and housing as compensable expenses in a noncommercial arrangement. In a country like the Netherlands, where it is accepted that “healthcare should be accessible for all,” this may not seem like a significant compensation, but in the United States, this is not necessarily the case (Dermout 448). Jacobsen writes, “Although all states forbid baby selling, some allow compensation to birth mothers (for medical expenses or rent, for example), while others forbid it, seeing it as payment for babies” (18). When the cost of compensating medical expenses alone can easily balloon to the tens or hundreds of thousands, and many are without access to healthcare due to lack of money or insurance, even noncommercial surrogacy can have independent economic benefit for the surrogate, which might suggest the sale of a baby in a country like the Netherlands where all commercial surrogacy is prohibited.

In commercial surrogacy, the process of marking the exchange as gift rather than the sale of babies is more complicated. This is one reason why many countries have made the practice illegal. Unlike the Netherlands, the United States has no federal legislation regulating surrogacy procedures, practices or fee structures. Laws vary by state, with nearly half of states remaining entirely silent on the topic (thus allowing trailblazing reproductive teams to go ahead with surrogacy arrangements that have neither been expressly condoned or prohibited by the state). The only guidelines for assisted reproduction and surrogacy come from professional medical associations like the American Society for Reproductive Medicine and the Society for Assisted Reproductive Technology, but compliance with these is entirely voluntary (Jacobson 17-18). Without consistent public or private policies on how commercial surrogacy should be handled, IPs, surrogates, and surrogacy professionals are left to determine their own standards for surrogate procedures, including necessitating altruistic intentions from the surrogate mother.

By also coding the monetary compensation as a gift from the IPs, surrogates are able to justify their altruistic motivations, and thus frame the surrogacy exchange as one of reciprocal gifting. One commercial surrogate, Deanna, shares that, “It’s not about the money ... They couldn’t pay you enough to have a baby for somebody else, at least not me. That’s not how it works. It has to be a gift from the heart. It’s meant out of love and out of kindness, not for the compensation you get” (60). By framing the money as insufficient compensation for the work of surrogacy if it were actually a job, Deanna characterizes the money as “a thank-you gift for [her] sacrifice ... not payment for [her] services or for the baby” (67). Involving money in the surrogacy exchange may appear to mark it as a commodity exchange, but by emphasizing the surrogate’s altruism, participants are able to instead frame the exchange as a gift, freely given and without coercion, where the IPs reciprocate with a gift of money.

### **Altruism as Insurance Against Exploitation**

In addition to the need for surrogacy to be perceived as gift exchange rather than selling babies, the surrogate being seen as altruistic is also important because it prevents the surrogates from being perceived as greedy or needy, and the IPs as exploiting the surrogate by coercing her to rent her womb. This is another ethical dilemma which is mitigated by policing the intentions of surrogates.

In noncommercial surrogacy, the existing social (and often kinship) relationship between surrogate mother and IPs obfuscates any coercion that might be taking place. Particularly in cases of a family member serving as surrogate, the request falls under the umbrella of familial obligation, which is a form of reproductive labor that is expected of women. Therefore, even if a woman feels pressured to become a surrogate for a family member, this is not seen as coercion

because no money is changing hands. If a woman chooses to be a noncommercial surrogate for a family member, it is because she is living up to the self-sacrificing archetype of the ideal woman, mother, and female family member. This can be seen in the case of Cherise, a commercial surrogate who was initially drawn to becoming a surrogate after she was asked by her mother to carry for her younger sister who was experiencing fertility issues. Cherise remembers, “I was like, ‘Oh yeah, no problem.’ Because pregnancy is pretty easy for me—unlike for my mom—and so I said, ‘Well yeah, of course. It’s my sister’” (Jacobson 53). Although Cherise’s sister was eventually able to achieve pregnancy herself and Cherise never served as a noncommercial surrogate for her sister, her willingness to do so demonstrates the type of essentialized feminine altruism that is necessary to mask any coercion that might influence a woman to become a noncommercial surrogate.

Again, the introduction of money into the equation makes managing the public image of commercial surrogacy additionally complex. However, by limiting who is allowed to become a surrogate in commercial arrangements, agencies and other surrogacy professionals (which are the primary way surrogates and IPs are matched) manage to mitigate the criticisms of surrogacy as exploitative of surrogates. One industry standard that has arisen in the selection of commercial surrogates across the United States is that surrogates must not be welfare recipients (37). One reason for this is to ensure that surrogates are not primarily motivated to participate because of the financial compensation. Jacobson shares that, “An important part of that image [of surrogacy], according to Cheryl [an agency director] and other surrogacy professionals, was ensuring that surrogates do not appear desperate—that they engage in surrogacy not out of economic necessity, not because they are being exploited to use their bodies for pay, but out of

an innate desire to help others” (38). From this example, it is clear that the surrogacy professionals are invested in maintaining the image of altruism in their surrogates, but what about the surrogates themselves?

Jacobson points to two justifications that surrogates give to explain why they are not being exploited: they genuinely enjoy being pregnant and they are motivated by the altruistic desire to help the IPs have children. While cultural depictions of the experience of pregnancy and childbirth are typically negative, the surrogates Jacobson spoke to all described how “they loved the feeling of movement from the developing fetus, they loved their ‘baby bumps,’ they loved the attention from others, and they loved how pregnancy made them feel” (54). While this focus on the women’s own experiences and enjoyment of pregnancy may imply selfishness as a motivation for becoming surrogates, altruism explains why they chose to become surrogates rather than simply having more children of their own. One surrogate, Andrea, shares, “I’ve always been one of those people that want to somehow help somebody, do something for someone else. And I just thought, ‘I’m capable of doing this and I have the ability. Why not? Why not?’ And especially at the time I was single. I wasn’t having any more children of my own, and I thought, ‘Why not? Why not help somebody?’” (55). For Andrea, “surrogacy provided an answer: [she] could enjoy pregnancy but not have a new baby for whom [she] would have to care” (54). Even if it seems like an afterthought for some surrogates, the altruistic desire to help IPs who cannot conceive their own children is still an important motivator in pushing a woman from saying, “I love being pregnant, but don’t want any more kids,” to “I want to get pregnant with another family’s child to help them achieve the happiness I’ve achieved through my own children.”

## Conclusion

Both commercial and noncommercial gestational surrogacy require that women conform to the essentialized feminine characteristic of altruism in order to become surrogates. The requirement that women enter surrogacy motivated by altruism cements the connection between the female anatomy that makes it possible for a woman to act as a surrogate and female socialization which expects certain behaviors of these women. Just as sex workers need not perform their labor because they altruistically enjoy giving pleasure to their clients, and domestic workers need not have the inherent desire to clean or care for children (although in both of these cases, clients often prefer to think that the workers derive pleasure or joy from fulfilling gendered roles), there is no inherent need for a gestational surrogate to be drawn to the work through altruistic desire to provide a biological child to an IP. However, while fulfilling essentialized roles is often deemed optional for sex workers and domestic workers, the requirement of altruistic motivations for surrogates is usually left out of discussions on intimate labor. It is assumed that fulfilling women's biological role of reproductive labor must be linked to women's socialized roles. In the Dutch study on noncommercial surrogacy, the authors come to the conclusion that, "It remains debatable whether or not the criteria, as applied in our programme, were the right ones or, arguably, were perhaps too strict, or even paternalistic" (Dermout 447). I agree, and through my analysis of the altruism requirement in gestational surrogates, I hope to encourage people to reconsider, or at least think critically about the implications of, this requirement for surrogates, as has been done for other forms of intimate labor.



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