

Representations of Surrogacy in Submissions to a Parliamentary Inquiry in New South Wales

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Abstract

Whilst feminist commentators have long critiqued surrogacy as a practice of commodification, surrogacy as a mode of family formation continues to grow in popularity. In this paper we explore public representations of surrogacy through a discourse analytic reading of submissions made in Australia to an Inquiry regarding surrogacy legislation. The findings suggest that many submissions relied upon normative understandings of surrogates as either ‘good women’ or ‘bad mothers’. This is of concern given that such public representations may shape the views of those who utilise surrogacy services in ways that limit attention to the ethics of surrogacy.

Key words: surrogacy, Assisted Reproductive Technologies, discourse analysis, dilemmatic accounts

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Introduction

For almost as long as surrogacy as a mode of family formation has been in existence, radical feminist commentators have spoken against it, stating that it is premised upon the commodification of women's bodies (e.g., Raymond 1994). Increasingly, however, there has been debate amongst feminists about the extent to which women's bodies are commodified through surrogacy arrangements. Liberal feminists (e.g., Scott 2009) suggest that surrogacy is not so much about the exploitation of women as about women choosing to provide a service to people unable to have children of their own. These two opposing positions suggest that public discourse about surrogacy is a contested terrain at best. Yet as this paper will demonstrate, the polarities of exploitation versus choice fail to adequately consider what an ethical practice of surrogacy might look like.

In terms of the practice of surrogacy itself, commercial surrogacy typically refers to an arrangement whereby a woman is paid for the work of carrying a baby, whereas altruistic surrogacy is an arrangement whereby no fees are paid but expenses may be met by the commissioning parents. In terms of the use of surrogacy as a mode of family formation in Australia, data to date have been poorly collected. What data exist suggests that the majority of people using surrogacy are infertile women, with some fertility clinics specifying that women must be married, or in *de facto* heterosexual relationships to receive treatment (Devine 2010). However, altruistic surrogacy arrangements are known to exist for gay couples in Australia (Dempsey and Critchley 2010). Indeed,

internationally there has been a growth in the number of gay men making surrogacy arrangements over the last 10 years (Bergman et al. 2010; Lev 2006; Riggs and Due 2010).

To return to the focus of our paper, and given it seems that surrogacy is increasingly becoming a viable alternative for people wishing to have a child, we suggest that it is important that public understandings of surrogacy are examined, as such understandings will likely influence the reproductive decisions that people make. One instance where public understandings of surrogacy recently came to the fore was in the public inquiry that preceded the passing of the *Surrogacy Bill (2010)* by the parliament of the Australian state of New South Wales on November 10, 2010. Notably, whilst the primary focus of the inquiry that informed the Bill (Robertson 2009) was on altruistic surrogacy, issues related to commercial surrogacy were repeatedly referred to within submissions to the inquiry, and commercial surrogacy became a large part of the Bill, with the introduction of an amendment to the Bill that prohibited offshore commercial surrogacy undertaken by any resident of the State.

In relation to public discourse about surrogacy as represented by the Inquiry, we were taken by the nature of submissions made to the Inquiry. In particular, what struck us was how the construction of women and motherhood in many of the submissions simultaneously devalued women who act as surrogates, whilst also frequently arguing for their status as the child's 'proper' mother. These seemingly opposing ideological accounts of surrogacy are, we argue, dilemmatic

in the sense outlined by Billig (1999), who proposes that not only are ideological positions typically contradictory, but that none of the options available within a given ideology are inherently positive or non-normalising. With these observations in mind, our interest in this paper is to explore how the bodies, roles and identities of women who act as surrogates were constructed within submissions made to the inquiry. This, we argue, is important as while at law commercial surrogacy may be banned in New South Wales, this does not necessarily translate into greater public awareness or attitudinal change about the practice of surrogacy in any form.

Our intention, of course, in analysing discourses of surrogacy within submissions made to the Inquiry, is not to dismiss the deeply felt emotions that typically lie behind the choices of those who use surrogacy as a mode of family formation, nor are we suggesting *a priori* that all women who act as surrogates are dupes of a commodifying logic. Rather, our interest is in what representations of surrogacy are made intelligible via submissions made to the Inquiry, and how this potentially limits the capacity of those who utilise surrogacy as a mode of family formation to adequately consider the ethics of it. With this concern in mind, we close the paper with both a consideration of what could constitute an ethical practice of surrogacy, but a call to nonetheless consider whether indeed surrogacy is a ‘reproductive technology’, or a technology in the Foucauldian sense that reproduces very specific ways of understanding bodies, rights and relationships. In other words, and in terms of the autonomy of women’s bodies, our discussion revolves around the issue of what conditions would need to be in

place to ensure that women who act as surrogates can truly ‘choose’ to carry a child for another. The work of Foucault (1988) would suggest, however, that ‘choice’ itself is an illusion in the context of highly regulated neoliberal societies that make available only certain, limited, and constraining subject positions (i.e., for women the role of child bearer). Yet at the same time, and given the fact that such constraining positions are likely to continue, our interest is in how it might be possible to contribute to a shift in public understandings of surrogacy so that the position of women who act as surrogates is less tenuous than at present.

Normative Understandings of Motherhood

Feminist scholars have long focused on the social construction of motherhood, and what is expected of a woman once she becomes a mother (see, for example, Rich 1989; Hays 1996). Whilst such expectations and constructions have changed over time in Western countries, dominant late 20th and early 21st century Western conceptions of motherhood continue to focus on mothering as ‘natural’, with mothers presumed to instinctively love and attach to their babies, even before birth (Maushart 1999). Hays argues that within such a construction of motherhood, mothers are expected to be, and frequently represented as, selfless, loving and nurturing. Indeed, being a mother is seen as all consuming, to the extent that the category of ‘mother’ is seen as defining the woman herself (Phoenix et al. 1991).

Normative understandings of what it means to be a mother are problematic in that they proscribe the way women should act, thereby functioning to strictly define the acceptable parameters of behaviour and emotions for women who become mothers (Maushart 1999; Douglas and Michaels 2004). These normative understandings of motherhood and women's roles as mothers present an inherent dilemma in relation to surrogacy, one that we return to repeatedly throughout this paper. That is, whilst women who act as surrogates are often *a priori* seen as 'good women' (for their generosity in carrying a child for another person), they are simultaneously seen as 'bad mothers' (for the fact that they do not then undertake the mothering work expected of 'good women'). Neither of these positions (automatically being assigned the position 'good woman' or being labelled a 'bad mother') are, we would suggest, desirable positions for women who act as surrogates, hence our reference to these positions as dilemmatic, following Billig (1999).

The limiting effects of normative discourses of motherhood are not restricted to women who act as surrogates. Authors such as Rothman (1989) and Clarke (2004) have argued that the very process of becoming a mother in many Western countries frequently encourages women to engage in practices of commodification through which their status as a 'good' mother is partly determined by the clothes and possessions (and their brands) that they purchase for their child. Thus mothers are subject not only to normative expectations concerning how to be a 'good' mother, but their status as women and mothers is also implicitly bound up in dominant consumerist narratives concerning their

reproductive abilities and capacity to care for children (a point we examine further in the following section on representations of surrogacy).

It is safe to say that within most Western countries there are many normative expectations surrounding the role of 'mother' and the construction of this category in multiple contexts. And indeed it is such normativity that appears to be at play in many of the submissions to the inquiry under examination in this paper, in which the status of women who act as surrogates is constructed as both a 'natural' mothering role (due to the 'natural' connection between the woman acting as a surrogate and the unborn baby she is carrying), whilst at the same time often represented as highly unnatural due to the fact that the 'mother' is willing to relinquish her 'baby', as we will now discuss in relation to previous research on the topic.

Representations of Surrogacy

Research by Krolokke et al (2010) suggests that public discourse surrounding surrogacy is often framed in two distinct ways concerning choice, reflecting the binary of altruistic and commercial surrogacy. Within the former, women who act as surrogates are portrayed as having the capacity to bestow a 'gift'. Krolokke et al suggest that such portrayals are highly gender normative, with women who act as surrogates referred to in terms such as 'goddess', 'giver' and with pregnancy itself depicted as a 'calling'. Representing women who act as surrogates in this way thus depicts them as 'good women' (albeit on highly

gender normative terms). By contrast, women who act as commercial surrogates are often depicted as mercenary *non*-maternal women who happily relinquish 'their' babies for others. From this perspective, women who act as surrogates are depicted as workers doing a job, one that is free from emotional labor and which, as a result, translates into the depiction of women who act as commercial surrogates as heartless and easily able to relinquish the child that they carry (see also Tehman 2008). Representing women who act as surrogates in this way thus depicts them as 'bad mothers'.

Vora's (2009) research on transnational surrogacy in India suggests that these two apparently opposing understandings of women who act as surrogates can in fact be understood on a continuum of commodification, where in either case women's bodies are depicted as 'spaces to be filled'. This type of logic thus positions surrogacy as just another form of labor within a capitalist market, regardless of whether the woman is 'giving a gift' or 'making money'. This can only be the case, however, if the incommensurable differences between the work that any person undertakes under capitalism, and the psychological and physical work that women undertake through pregnancy, is minimised, something that occurs precisely because it is women's bodies that are at stake. In other words, in the broader global context of patriarchal imperialism, women are treated as objects of exchange precisely because in general this is how they are represented, as we discussed earlier in regards to the category 'mother'.

The depiction of women who act as surrogates as simply ‘paid babysitters’ was deployed in one US case reported by Roberts (1995), in which an African American woman (who had carried the child of a white man and Filipino woman) was constructed as being akin to a foster parent or a wet nurse (and thus her desire to retain custody of the child after birth was denied). Such analogies fail on multiple levels to recognise the role that women play in acting as surrogates. First, the basic association of surrogacy with foster parenting or wet nursing means that the racial implications of black women carrying (in this instance) the children of white men are not placed in a historical context where black women’s bodies have long been treated as tools for the use of white men (Roberts). Second, wet nursing, foster care, and surrogacy are treated as though they all require the same (or even commensurable) emotional or physical labour (and thus produce similar kinship claims – i.e., none in the eyes of the law). Thirdly, (and problematically for each of these forms of carework, but particularly for foster parenting and surrogacy), caring for another person’s (biological) child is seen as not resulting in any form of rights for the person who provides the care.

This brief summary of research on representations of surrogacy suggests that women who act as surrogates are constructed as objects in multiple ways, regardless of whether the surrogacy is altruistic or commercial. In either instance, carrying a child and then relinquishing it to the intended parents is constructed as ‘easy’, with this having direct implications for how the women are seen *as women*. In the case of altruistic surrogacy, child bearing is constructed as a ‘natural’ experience for ‘good’ women (which serves to justify their role as

producers in a capitalist market), whilst in the case of commercial surrogacy women are depicted as *not women enough* (through the construction of them as 'bad mothers') if they are willing to 'sell' a baby. Neither of these positions open up the capacity for critical public discussion about what Mary Lyndon Shanley (1993) has referred to as the "right to procreate" (p. 618), and particularly its evocation in relation to surrogacy. In the analysis that follows, then, we contribute to the opening up of just such a discussion by examining how the role of women who act as surrogates was depicted in submissions made to the inquiry that informed the *Surrogacy Bill (2010)*.

Method

Data

Inquiries such as that which led to the *Surrogacy Bill (2010)* typically produce a large amount of publically available documentation. In the case of the New South Wales Standing Committee on Law and Justice's inquiry into *Legislation on Altruistic Surrogacy in NSW*, there were 40 submissions made by members of the public, including academics, parents by surrogacy, and professional bodies. There were also four public hearings in which these groups could present further information. The inquiry itself produced a report (Robertson, 2009), and this was discussed on two separate occasions by members of the New South Wales Legislative Committee. The subsequent Bill was then read into parliament and

debated, and then two days later an amendment was introduced and the Bill was discussed again and then passed.

Data analysed for this paper are 39 of the 40 public submissions made to the inquiry. All bar one of the submissions are freely available on the Standing Committee's website (the remaining submission, #13, was confidential and thus not published on the website). The reason for selecting this particular data set was that it contains the most diverse range of viewpoints from across a range of stakeholders. The discussions of the report and the readings of the Bill, whilst interesting in their own right, only include the representations of surrogacy endorsed by members of parliament, and thus are not necessarily representative of the broader public. The evidence given at public hearings, whilst often including a somewhat broader spread of viewpoints from the general public, still tended towards privileging academic standpoints and information provided by professionals in the field of surrogacy. We thus consider it appropriate to focus on the public submissions in order to canvas the widest range of opinions within any of the forms of data available in regards to the inquiry.

Analytic Approach

The approach taken to analysing the data draws upon Wetherell and Potter's (1992) now classic approach to discourse analysis. In their work they introduce the concept of interpretative repertoires, which they refer to as 'broadly discernable clusters of terms, descriptions and figures of speech often assembled

around metaphors or vivid images” (p. 90). As they go on to note, identifying and examining interpretative repertoires is “a way of understanding the *content* of discourse and how that content is organized” (original emphasis). Thus in the context of the present paper, whilst the overall discourse to be examined is one related to surrogacy – what may be termed a broad discourse of reproductive rights – it is in the interpretative repertoires identified that we can see just how this discourse is deployed. Importantly, our focus in this paper is on how the interpretative repertoires that we identify indicate something of the stake that people have in the topic of surrogacy. It could of course be argued that all people who make submissions to public inquiries will have some form of stake – why else would they make a submission. But in this particular instance, we believe that stake plays a particular role when it comes to the social construction of motherhood, as previous research would appear to indicate.

In terms of data coding, the entire dataset was read and re-read, looking for coherent patterns of argumentation; rhetorical and semantic forms; and the investments that these seemed to indicate. From the data, two main repertoires appeared evident, which echoed previous research on representations of surrogacy: 1) the depiction of surrogacy as damaging to women and children, and 2) the depiction of surrogacy as a social good. These two repertoires are now discussed in turn via a sample of representative extracts. Importantly, whilst we present these two repertoires separately in the analysis that follows, we wish to highlight the similarities across the two in terms of the very normative construction of women that they evoke.

Analysis

Surrogacy as Damaging

As is often the case in debates over reproduction and families, many of the submissions to the inquiry evoked the notion of children's 'best interests' to argue for a particular viewpoint. The particular evocation of this argument that appeared repeatedly in the submissions was one in which it was presumed that all children 1) need a mother, 2) are damaged by not knowing a mother, and 3) that a child's 'true' mother is the woman who carries them from conception to birth. In many instances this line of argument was justified through recourse to religious claims, such as is the case in the first extract below. However what lies at the heart of these claims is a normative notion of motherhood, as is exemplified by all of the extracts presented in this first repertoire.

Extract 1:

Family Life International, Ms. Gail Instance, Submission #16

Because of the person's innate dignity, the truly responsible procreation of the unborn child must be the fruit of marriage. In other words, the spouses conceive a child only through their reciprocal self-giving; they become a father and a mother only through each other... It is difficult enough for a child to come to terms with being abandoned by his/her parents. Many of these children suffer for years,

often blaming themselves, and trying to make contact with the parent/parents who, he believes, abandon him... How much worse would it be for a child to learn that the mother who gave him birth, either a genetic stranger, who did not love him but merely hosted him in her womb, or a mother genetically related to him, bore him, not out of love for him but simply to give him away to someone else. It is a tragedy not to be loved by one's parents, particularly by one's mother. For the State to legally sanction this is monstrous and cruel.

This extract introduces three key threads that run through many of the submissions made to the inquiry. The first thread is one in which surrogacy is depicted as the 'worst' form of family making (i.e., 'monstrous and cruel') by comparison to other forms that are also treated as also bad (i.e., children who are 'abandoned') and of course by comparison with the ideal form of family making (i.e., 'the fruit of marriage'). This type of argument sets up a hierarchy of family forms in which surrogacy is not simply at the bottom, but rather is deplorable at all levels.

The second thread is one in which women who act as surrogates are by default referred to as mothers, yet at the same time they are treated as always already being *failed* mothers. In the first extract above, to love a child is not to carry them and give them away, but rather it is to carry them and raise them. Women who carry children, but who 'give [them] away to someone else', are depicted still as 'mothers', but they are depicted as inadequate *women* (i.e., 'merely hosted',

‘simply to give away’, ‘not out of love’). Here the emotional labour that goes into, and the motivations that underpin, surrogacy are rendered invisible through the idealisation of what a ‘mother’ should be and want.

Finally, this extract epitomises the adult-centric nature of the arguments presented in many of the submissions in terms of the ‘best interests of the child’. Not only are the claims made in this extract obviously premised upon a heteronormative view of families, but they are also premised upon one in which it is mothers and fathers who accord an identity to one another, rather than the categories of mother and father only making sense in relation to children. In other words, whilst in the extract much is made of the ‘tragedy not to be loved by one’s parents’, such an account is entirely adult-centric in its orientation: it displays no capacity to consider what children actually need or want, and instead capitulates to a highly normative understanding of children in which they are always and ever the product of the desires of others, rather than also being subjects who through their very being make the categories ‘mother’ and ‘father’ intelligible.

In the following extract the language of ‘best interests’ is evoked to again reify the mother/child bond and thus construct surrogacy as ‘cruel and wrong’:

Extract 2:

Tangled Webs Australia, Ms Myfanwy Walker, Submission #21

A child's best interests are served when it is conceived and gestated by; born to and nurtured by, one mother. To fragment maternal roles through ova donation/gestational surrogacy (or 'straight' commercial or altruistic surrogacy and relinquishment at birth), is to deny a child its entitlement to a whole mother. Tangledwebs believes it is every child's birthright to experience a lifelong physical and emotional relationship with its genealogical mother from conception onwards... In circumstances where a baby loses its mother through death or abandonment (or through other tragic circumstances) it is regarded as a profound loss for the child. Surrogacy CREATES this loss for a child and regards it as a triumph to be celebrated... Regardless of the needs and desires of adults to become parents in these circumstances, Tangledwebs maintains that it is cruel and wrong to intentionally create a child with the intention of denying him/her a 'whole' relationship with a 'whole' mother.

It is important to note that the group of people who made this submission publically identify as adults who were conceived through some form of donor conception, who do not have access to information about their donor (due to laws that existed at the time of their conception that assured anonymity to donors, and which despite legislative change have not been retrospectively amended), and who feel that this lack of access prevents them from truly developing a complete sense of self. Whilst considering these claims is beyond the scope of this paper, it is important to note this information as whilst it would be germane to

an inquiry on donor conception, it is notable that their submission was made to an inquiry on surrogacy, which doesn't necessarily involve donor conception.

This gap between the remit of the inquiry and the terms of the response made in this extract is evident from the first sentence, which clearly constructs 'appropriate' conception as that which involves one woman who conceives, gestates, births and raises a child – what is referred to here as a 'whole' mother. This is a highly idealised image of motherhood and one that promotes a very narrow understanding of what children's 'best interest' may be. Indeed, and as we suggested in regards to Extract 1, the best interests being referenced here are not necessarily those of actual children, but rather are the best interest of children in a normative and idealised world in which it is certain adults who determine what all children need. Obviously given the remit of Tangledwebs it is perhaps understandable that this group would wish to argue for a particular set of rights for children, yet this nonetheless fails to recognise that this group's experiences of being a child is not necessarily the universal experience of all children.

Furthermore, and like Extract 1, this extract again reiterates a construction of idealised motherhood through comparison with supposedly unideal types, such as 'death or abandonment (or other tragic circumstances)'. Yet in this very acknowledgement of other ways in which children are denied access to a 'whole mother', the submission again constructs a hierarchy that is dependent not upon the actual diversity of family forms, but upon a highly idealised structure in

which all children would and should have a 'whole mother'. Such a hierarchy fails to take into account not simply the diversity of family forms, but also the wide range of life circumstances through which some families are powerless to the effects of the contexts they live in.

In the following two extracts the reification of a very particular image of 'the maternal' is rendered even more clearly:

Extract 3:

Vanish, Ms Patricia Lauria, Submission #6

Any legislative changes must consider the physiological, emotional, and psychological processes that occurring during any pregnancy, irrespective of the origins of the sperm and/or ova. Proponents of surrogacy, altruistic or otherwise have claimed that the surrogate mother is merely an incubator in the process, which implies that a pregnant woman is an inanimate object void of any physiological, emotional or psychological responses to being pregnant. This view diminishes the role of women and demeans the human responses to motherhood and the birthing process. Legislators must therefore give due consideration to the normal attachment and bonding processes that occur between a mother and her unborn child and the child to its mother, and closely examine the potential and/or lasting effects that may result for both, if or when these factors are ignored.

In this extract a sympathetic view of women who act as surrogates is endorsed. Yet in order to warrant this claim, the extract relies upon a highly normative notion of motherhood, one in which ‘normal attachment and bonding processes that occur between a mother and her unborn child’ are treated as universal and unquestionable. This leads us to suggest that whilst the tenor of the extract is one in which women’s bodies are the key issue of concern (and to a lesser degree the impact of surrogacy on children), the actual standpoint endorsed within the extract only serves to reify motherhood as always being the same for all women, a powerful discourse that has long been challenged (e.g., see chapters in Nathanson and Tuley 2009).

Importantly for our argument in this paper, this type of claim about mothers does nothing to actually examine the structural inequities that require attention in regards to the ethics of surrogacy, and instead diverts our attention to an idealised image of motherhood that is not simply potentially unproductive for some women who act as surrogates and the children they bear, but perhaps more importantly for all women who feel compelled to ‘normally attach and bond’ to their children. This type of argument is further illustrated in the following extract:

Extract 4

Family Voice Australia, Dr David Phillips, Submission #5

The formation of a profound bond between mother and child is a natural process that is stimulated by the hormone oxytocin associated with birth and breast feeding. Surrogacy involves making a decision when the woman is not subject to such influences – before the conception of the child – and then being required by the legal contract to carry out this decision when she is subject to these natural emotions... In the case of altruistic surrogacy the problem may be exacerbated if the birth mother is going to continue to have any close contact with the child. This is likely to increase the bond for both mother and child.

This extract is interesting for the complex, though no less normative, account it provides of motherhood. Recourse is made to a discourse of science to warrant what is at base a highly essentialist account of the mother/child bond. Claims to hormones, for example, moves the account beyond simple polemic, and instead attempts to represent motherhood as a ‘natural process’, rather than as a socially constructed category with normative expectations of the ways in which women should behave as mothers. Where this type of account fails, again, is precisely in its reliance upon a universalising account of motherhood. So, for example, reference is made to breastfeeding (which not all mothers do) and birth (which does not always happen through vaginal delivery) to evoke a notion of bonding as the result of such ‘natural’ processes. We need only consider the diverse ways in which mothers and children may or may not bond with one another to recognise

that this use of scientific discourse as a way to legitimate motherhood falls very short as an argument against surrogacy.

Furthermore, the extract is interesting for the way in which it uses scientific claims to construct potential surrogates as dupes of their own biology. In the argument presented, women are at the mercy of hormones after giving birth, hormones that prevent them from rational thought or staying committed to their own decisions. Furthermore, women, when presented with the consequences of their decisions (i.e., in the case of altruistic surrogacy for a family member, as outlined in the extract), are depicted as unable to do anything but further bond with a child they have given birth to. Again, this is a highly normative account of mother/child bonding, and one that fails to treat women as autonomous subjects.

In sum, the extracts included here which speak against surrogacy in all forms are united not simply by their opposition to surrogacy, but more precisely by their commitment to a highly normative understanding of mothering, and by the depiction of a typology of family forms and by the implicit dismissal of children's voices. Interestingly whilst the extracts presented in the following repertoire primarily voice support for surrogacy arrangements, they too adhere relatively closely to a highly normative understanding of women's roles, in a manner which typically denies them autonomy.

Surrogacy as a Social Good

It is important to acknowledge that whilst there was to some degree a sense of consistency about the submissions that spoke against surrogacy, as outlined above, there was less consistency amongst those submissions that spoke in support of surrogacy (and there were less of these overall in comparison to those which spoke against surrogacy). What did appear to repeat in the submissions in support of surrogacy, however, reiterated the previous literature on representations of surrogacy, namely the depiction of it as a gift, as can be seen in the following extract:

Extract 5:

Michelle Evans, Submission #26

Please, don't deliberate on this issue - there are so many loving and caring people in this state alone who wish to make another person a part of that loving environment - how can we let bureaucracy and red tape stop that? Why is there a difference for a willing person to offer you the most wonderful gift in the world, to a young teenage mother to bring life to something that may not be wanted? It's simply not fair! Life deals us cards that can sometimes be a little hard to deal with and this is one of them. With the right law in place and the right guidelines to ensure that the child's wellbeing is always at the forefront of any decision, why can't this be a simple process? This is not merely moneymaking scheme by welcome uteruses - it's something that the most wonderful person out there wants to share

with someone else - the chance to have their own child! It's not a baby factory - it's simply a chance to let a much loved and wanted little one into the world.

Much like the earlier extracts, this extract is reliant upon a set of binaries that normalise women's roles as one centred upon reproduction. In this extract we see paired contrasts between 'loving and caring people' and 'moneymaking schemes', and between a 'baby factory' and 'let[ting] a much loved and wanted little one into the world'. In these contrasts the extract attends to both sides of the binary, yet makes a clear case for which side politicians should come down on. Yet in so doing, the extract takes for granted a number of assumptions, namely 1) that surrogacy is a gift, 2) that the wellbeing in need of protection is solely children's, and 3) that surrogates are 'willing' people. Placed together, and despite the fact that the extract speaks glowingly of surrogacy, what tends to disappear are the specific women who might act as surrogates. This is especially concerning given the only reference to an actual woman is a 'young teenage mother', precisely one of the populations of women who would be most at risk of exploitation in regards to surrogacy. Issues of exploitation and rights are more clearly (though not necessarily any less contentiously) addressed in the following extract:

Extract 6:

Ms Susan Mobbs, Submission #27

We are expecting our first child in Feb - with my sister in law acting

as our surrogate. If the current legislation stays as it is we will have wait years until we are able to adopt our own child. My sister in law will be legally recognised as the mother and her husband the father of our child even though it is not directly genetically related to them. There will be not legal recognition of our child's genetic heritage, we will have to apply for a parentage order, until that is granted we will have problems regarding accessing healthcare for our child without my sister in laws consent, should we want to travel overseas and get a passport for our child we would require my sister in laws consent. Surrogacy is about creating families; it is not about tearing mothers and babies apart like adoption. It is about giving babies back to their families.

In this extract the personal narrative provided to a large extent overshadows some of the complexities in surrogacy by rendering salient only some of the issues. The concerns raised centre upon genetics and consent, and in so doing primarily emphasise the rights of the intended parents. Whilst it could be argued that these are circuitously aimed at supporting the child, the question must be asked as to why the parents would have concern about a member of their own family not consenting. That issues of consent are so salient seems to us to demonstrate a proprietorial investment in the child, who it must be noted will always be able to access healthcare in Australia regardless of their birth certificate, and who as a child has no inherent need for a passport.

Importantly, we make these points not to argue against the personal opinion represented, but rather in order to highlight the dilemmatic nature of the argument presented in this extract. In other words, if the bottom line of the submission is that surrogacy is good because it allows for the creation of families, and if altruistic surrogacy occurs in an extended family context, then what must be questioned is precisely what form of family is being invested in here. We would suggest that a possessive investment is evoked here when the concern becomes more about tangential rights than the actual fact of having a child that is desired by its family. Furthermore, there is an implicit assumption that in order to be a good woman, the woman acting as a surrogate must relinquish the child and take up an investment herself in the intended parent's possessive investment. Again, then, this is reliant upon a highly normative image of women as generous, giving and selfless child bearers who must either comply with the demands made of them, or risk being seen as causing trouble. Obviously such an image is problematic for the ways in which it limits women to tightly regulated understandings of their reproductive capacities.

Note that this extract reinforces the family formation hierarchy outlined earlier, when reference is made to surrogacy being 'about creating families... not about tearing mothers and babies apart like adoption'.

In the following and final extract an interesting version of the argument for surrogacy as a social good is presented, in which the role of gift giving in some situations can apparently be taken too far by some women who act as surrogates:

Extract 7

Ms Christine Whipp, Submission #7

There is little research data to indicate what drives a woman to agree to have a baby... and then hand it over... Kim Cotton says of her decision to become a surrogate, 'I thought I was a nobody, but through surrogacy I thought I could become a somebody. When you are helping someone else have a baby, you feel so good about yourself, and with the money I receive I could improve the quality of my children's lives'. One of the UK's most prolific surrogate mothers, 43-year-old Jill Hawkins, lost the twins she was carrying in her eighth surrogate pregnancy... Cotton says of Jill Hawkins that she may have become addicted to the 'feel-good' factor of helping an infertile couple have a child. The surrogate becomes the centre of the commissioning couple's world, making the surrogate feel special, and the bond created with them – rather than the child – is what becomes addictive.

We must note that this extract is taken from a submission that spoke against surrogacy in general. Yet a significant proportion of the submission involved the presentation of information about why women *do* become surrogates, and in so doing gave insight as to how women who act as surrogates depict themselves as fulfilling a social good. We include this extract precisely for the fact that it clearly highlights the contradictory nature of the positive aspects of surrogacy as

they are represented by women who act as surrogates, namely in the way that surrogacy allows some women to feel they are helping others, but that this can come at a cost. Most notable is the comment that women may 'become addicted to the "feel-good" factor of helping an infertile couple have a child'. Whilst in the extract this is obviously framed as a negative way of feeling good, we would suggest that what this extract actually points towards is the very logic by which carrying a child for someone else – a role that comes with considerable emotional and physical demands – is something that could involve a 'feel-good factor'. In other words, we would suggest that this is a highly gendered way of thinking about feeling good, whereby it is typically the role accorded to women to take their own happiness from the happiness of others, and that this could lead women such as Jill Hawkins to repeatedly undertake the work of surrogacy.

As noted earlier, the extracts that were pro-surrogacy (or in the case of the last extract, included comment on why women might want to act as surrogates) were far from uniform in their claims, yet underpinning them was the continued emphasis upon highly gender normative roles for *all* women, not simply for women who act as surrogates. As we now discuss, this continued emphasis upon traditional roles has significant implications for the capacity of public debate to truly consider the ethics of surrogacy.

Discussion

Throughout our above analysis of public submissions made to the New South Wales Standing Committee on Law and Justice's inquiry into *Legislation on Altruistic Surrogacy in NSW*, we repeatedly emphasised the normative ways in which women, mothering and reproduction were constructed. And this is, at least for us, one of the most central and pressing concerns relating to critical commentary on surrogacy in the near future: how do we keep in sight both the social construction of motherhood (and thus refuse the assumption that woman = womb = mother) whilst at the same time recognising the gendered nature of surrogacy (i.e., it is only women who can carry children to term, either for themselves or for others). Furthermore, whilst it may seem redundant to state that surrogacy is gendered, what we are suggesting is that surrogacy is *normatively* gendered in that it takes the capacity of women to reproduce as a given, when in fact the very case of surrogacy occurs in most instances because some women *cannot* bear a child.

As such, we would argue that acknowledging normative understandings of gender and motherhood in any discussion around surrogacy is critical to ensuring that such discussions recognise the nuanced and dilemmatic nature of arguments around surrogacy, as well as open up a space to challenge normative understandings of women and mothers. In particular, we note that in both understandings of surrogacy presented in this paper (that is, surrogacy as damaging and surrogacy as a social good), women are typically treated as objects. To expand on this point; in the first example women are represented normatively as connected to the children they carry (that is as 'natural mothers'),

and therefore as lacking the agency to make a choice concerning acting as a surrogate, whilst in the second they are frequently represented as desiring to give happiness to others, thereby again drawing upon normative understandings of women, particularly in relation to the characteristics women are considered to have that make them good mothers.

Therefore, and to return to our opening comment about feminist standpoints on surrogacy, our analysis highlights the complexities and dilemmatic nature of surrogacy, both of which arise precisely because arguments either for or against surrogacy are always already premised upon the shaky essentialist foundations of normative claims to motherhood. What these claims typically have in common, particularly when applied to surrogacy, is a lack of engagement with women as autonomous beings, instead engaging only with women in terms of normative and gendered understandings of how women are expected to behave, particularly in relation to motherhood. When such normative understandings of women and mothers are taken as a starting point for discussions of the benefits or disadvantages of surrogacy, the autonomy (or lack thereof) afforded to women acting as surrogates is rarely discussed. We would argue that a starting point for discussions concerning surrogacy ought always to be the ways in which surrogacy as a practice has the potential to either subvert or uphold women's autonomy and agency when making decisions about their bodies and reproductive capabilities. In particular, we argue that such a discussion is necessary in light of the feminist critiques of surrogacy as a practice which commodifies women's bodies, and particularly in relation to the inequalities

which are arguably present in many, if not most, commercial surrogacy arrangements.

Correspondingly, we argue that when normative understandings of women and mothers remain the primary target of any commentary on surrogacy (either for or against it), what disappears are both the actual disparities that result in certain groups of women acting as surrogates and other groups of people making use of surrogacy services, as well as any sort of productive commentary on what practices and policies would need to be in place for surrogacy to be a truly ethical practice that refuses normative discourses of motherhood and their practices of commodification. We now examine each of these issues in turn.

In terms of disparities, research on commercial surrogacy in India (e.g., see Nurluqman et al. 2009; Vora 2009) reports that women who act as surrogates would not become surrogates if other avenues of work were available to them. As such, any discussion of surrogacy must take as its starting place the equality of surrogacy arrangements, and particularly the role of race and class when considering the ‘choices’ that women make in undertaking surrogacy (Dillaway 2008; Riggs and Due 2010). One key example of the need to attend to issues of race and class appears in the work of Dorothy Roberts (1995), who documents the negative effects of surrogacy laws in the US upon African American women who act as surrogates. Roberts suggests that African American women may often be implicitly viewed as ideal surrogates by white commissioning parents due to the fact that they are less likely to be able to afford to litigate if they wish to

amend the surrogacy contract (either to terminate the pregnancy, to keep the child after giving birth, or to have access to the child after birth), or if they do litigate, they are less likely to be successful (as high profile cases brought to trial involving African American surrogates and white intended parents in the 1990s such as that mentioned earlier demonstrated). In this sense, whilst at law African American women are treated as autonomous individuals capable of 'choosing' to act as surrogates, when they seek to make a different 'choice' the outcomes tend to indicate that they are in fact seen as objects whose role it is to fulfil the procreative dreams of white commissioning parents.

The issue of surrogacy is not simply one about the ethics of whether or not particular groups of women have the capacity to 'choose' surrogacy: it is also an issue about equity in terms of who accesses reproductive technologies and how access is regulated by race and class. For example, recent research in India (Kumar 2007) suggests that whilst poorer women have much higher rates of infertility at much younger ages than both their richer Indian counterparts and also in comparison to those living in the overdeveloped west, these women are the least likely to be able to access a surrogacy arrangement in order to have a child. In this regard, then, surrogacy is not simply about the capacity of women to opt in or refuse the role of surrogate, but about how the effects of privilege and disadvantage function to position certain groups of women as surrogates by default of their social position, and other women as users of surrogacy services.

Moving to the potentially positive aspects of surrogacy, the work of Teman (2010) and the example provide by Kirkman (2002) indicate to us the fact that whilst in a large number of cases (and particular in the case of transnational surrogacy) the effects of commodification upon women's bodies may primarily be a product of normative discourses of femininity and the maternal, this may not always be the case. Teman suggests that for many women who act as surrogates, their ability to relinquish the child after birth is not because they are failed women or mercenary or because they steel themselves against the emotional and physical impact, but rather because they develop a bond with the woman for whom they carry the child (obviously in the cases where at least one of the commissioning parents is a woman). In other words, some women are able to cope with carrying a child for another woman because of their relationship with that woman. Obviously in some cases this may go awry, as was potentially the case with Jill Hawkins reported in Extract 7. Yet this is not necessarily always the case, as indicated in the writings of Kirman who speaks of becoming a mother via her sister carrying a child to term for Kirkman and her husband.

Perhaps echoing the work of Gilligan (1982), then, this argument in support of surrogacy recognises that yes, surrogacy can only be undertaken by women, but this does not have to be because women are 'natural' mothers or only of worth if they fulfil the needs of others. Rather, examples such as that provided by Kirkman (2002) suggest that perhaps in some instances the 'trade' that two women may make for each other is not one of commodification, but rather one of a shared experience of living under patriarchy. Of course this suggestion sits

somewhere on the slippery slope of essentialism about women and carework, and certainly our intention here is not to argue simplistically that women can easily undertake the role of surrogate and this be free of commodification. Rather, our intention here has been to suggest that beyond gender normative accounts for or against surrogacy, there may still be other ways of thinking about the complexities of surrogacy.

To conclude, then, we question whether surrogacy is a reproductive technology on par with other forms of reproductive technology such as IVF or ART more broadly. Whilst surrogacy will typically use these technologies, and without wishing to minimise the commodifying aspects of all forms of reproductive technology, our supposition is that surrogacy is more of a technology of the self (Foucault 1998) that reproduces very particular ways of understanding women's bodies. As we have indicated in this discussion, however, we do not believe this always has to be the case. Whilst in some situations (such as transnational surrogacy) we have ongoing concerns about the lack of reciprocal policies between receiving and relinquishing nations that would ensure the wellbeing and rights of women who act as surrogates, we nonetheless do believe that it is possible to have conversations about the ethics of surrogacy in which the autonomy of women can be a viable topic.

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References

- Bergman, K., Rubio, R. J., Green, R. J., and Padrón, E. 2010. "Gay Men who Become Fathers via Surrogacy: The Transition to Parenthood," *Journal of GLBT Family Studies* 6: 111-141.
- Billig, M. (1999). "Whose claims? Whose ordinariness? Rhetoric and ideology in conversation analysis," *Discourse and Society* 10(4): 543-547.
- Clarke, A.J. 2004, "Maternity and Materiality. Becoming a Mother in Consumer Culture," in: J.S. Taylor, L.L. Layne, and D.F. Wozniak, eds, *Consuming Motherhood*. New Brunswick and New Jersey: Rutgers University Press, 55-73.
- Dempsey, D. and Critchley, C. 2010. "Comfort with Use of Assisted Reproductive Technologies (ART) for Family Formation by Same-Sex and Heterosexual Couples: A Survey of Australian Social Attitudes," *Gay & Lesbian Issues and Psychology Review* 6: 90-102.
- Devine, B. 2010. "An Overview of Surrogacy in Australia," *O & G Magazine* 12: 38-39.
- Dillaway, H.E. 2008. "Mothers for Others: A Race, Class and Gender Analysis of Surrogacy," *International Journal of Sociology of the Family* 34: 301-326.

- Douglas, S.J. and Michaels, M.W. 2004. *The Mommy Myth: The Idealization of Motherhood and How it Has Undermined Women*. New York: Free Press.
- Foucault, M. 1988. *Technologies of the Self: A Seminar with Michel Foucault*. Massachusetts: University of Massachusetts Press.
- Gilligan, C. 1982. *In a Different Voice: Psychological Theory and Women's Development*. Massachusetts: Harvard University Press.
- Hays, S. 1996. *The Cultural Contradictions of Motherhood*. London: Yale University Press.
- Kirkman, M. 2002. "Sister-to-Sister Gestational 'Surrogacy' Thirteen Years On: A Narrative of Parenthood," *Journal of Reproductive and Infant Psychology* 20: 135-147.
- Krolokke, C., Foss, K. A. and Sandoval, J. 2010. *Contemplating Maternity in an Era of Choice. Exploration into Discourses of Reproduction*. Plymouth: Lexington Books.
- Kumar, D. 2007. "Prevalence in Female Infertility and its Socioeconomic Factors in Tribal Communities of Central India," *The International Electronic Journal of Rural and Remote Health Research, Education, Policy and Practice* 7: 1-5.
- Lev, A. I. 2006. "Gay Dads: Choosing Surrogacy," *Lesbian & Gay Psychology Review* 7: 72-76.
- Markens, S. 2007. *Surrogate Motherhood and the Politics of Reproduction*. Berkeley: University of California Press.
- Maushart, S. 1997. *The Mask of Motherhood*. Sydney: Random house Press.
- Muhd Nurluqman, M., Wei Xin, T. and Shijian, D.L. 2009. *The Indian Surrogate*.

- Nathanson, J. and Tuley, L.C. 2009. *Mother Knows Best: Talking Back to the 'Experts'*, Toronto: Demeter Press.
- Phoenix, A., Woolett, A. and Lloyd, E. 1991. *Motherhood. Meanings, Practices and Ideologies*. London: Sage Publications.
- Raymond, J. 1994. *Women as wombs: Reproductive technologies and the battle over women's freedom*. North Melbourne: Spinifex Press.
- Rich, A. 1986. *Of Woman Born: Motherhood as Experience and Institution*. New York: W.W. Norton and Company.
- Riggs, D.W. and Due, C. 2010. "Gay Men, Race Privilege and Surrogacy in India," *Outskirts* 22, retrieved March 22, <http://www.chloe.uwa.edu.au/outskirts/archive/volume22/riggs>
- Roberts, D. 1995. "Race and the New Reproduction," *Hastings Law Journal* 47: 935-949.
- Robertson, C. 2009. *Legislation on Altruistic Surrogacy in NSW*. Sydney: New South Wales Parliamentary Library.
- Rothman, B. 1989. *Recreating Motherhood: Ideology and Technology in a Patriarchal Society*. New York: W.W. Norton and Company.
- Scott, E. 2009. "Surrogacy and the Politics of Commodification," *Law and Contemporary Problems* 72: 109 -146.
- Shanley, M.L. 1993. "'Surrogate Mothering' and Women's Freedom: A Critique of Contracts for Human Reproduction," *Signs: Journal of Women in Culture and Society* 18: 618-639.

- Smerdon, U. 2008. "Crossing Boundaries, Crossing Borders: International Surrogacy between the United States and India," *Cumberland Law Review* 39(1): 15-85.
- Teman, E. 2010. *Birth of a Mother: The Surrogate Body and the Pregnant Self*. Berkeley: University of California.
- Teman, E. 2008. "The Social Construction of Surrogacy Research: An Anthropological Critique of the Psychosocial Scholarship on Surrogate Motherhood," *Social Science and Medicine* 67: 1104-1112.
- Vora, K. 2009. "Indian Transnational Surrogacy and the Commodification of Vital Energy," *Subjectivity* 28: 266-278.