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Individual responsibility or trust in the state: A comparison of surrogates' legal consciousness

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Abstract

Drawing on ethnographic research in the United States and Israel, two countries that have long-term experience with surrogacy, we compare surrogates' understanding of, approaches to, and expectations about regulation. Women who become surrogates in these two countries hold opposite views about regulation. US surrogates formulate their rejection of standardized regulation—including standardized screening and contracts—by emphasizing their own responsibility for the legal, relational, and medical aspects of surrogate pregnancy. They want more oversight of fertility clinics and surrogacy agencies but ultimately argue for individual accountability. Israeli surrogates, conversely, support centralized government regulation of the practice and even defend Israel's centralized regulation of surrogacy; many advocate for the extension of the law and the state to assume more responsibility for these arrangements. We discuss these differing formations of legal consciousness in terms of Engel's conceptualization of "individualism emphasizing personal responsibility" versus "rights-oriented individualism."

Keywords

Comparative ethnography, neoliberalism, contracts, legal consciousness, regulation, surrogacy

Introduction

With the growth of transnational surrogacy in India, Mexico, Ukraine, and Russia, the lack of surrogacy legislation has attracted scholarly scrutiny. This article contributes to the ongoing conversations about regulatory issues by focusing on two countries, the United States and Israel, where compensated surrogacy arrangements were practiced long before the global "surrogacy boom" and which represent two very different approaches to legislation. We explore regulation from "the ground up" instead of simply documenting various regulatory absences and hurdles as much of the

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scholarship does. Rather, we investigate relational contexts and surrogates' notions of risk management through the lens of legal consciousness, defined as "the ways in which people experience, understand, and act in relation to law" (Chua and Engel, 2019: 336). This approach allows for a broader understanding of surrogates' concerns about varied pregnancy-related health hazards and clinical practices as well as their responses to them. While regulation is discussed at length in the legal scholarship, it has not been addressed from the perspective of the "communities of meanings" (Chua and Engel 2019: 347) surrogates create through various forms of communication, including online forums and social media. In the following, we argue that the "ground-up" approach better explains practices than the scrutiny of laws on the books alone can, given that practitioners support, challenge, or circumvent legal regulations based on their notions of right and wrong.

The data for this study come from our respective ethnographic research conducted over several years in the United States and Israel. Methodologically, we adopt a comparative case method that focuses on the varied yet systematically different experiences of surrogates with regulatory institutions in both countries. There are many similarities between the two social contexts in these highly developed countries, yet participants' approaches to the almost diametrically different regulatory contexts can be traced to some key socio-political differences. Findings from our respective studies show that regulation is best understood in its own socio-political context and practitioners' worldviews and perceptions of events and situations are central to their cooperation with or challenging of legal practices. We ask: how do surrogates in the United States and Israel view regulation, how do their views reflect and support their understanding of surrogacy and how do these conceptualizations link up with larger socio-political developments? How is surrogates' legal consciousness configured differently in these two contexts? What can a comparative assessment of the ethnographic data contribute to discussions of surrogacy legislation and practitioners' approaches to it?

We are not advocating for or against surrogacy but are interested in how surrogates evaluate surrogacy practices and their organization by the state and other actors. Our findings indicate that US surrogates define surrogacy as a private "journey" of a surrogate and intended parent [IPs] and emphasize individual responsibility for navigating regulatory hurdles and making the right decisions, even if it means finding legal loopholes. Conversely, Israeli surrogates define surrogacy as an intimate "journey" of surrogates and IPs with the state as a chaperon. While US surrogates emphasize individual responsibility and generally reject federal regulation, including regulation of who can contract with a surrogate, Israeli surrogates emphasize the state's responsibility to facilitate, and protect those involved, and advocated the extension of state regulation to include previously excluded citizens, such as gay men. However, in both countries, surrogates are not financially destitute and consider themselves the IPs' social, if not necessarily economic, equal.

We make a twofold argument. Surrogates' views of regulatory practices can contribute to a nuanced understanding of practitioners' meaning-making and decision-making behavior and to our understanding of how socio-political context shapes legal consciousness. Our findings show that views on regulations are embedded in broader understandings of the state, its role, and the relationship between state and citizens.

Literature review

Early work on surrogacy, influenced by radical feminist theory, advocated strongly against surrogacy, viewing it as a form of subordination and exploitation of women's bodies under patriarchal technological regimes, comparable to prostitution and slavery (e.g. Corea, 1985; Rothman, 2000). More recently, India has attracted the most interest, as its surrogacy practices seemingly fit the scenario earlier feminists have outlined. Scholarship, focusing on transnational surrogacy, has

highlighted not only the underlying inequalities of assisted practices but also the consequences of inconsistent or nonexistent regulation (e.g. Deomampo, 2016; Majumdar, 2017; Pande, 2014; Rudrappa, 2015; Saravanan, 2018; Vora, 2013). Increasingly, scholars have studied other transnational surrogacy markets such as Mexico (Hovav, 2019; Schurr and Militz, 2018), Thailand (Whittaker, 2014), Ukraine (Siegl, 2018), and Russia (Weis, 2017). Scholarship on these newer surrogacy markets continues to highlight the exploitative potential of surrogacy while simultaneously challenging the notion of surrogates as predestined victims.

The abovementioned scholarship on surrogacy in newer reproductive markets describes what surrogacy looks like in the absence of regulatory protection, illuminating its potential harms. Much of the focus is on transnational practices and inequalities and the commodification and marketization of bodies and reproductive potentials (e.g., Hovav, 2019; Schurr, 2018; Weis, 2017). However, the national context these studies reveal is one of profound socioeconomic inequality; surrogacy is the best-paid option of "work" for the women who do it and who are often in financial straits. As concerns about exploitation are raised (e.g., Pande, 2014; Rudrappa, 2015; Weis, 2017), critiques of lack of regulation are often linked to calls for recognizing the "obscured labor" of surrogacy that Jacobson (2016) considers akin to employment.

While scholars generally consider regulation of payment and surrogates' and IPs' rights necessary, they usually prefer increased regulation to limit the practice rather than support it. What is missing in these perspectives is the analysis of how the participants themselves make sense of the practices in which they engage and the experiences they have while doing so. Rather than taking for granted institutional and regulatory practices, we analyze how surrogates embrace, challenge, and at times even subvert these practices, thereby creating more complex situations of the interplay between institutional practices and meanings. Our data speak to local, rather than transnational, developments, and we aim to add to the scholarship by focusing on local meanings and their practical outcomes.

Our respective data indicate that surrogates have been in many ways engaged in the process of the formation and stabilization of the meaning systems that guide evaluations and actions. Legal meanings are one particularly salient element in the "normative universe" surrogates create and maintain (Cover 1983: 4). As Cover (1983: 8) argues, "law is a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate, or dignify." As it turns out, US and Israeli surrogates submit to, rejoice, and struggle against as well as at times pervert different elements of their respective legal systems. Yet in both countries, there are relational issues that surrogates consider to be outside of the law's jurisdiction, belonging to the private moral sphere, as we will argue.

Silbey (2005: 334) defines legal consciousness as "the search for forms of participation and interpretation through which actors construct, sustain, reproduce, or amend the circulating (contested or hegemonic) structures of meaning concerning law." Legal consciousness is shaped within local cultures and shapes not only how people think about law—their ideas and opinions—but also what they do; it is "a type of social practice, in the sense that it reflects and forms social structures" (Silbey 2005: 334) and plays a role in the construction of the authority and hegemonic power of the law.

People's understanding of the law takes the form of cultural practice (e.g., Conley and Barr, 1990; Engel, 1984; Ewick and Silbey, 1991; Marshall and Barclay, 2003). Such cultural practices take place in specific contexts and are informed by specific historical and legal developments. For our purposes, it is useful to distinguish between what David Engel (1984: 558) called "rights-oriented individualism" versus "individualism emphasizing self-sufficiency and personal responsibility." Rights-oriented individualism is compatible with, indeed calls for, legal compensation, remedies, and protection, while individualism emphasizing personal responsibility calls for a

personal evaluation of risks and protection against them. Risk means calculated uncertainty; it can be understood as a "relational order through which connections between people, 'things', and 'outcomes' are constituted" (Boholm 2003: 175). The very notion of risk is tied to aspirations for control (Giddens, 1999). Personal responsibility for risk management suggests that the individual should have considered the situation and possibilities more carefully and has primarily herself to blame if things go wrong.

Engel's formulation informs our comparative analysis of the legal consciousness of US and Israeli surrogates. We suggest that the collective meaning of risk management negotiated among US surrogates in our sample reflects the personal responsibility approach. The pervasive cultural ideal of self-sufficiency in the United States has been reinforced by the neoliberal insistence that people are responsible for the outcomes of their actions, success as well as failure, and the legal organization of surrogacy, which we will discuss subsequently, "allows" the parties to surrogacy quite a lot of room for taking responsibility for risk management. In the US contexts, many surrogacy-related risks are "manufactured risks," that is, uncertainties and risks created by technological and medical developments, much less confined to collective life than dangers and hazards in traditional societies (Giddens 1999: 4). Given that the neoliberal turn means that even traditional hazards become matters of individual responsibility, we should not be surprised by the emphasis on individual responsibility in surrogacy, where new risks are created by medical technologies.

Israeli surrogates' legal consciousness, conversely, incorporated the rights-oriented approach, informed by both nationalist and individualist discourses in which extensive state funding for fertility treatments is justified both as "an issue of core national values of the Jewish State" and an issue of individual "emotional rights" to well-being and "civil rights," particularly the "right to parenthood" of Israeli citizens (Gooldin, 2013: 93). Kahn (2000), Gooldin (2013), Birenbaum-Carmeli (2016), and others discuss how high rates of support for fertility treatments (particularly in vitro fertilization [IVF]) are legitimized consensually by Israeli legislators, policy makers, patients, and the media as civic entitlement to state-funded "lifesaving" services to suffering infertile citizens (see Gooldin 2013). The discourse of national, civil, and emotional rights of infertile Israeli citizens to become parents with state assistance played a central role in the legalization of surrogacy in the country in 1996 (see Gooldin 2013; Teman 2016) and is expressed in contemporary debates on the citizenship rights of gay men in relation to surrogacy (see Lustenberger, 2017). Thus, in the nationalist and rights-oriented framework, risks associated with assisted practices are treated more similarly to collective hazards, "accidents of fate," rather than "manufactured risks" associated with the expansion of personal choice (Giddens 1999: 4, 5)

The context: Surrogacy regulation in the United States and Israel

In this section, we highlight the almost diametrically opposite national regulatory approaches that make it compelling to compare the two countries that otherwise share many similarities in terms of how surrogates organize and understand the relationship with the intended parents.

The United States has no federal surrogacy legislation; every state regulates it differently and some refrain from regulating it altogether. Regulation pertains only to contracts, although not in terms of its provisions; states may regulate who can enter a surrogacy arrangement, whether traditional (in which the surrogate is the genetic mother) or only gestational surrogacy (in which she is not) is allowed, and if compensation is allowed or not. Surrogacy contracts are legal in some states, not in others, and many states fall into a regulatory vacuum. Eleven states permit surrogacy for all parties ("surrogacy-friendly states"). Three states prohibit surrogacy; six states neither allow nor prohibit surrogacy, and in two of them surrogacy contracts are invalid (https://www.creativefamilyconnections.com/us-surrogacy-law-map/). In the rest of the United States, surrogacy is practiced,

but regulation varies greatly in substance. Parentage can be established by prebirth order or after the birth by court ruling as legislated by states.

The lack of federal legislation allows a commercial market of unregulated private surrogacy agencies and fertility clinics to prosper, especially in "surrogacy-friendly" states, such as California. Most of the states that allow commercial surrogacy do not limit who can contract with a surrogate nor specify the requirements for contracts or screening. Surrogates and IPs negotiate the conditions of their arrangement through an agency, a lawyer, or privately, albeit with legal assistance. Lawyers have increasingly become specialized and draw up detailed contracts for review and revision, thus progressively standardizing the process of risk assessment (Berk, 2020).

Conversely, surrogacy in Israel is tightly regulated and monitored by comprehensive state legislation. The whole screening process, culminating in the signing of the surrogacy contract, is regulated by a government committee. Both surrogates and IPs must be Israeli citizens or permanent residents of the same religion (nearly all applicants are Jews) and cannot be related to one another.

The practice is not officially encouraged by the state but is a "last resort" for genetic kinship. Only gestational surrogacy is allowed, and at least one intended parent must be genetically linked to the child and until recently was limited to married, heterosexual couples with medical issues or a history of repeated unsuccessful attempts at pregnancy. As a result of increasing popular pressure, the surrogacy law was amended in 2018 to permit single women (or lesbian couples), using donor sperm, to contract a surrogate if they meet the criteria. In 2021, a further amendment allowed single men and gay male couples to enter surrogacy arrangements, effective in 2022, using donated ova. The children born are full citizens, and the IPs are recognized as parents once a parental order is granted following the birth. A striking difference between the United States and Israel is that Israeli women cannot enter a private surrogacy arrangement within the country independent of the government supervisory committee—indeed, this is a punishable crime—while surrogates in the United States can enter "independent or indy" arrangements (without agency mediation, although almost always with legal representation).

Method

Similar to Inhorn et al.'s (2018) comparative study of egg freezing among Israeli and US women, we find the binational ethnographic investigation of surrogates' understanding of regulation fruitful because it sheds light on patterns of the interplay between national legislation and legal consciousness. We compare two practices and surrogates' views on them, namely, in phase 1, the medical and psychological screening of the parties and, in phase 2, the contract, as they are or are not regulated in the two countries. By comparing both practices and stances and analyzing interconnections, we aim to flesh out the "grounds-up" approach in its local social context.

This article draws from each of the authors' research on surrogacy. While expanded upon elsewhere (Teman, 2010, 2019; Berend, 2016), the following is a brief outline of the methods for the studies. The Israeli study included in-depth, open-format interviews with 20 Jewish-Israeli surrogates who gave birth between 2014 and 2016. All were married and had two or more children. Interviews were conducted in Hebrew in the surrogate's home and lasted an average of 1.5 hours. Additional data were collected by following the hashtag #surrogatebychoice (in Hebrew, *#pundekaitm'bchira*) from public Facebook posts by 40 surrogates during the summer of 2018 in response to proposed changes in the surrogacy law.

The US study, conducted from 2002 to 2013, employed online ethnographic observation of www.surromomsonline.com (SMO), the largest and most important mediated public surrogacy website in the United States; most of the data for this article came from the last 4 years when discussions of regulatory issues multiplied. Berend also exchanged emails with 35 SMO surrogates,

asking about their take on contentious threads and for clarifications of some SMO stances. Responses provided useful clarifications and insider interpretations of SMO interactions.

The overwhelming majority of surrogates who posted stories, questions, information, and advice on SMO message boards live in the United States, and this study contains only US surrogates, from many different states. Nevertheless, it is important to point out that not all surrogates in the United States participated in SMO. Most SMO surrogates are married, a mix of traditional and gestational surrogates—although mostly the latter and some did both—who carried for gay and heterosexual couples and single men, frequently from another state or even another country. All surrogates in the sample had completed one or more surrogacy, were pregnant, or had started the process. Berend did not encounter anyone on SMO who was denied as a surrogate; accounts of denial in one clinic also contained news of acceptance at a different clinic.

We both used open coding to tease out the implications of our data, followed by axial coding to compare data across observations and interviews, and bring the conceptual dimensions into sharper focus. We wrote thematic memos to reflect on the data and its variation. We wanted to understand how surrogates themselves attach meaning to surrogacy. These meanings in turn inform surrogates' actions and have consequences for the practice of surrogacy. All names are pseudonyms.

Practices and meanings

Screening and private evaluations—United States

Physical and psychological screening is managed by agencies, clinics, lawyers, surrogates, and sometimes even intended parents. Agencies and clinics mandate such screening and testing of surrogates and often IPs as well, although they generally require more from surrogates than from IPs, and sometimes do not require much testing of repeat surrogates. Testing and screening are by no means uniformly strict. "The psych eval was a joke compared to what I have heard from other SMs (surrogate mothers). My husband and I went to a psychiatrist's office and talked to her for an hour about what we expect to happen during and after the surrogacy—Then we were done! I am glad we didn't have to go through the MMPI (a psychological test that assesses personality traits and psychopathology), it was in and out," wrote Amy. Judging from discussions, psychological screening was often *pro forma*. "I had my psych evaluation done the morning of the day I flew out to meet my IPs and sign contracts," posted Ashley. Similarly, in her fieldwork in a Los Angeles clinic, Guerzoni (2020b) found that while the physical testing was extensive, psychological evaluations were done in a 30-min telephone conversation.

The American Society for Reproductive Medicine's (ASRM) guidelines (Recommendation for Practices, 2016) notwithstanding, physical and psychological screening and testing varied by agency, clinic, and administering practitioner. The results were shared with IPs. ASRM recommendations include a thorough psychological screening of the surrogate and her partner as well as testing for Hepatitis C and B and for sexually transmitted diseases. Some surrogates reported that their husbands only had to have a blood test to screen for HIV. Surrogates normally had to take several STD tests and undergo a gynecological examination. "You might have to have a saline ultrasound or an HSG [special x-ray using dye to look at the womb and fallopian tubes], they do bloodwork . . . From what the agency told me it is rare that someone 'fails' these tests although they could possibly find things (i.e., polyps) that would delay transfer," responded Carrie to a question about what to expect. Lori commented: "It really depends on the RE [reproductive endocrinologist]. Some are stricter than others. Our RE had few guidelines." Monica opined that the screening is "mostly a check for complications during the pregnancy. They just want to make sure on paper at least it looks like you should have a simple and straightforward pregnancy with no

complications anticipated." Some women recounted that they were rejected because they were "fluffy" (high body mass index or BMI) or had "too many cesareans," while others reported that their REs did not care about weight or previous cesareans. Women who failed to pass screening or testing at one agency or clinic often got advice on SMO about where else they might succeed; many posts testify to such successes.

SMO surrogates often understood variation in clinical and agency practices as possibilities for creative action to evade restrictions or requirements they considered unhelpful. Their perspective on the rightness of medical practices was central to assessing the legal legitimacy of such practices. The rightness of practices, SMO discussions reveal, was most often evaluated based on surrogates' assessment of and trust in their own physical and emotional abilities. Tiffany expressed this sentiment succinctly: "I have learned that I know my body much better than the doctors. I felt that I could be pregnant successfully again and I was." Surrogates both trusted and mistrusted medical practitioners. They celebrated "medical miracles" and wanted safe pregnancies and birth, and quite uniformly welcomed more ultrasounds. Yet they also emphasized their own fertility resources and knowledge, much like a badge of distinction that made them "great surros."

Surrogates all had to sign informed consent forms; it is the physician's responsibility to inform the surrogate about medical risks. Information includes descriptions of the procedures and nonguarantees of success, unknown side effects of the hormones and other medications, risk of abnormal pregnancy, and possible complications (Austin and Brisman, 2013). Informed consent, however, can also serve as a neoliberal mechanism of transforming citizens into rational decision makers, responsible for their life choices (Rose, 1999), and thus transforms pregnancy-related hazards into "manufactured risks" women take on by choosing to become surrogates. While it is understood to be the key to respecting individual autonomy, meaning privacy, voluntariness, self-mastery, and accepting responsibility for one's choice, informed consent does not guarantee individual autonomy; it protects choices made without sufficient critical reflection as much as other choices (O'Neill, 2003). The legal standard governing informed consent varies by state, but there is no requirement that all conceivable or commonly known risks be disclosed. Assisted procedures are lucrative business; dissuading women, unless risk factors are obvious, may go against the clinic's self-interest, as we see from the practice of some of them accepting women turned away by more scrupulous clinics. Learning about the risks and taking full responsibility for one's choices resonated with surrogates. SMO discussions often warned newbies that unless they educated themselves about the medical issues involved, they had no business being surrogates.

SMO surrogates were on board with their agency- or clinic-mandated physical and psychological screening and testing, even when strict, yet also maintained that no screening could replace personal contact through which IPs and surrogates should get to know and trust one another. Surrogates debating a suggestion about standardized evaluation riled against it 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" (emphasis in the original).

IPs' screening, when done at all, differs by agency/clinic. Since our data do not directly speak to IPs' screening and testing, it is impossible to say how much of the ASRM's long list of recommended screening and testing is ever done. ASRM guidelines recommend thorough genetic and medical evaluations and that IPs be screened the same way as gamete donors are. However, SMO data reveal cases when surrogates miscarried several times before IPs—who had lost several pregnancies themselves—underwent genetic testing that showed abnormalities. Numerous stories on SMO document the lack of comprehensive evaluations. Other studies corroborate these findings. Guerzoni (2020b) found that one of the clinics she studied did not screen IPs, many of them international couples. Zaina Mahmoud's (2021) data from five California agencies and interviews with

several surrogacy lawyers and surrogates reveal that in most cases IPs were not screened and tested.

However, not all surrogates deemed thorough screening and testing of IPs necessary. Many saw such practices as unfair, saying that people who produce children without assistance never have to undergo such examinations. Data show that surrogates often considered IPs' screening on a case-by-case basis, in the context of their relationship. When Jess reported that her intended father [IF] was "dragging his feet" and seemed "only to do it for the IM [intended mother]," fellow surrogates agreed with the following advice: "Do not proceed without taking a look at the resources (contract, psych. screening) that are available to you [to better assess the situation]. Not everyone needs to use the resources, but it sounds like you may." Some others advised Jess to "talk it over with the couple."

SMO discussions reveal the collective definition of surrogacy as a private arrangement between two families, even if it involves various strangers, such as medical professionals, lawyers, and agency personnel. Surrogates agree that procreation is by definition private and assisted reproduction is a necessary measure in the pursuit of children, interference in the private lives of couples who are already "traumatized by so many failures and losses" and "who have already suffered so much." Yet couples' private intentions, when turned into actions with a surrogate's help, "create families" and involve public legal actions and legal understandings.

Screening and the trusted state—Israel

Contrary to US surrogates, Israeli surrogates supported comprehensive state regulation of screening. They viewed surrogacy as a state-mediated arrangement between two families. Their approach can be better understood in the context of Israeli health policy on reproductive technologies. Israeli national health insurance covers unlimited IVF attempts without any restrictions on marital status, sexuality, or religion for women using their own or donor eggs up to age 54. National health insurance also covers all prenatal care and hospital births; all medical expenses related to IVF and the pregnancy are covered in surrogacy as well. Thus, the state is already a central actor in assisted reproduction.

Before signing the contract, surrogates and IPs undergo comprehensive psychological and medical evaluations, receive separate legal counsel, and must attend together a medical explanation of the risks of all medical procedures. After documents are submitted to the surrogacy committee, the surrogate and her husband are interviewed by committee representatives, and the contract is signed before all nine committee members. All Israeli surrogates undergo the exact same centralized bureaucratic process. It is a long and arduous path that tested their patience and endurance. Hanna said: "It took a really long time, the bureaucracy can take three months, it can take a year. Because the committee needed all sorts of documentation. . . . All sorts of things delayed it."

Unlike in the United States, there is no way to circumvent the committee's decision if a candidate did not pass the screening process. Zohar explained how she viewed each stage as a difficult obstacle course:

> There are loads of tests. . . . I said there would probably be something that would fail me along the way. I passed the blood test. Then there are uterine lining thickness tests, [I thought] "I won't pass that," [but] I passed. Then a gynecological examination, there will probably be something . . . I passed. And then the psychologist, I said for sure I won't pass the psychological evaluation, but I passed it too. Then we met the couple and there was a connection and a click . . . Then I met with the committee which I was also not sure I would pass, and I passed the committee too.

Surrogates' husbands also had to undergo an HIV test, psychological evaluation, and be present during a mandatory explanation of the medical process and all possible risks as well as at a meeting with an insurance agent regarding the surrogate's mandatory coverage. Rena reported that when she was probed about the medical risks in the committee interview, "they didn't think I was aware enough and made me go to the fertility doctor again . . . Only after he explained it all to me again, they let me pass." In a public Facebook post, a surrogate noted that the committee's insistence that she learn all of the risks, including death during childbirth and possible loss of uterus, only confirmed her decision:

> I learned there are many things that could harm me and my family and that no sum in the world is worth it. But most of all I understood I am going to make this couple's dream come true and all the rest doesn't matter to me.

Surrogates reported that the psychological evaluation and the subsequent committee interview were especially difficult. They expressed pride in having "passed the committee's tests," often comparing it to a criminal investigation, university entry exams, or screening for an elite military unit. "I don't think even fighter pilots can pass these tests," said Hila.

Raz felt the committee was so selective and demanding that it seemed as if they were looking for reasons to screen her out and even to dissuade her:

> There is the psychological evaluation, and it is not a sure thing to pass it, because it is really not easy. It's a four-hour meeting . . . I may be a normal, sane person but from the questions you are asked, from the tests they give you, you say "there's no chance." But I passed that too. Then you submit everything to the Ministry of Health and then comes the most stressful part when you are sitting in front of the committee and you feel like they are trying to fail you, not supportive but the opposite, to convince you not to do it. . . . they give you all the answers for why you shouldn't do it. A thousand and one reasons. (You are told) you can get depressed . . . your kids can take it very hard . . . there can be complications and it can damage your fertility.

Yet, instead of considering the state screening process as invasive and paternalistic, most surrogates viewed it as essential gatekeeping that protected women from making a mistake. Many of them were grateful for the committee's strict screening as it reinforced their confidence in their decision to become a surrogate. Leah said,

> It is a conversation in which you convince them how much you really want this. And it also makes you have a sort of inner accounting with yourself about why you are doing it. If a woman is not completely sure about it, they can get her to reconsider the whole thing. But it just proved to me how much I was ready.

Hanna, too, rethought and subsequently reaffirmed her decision: "The committee really checks . . . They really sit there and dig into you. It makes you think—is this really what I am choosing to do?"

Gal justified the stringent screening process as the state's "job" in making sure her family is ready for this "family project" (Teman and Berend, 2021), despite her surprise at the depth of their questions:

> I didn't imagine that the committee would give me such a cross-examination. I arrived very relaxed and open. . . . They asked how the kids would cope, so I told them that my daughter was already under psychological care for other issues so it will be fine. That worried them, they said they needed to speak to her psychologist to see how it would affect her . . . And then they put a lot of pressure on my husband

> about how he is responding . . . I don't blame them, they did their job, that's fine. I think they're doing it to have some sort of indication to see if people are not ready for the process.

Similarly, other surrogates had to undergo further steps in the screening process following the committee interview. Surrogates did complain about the runaround and bureaucracy, as well as the time it took to satisfy all the stressful and arduous screening requirements, but they all justified the screening as the state taking responsibility for minimizing the possible risks for surrogates. Their position may be contingent on having eventually given birth to a surrogate baby. Statistically approximately half approved contracts end in live births (Teman 2019); it is beyond the scope of our study, however, to know if those who do not give birth may have different views of these regulations.

While in the United States informed consent practices vary by state and practitioner, and some clinics may primarily protect themselves from lawsuits, the Israeli surrogacy committee covered all foreseeable eventualities because it is the state itself that is accountable. Having directly authorized the agreement, the Health Ministry could be sued by a surrogate contending that the state did not protect her. Thus, while SMO surrogates emphasize individual responsibility for knowing the risks involved, Israeli surrogates look to the state for educating and protecting them as citizens entering these arrangements.

A particular understanding of privacy underlies surrogates' responses to the necessary sharing of their psych evaluations; many viewed it as unproblematic that it should be shared not only with state officials but also with IPs. Carrine viewed the exchange of psych evaluations as initiating a bond with her IM: "Already then we realized we had this connection." Maya spoke about how both she and her IM were very private people who liked clear boundaries in the surrogacy relationship, but privacy concerns did not seem to influence her perception of the selection process, noting she too realized how well they were matched from reading her IM's psych evaluation:

> Before we met with the couple, they got the report the psychologist wrote about us and we got theirs. And then we actually got a picture of who they are . . . Then I realized that she was not a person who likes her privacy invaded and neither am I.

Rather than an infringement of her privacy, Maya saw evaluation-sharing as a way to get to know her IM better and as proof of a good match, the state as akin to a good matchmaker.

Only one surrogate, Dvora, questioned the necessity of sharing her psych evaluation with the IPs but did not question sharing it with the state committee:

> You must bring a psychological evaluation to the committee . . . It goes over your whole life. The psychologist asked me if the IPs want to see it, is it okay? . . . I said "it's private. I'd rather not." Everyone has private things. When you go into such a very, very emotionally charged process everyone should be allowed to open up at their own pace. [. . .] Then the committee passed it on to my IPs, without asking me, without me signing any confidentiality agreement. . . . My privacy is transparent to the committee. I was sure she (the committee coordinator) would apologize. No. She told me "they chose you, they need to see it." I kept saying "I chose *them*." Like who's choosing who here? . . . The committee has to decide whether or not I'm qualified. Not *them*.

Dvora saw the state committee, not the IPs, as the final arbiter of acceptance, simultaneously highlighting her active role in decision making. Israeli surrogates do not see state intervention as an invasion of their privacy and are willing to submit to the terms defined and safeguarded by the state in exchange for state protection. Like the SMO surrogates, they, too, conceptualize the relationship with their IPs as based on

equality, and understand trust-building as a private process of getting to know one another, but only after the state has facilitated the match.

Contract and individual responsibility—United States

Signing the contract means the official beginning of the surrogacy "journey" in both countries, yet the contract itself is understood in diametrically opposite ways. In the United States, SMO surrogates reject the definition of surrogacy as an "industry" with "standards" that should be defined and enforced through federal regulation. They maintain that all the relevant contractual questions, including the number of embryos to transfer, reasons for terminating the pregnancy, as well as all financial issues, need to be discussed by the parties themselves, with assistance from their lawyers. "In surrogacy, nothing is standard," they insist, even as they compare contracts for their own information. SMO surrogates contend that "a working uterus is not enough"; a responsible surrogate gets informed about all aspects of surrogacy and gets to know her IPs before signing the contract. "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," wrote Kim. "I feel these journeys are like our marriages. It's all about trust and honesty," wrote Liz.

Thus, many surrogates think of the contract as a way to not only protect the parties but also work out their private relationship: "It's how you all handle the negotiations which will clue you in on your future relationship and communications." Contract discussions are stressful; if the parties manage to reach an agreement and stay respectful and considerate it is a good sign for the future, surrogates say, and the financial agreement should be the result of honest discussions about what the surrogate's family needs and IPs can afford. Berk's (2020) analysis of surrogacy contracts reveals that in most of her cases the compensation amount was left blank, to be negotiated, in the increasingly detailed standardized contracts; the amount ranged between $18,000 and the outlier $50,000; typically, compensation was between $25,000 and $35,000. SMO surrogates maintain that a fair agreement must reflect the parties' values and circumstances and specify what they are comfortable doing for and during the pregnancy and after the birth. Countless threads address the importance of carefully negotiating all the sensitive contract issues, even in states that do not legally recognize contracts, in order to come to a mutually fair agreement and forge a good relationship.

After reading many contract stories on SMO and debating provisions and wording, surrogates increasingly realized that it was necessary to specify everything that mattered to them in detail. Such specifications included payment schedule, fees above the base compensation, reimbursements, proof of escrow, no cap on lost wages, childcare costs in case of complications, number of cycles and number of embryos to transfer, agreement about selective reduction of multifetal pregnancy, and a detailed list of conditions for which the surrogate was willing to terminate the pregnancy. "Being on the same page" with IPs about these latter items was very important to surrogates who often reported their insistence and success in revising the contract, urging others to not leave things up to chance. Increasingly specialized surrogacy lawyers worked out longer and more detailed contracts, but SMO discussions show the increasing demand from surrogates to do so.

Financial negotiations were one element of contract discussions and one aspect of risk management. Monetary dealings were evaluated according to varied concerns, including fairness to both parties, perceived individual needs, and symbolic meanings. Many women were willing to forgo certain reimbursements because they felt bad "nickel-and-diming the IPs." Such concerns had to do both with some public representations of surrogacy as baby-selling and the intensely private understanding of the relationship as helping "deserving couples who suffered so much" become a family. However, most surrogates considered "every penny" of the compensation "richly earned,"

arguing that pregnancy was unlike regular jobs because it meant "24/7" involvement and responsibility as well as many unknown and unforeseeable risks and sacrifices for her whole family.

Symbolic meanings emerged from concerns about IPs' appreciation associated with financial negotiations. IPs' attempt at bargaining with the surrogates was considered "disrespectful" and "offensive." "If you're already low comp . . . lowering it further sort of makes you a clearance special with a blue light flashing overhead," wrote Mimi, arguing that no surrogate wants to be devalued as a person. Surrogates realized, sometimes too late, after agreeing to lower their comp, that money indicates valuation as well as payment. They warned that IPs' bargaining can change the relationship: "You start to feel like an employee. I haven't met a surrogate yet who wants her IPs to think of her as nothing more than a womb for rent, or paid employee, a bargain basement surro." IPs' unwillingness to pay what the surrogate asks for could hurt her financially and is also hurtful emotionally; to surrogates, it indicates a lack of consideration and appreciation, especially since so many women went to great lengths to save money for their IPs.

Yet, over time, there was a noticeable learning curve. Increasingly, surrogates offered advice by posting about lessons learned, much like Vicky below.

> When I first met my IPs I thought we were perfect for each other. We even spent almost a year to get to know each other better. . . . I lowered my comp for them out of my love for them. I left things verbally agreed upon out of the contract, because I didn't want to hurt their feelings. Things went terribly wrong, and in the end our magical journey was nothing more than a business deal. We were to follow our contract exactly, leaving some of my pregnancy expenses to come out of my already low comp. . . .
>
> DO I BLAME MY IPs?????? NO! NO! NO! Is this thread created to bash my former IPs??? NO! NO! NO!!!!!
>
> It was my fault! I learned my lesson well!
>
> Next time I will not be lowering my comp, and I will know exactly what needs to be in my contract . . .

Our data help contextualize Guerzoni's (2020a) finding that the clinics that recruited mostly lower income minority women and attracted foreign IPs who wanted no contact with their surrogate, raised the standardized base compensation repeatedly, from $20,000 in 2015 to around $30,000 in 2019 for first-time surrogates, and in 2020 to $40,000 to $50,000 for repeat surrogates, to be "competitive" in recruiting surrogates. Without a relationship between IPs and surrogates, the compensation had no expressive relational power and was easily standardized. Also, it seems, the increase reflects the full monetization of the somewhat amorphous extra value that many surrogates derived from the relationship and IPs' appreciation.

Most of the nonfinancial negotiations were about contingencies that can arise because of a lack of comprehensive regulation. According to numerous surrogates, reproductive endocrinologists often attempted to and succeeded in convincing surrogates, already in the clinic prepared for the procedure, to agree to transferring more embryos than were specified in the contract, claiming embryo quality issues. While acknowledging that "self-regulating" practices in US clinics (i.e., lack of federal or state regulation) are often problematic, most SMO surrogates were distrustful of regulation, as Mandy expressed: "I truly believe that for that [responsible clinical practices] to happen . . . and this can be an ugly word around here . . . this industry will need better regulation. . . . But regulation is a totally scary thought." Interestingly, even military spouse surrogates in Elizabeth Ziff's study are hostile to federal regulation. These women, living under highly regulated conditions because of their husband's military career, prefer some oversight of agencies and clinics but

reject overarching government role in assisted practices, much like SMO surrogates (Ziff, personal communication, July 2020).

Surrogates, who invariably said they wanted to give life and not take it, were often against agreeing to selective reduction and terminating for any non-life-threatening condition. Even when generally favoring more regulated clinical practices, surrogates also advocated for working out embryo transfer questions in honest discussions with IPs during contract negotiations. Experts notwithstanding, "I feel that ultimately it is my responsibility as to what is placed in my uterus," wrote Kelly. Others, like Kat, agreed. "If the surro agrees . . . on what the doctor recommends and the IPs ok, then she is taking responsibility also." The SMO advice was that she did not have to agree. "You have to be your own advocate!"

Many contracts specified contact with IPs during pregnancy and after birth, although surrogates came to realize that such provisions were not useful; several women advised against even having such specifications. They all wanted a real rather than a forced relationship with IPs. No surrogate on SMO ever reported having gone to court to enforce the contract when IPs cut ties.

The central concern for SMO surrogates was to make sure they see eye-to-eye with IPs. Contractually listing all the possible contingencies, they increasingly insisted, was the best way to be on the same page. Difficult negotiations were considered a bad sign for the relationship. Zoe had an unpleasant experience during contract negotiations and advised another surrogate accordingly: "I had to call my agency and tell them that I wasn't playing "hard ball" with someone, I'm trying to help create a family . . . if you're not comfortable do NOT settle." Zoe used the word "settle" the way most women on SMO, and romantics in the dating world, did; "trust your gut feelings and don't settle for IPs you're not fully comfortable with. There is a perfect match out there for you." While "match" is a word used in clinical settings as well, surrogates' numerous comparisons between surrogacy and dating indicate that the "perfect match" means more than a satisfying medical pairing.

In debates about what to do when a contract favors the IPs, surrogates overwhelmingly agreed that fairness was essential; if IPs agree to a one-sided contract, there is no way to have a good relationship. The noticeable learning curve was the result of many bad stories. While numerous threads testified to a desire for a "wonderful journey" and "making deserving IPs parents," surrogates also warned about bad outcomes and the importance of taking responsibility.

SMO surrogates' understanding of surrogacy as a private arrangement for which they should assume their share of responsibility was formulated within an institutional context that privileges free-market models, although the federal government regulates drugs and medical devices, and states license medical practitioners. The ASRM recommendations to fertility clinics are not binding and there are no sanctions against violators. In the absence of FDA regulation "pretty much ANYONE can open a surrogacy agency," as a prominent assisted reproduction attorney put it in a SMO post (emphasis in the original). Many surrogates argued for more oversight of agencies, while many others advocated being informed and cutting out the "middle-man." For example, Kelly noted . . ."I am good at doing my own leg work. I listen to the red flags." Overall, many surrogates agreed with the following popular post:

> 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 . . . would be a mistake. I have spent 3 years of my life within a personal journey with my IPs . . . It would be highly distracting to have such a beautiful and personal process sterilized.

Surrogates wanted surrogacy-friendly legislation, unspecified "stricter oversight" of clinics and agencies, but also, centrally, more individual responsibility and grassroots actions. They were in

favor of circulating stories of unethical practices on SMO: "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!" These varied negotiations and practices illuminate surrogates' worldview about a normative order they are intent on maintaining (Cover, 1983). In this worldview, the contract, a legal document, gained practical value and legitimacy because it reflected private agreements made in the context of trust and respect.

SMO discussions represent the view that responsible individual action rather than formal centralized regulation has the potential to keep institutional actors in check. The calls for regulation are almost always accompanied by some cautioning: "[surrogacy] needs to be regulated but done in such a way that it doesn't hinder the process. It's a slippery slope . . ." Most posts ultimately reiterated that "If people would just use common sense and do their homework, stuff like this [unethical or exploitative practices] can be easily avoided." An oft-repeated conviction held that "Whether you go indy or not, ultimately your journey is your responsibility to get right."

Based on SMO evidence, we suggest that surrogates have an essentially neoliberal view of the contract as the codification of a deregulated private exchange relationship and a "neutral medium" for people to work out their differences and to "transact unlike values" (Comaroff and Comaroff, 2000: 39). SMO threads show that it is precisely the transaction of unlike values that surrogates defend as central to their definition of surrogacy as a non-market, personal relationship. According to them, a good journey is a "win-win" in which two families gain benefits they would not have otherwise. Only the parties to the arrangements can know and articulate what their needs and preferences are; if they cannot agree, they should not work together.

Surrogates consider lawyers helpful in the process but do not want government agents to control the negotiation. For them, the morality of the arrangement lies in a fair agreement, the result of working out personal differences, rather than in centrally regulated and standardized provisions. These findings also dovetail with research findings by legal consciousness scholars that document Americans' preference "to handle problems by themselves, by talking with the other party, or by avoiding the problematic situation" (Silbey 2005: 339). Caseload statistics show a similar picture; Americans are less litigious than popularly believed. The great majority of civil cases are contract cases, and about 86 percent of them are debt collection cases and landlord-tenant disputes. Only about 4 percent of civil lawsuits involve tort cases, the majority of them car accidents (CPC Court Statistics Project, 2018).

Contract and reliance on the state—Israel

The surrogacy committee reviews each contract; Israeli surrogates conceptualize the contract as necessarily witnessed, mediated, and directly backed by the state. Although the committee does not set limits on compensation and women can potentially negotiate higher compensation, most surrogates receive 150,000 shekels (approximately $46,000). The committee requires that IPs cover maternity clothes, house cleaning, travel to surrogacy-related appointments, babysitting expenses, life insurance for the surrogate, and reimbursement of lost wages in case of bed rest during surrogacy. Also required is reimbursement for psychological counseling for the surrogate, her husband, and children, if needed, up to 6 months post-birth or after termination of the contract. Surrogates understand these provisions as protections. Payments are distributed each trimester, or monthly, and if the pregnancy is lost after 24 weeks, the full sum is paid. Contracts specify confirmation of escrow and extra payments for cesarean delivery, twins, fetal reduction, and also specify the number of embryos surrogates are willing to transfer, conditions for selective reduction and termination, and the maximum number of transfers (six) or maximum time frame of embryo transfer cycles (1.5 years). Most surrogates said that they were happy with the standard contract. Hanna

explained: "The contract has a lot of really smart things in it. . . . The State of Israel, in the process of surrogacy, turns out to be a very developed country . . . It's well organized and there are all the conditions."

Even if a surrogate feels uncomfortable with some of the standard provisions, the committee requires them, and many surrogates end up signing contracts that include protections or benefits that they might have forgone otherwise. Hanna said,

> Everything that you write in the contract makes you feel really greedy, and there are some standard things. Like if the lawyer tells you that from the 38th week you get a cleaning person to come once a week on the couple's bill, it makes you say, "Wait, I feel uncomfortable taking more money from them."

Nitzan explained how important it was for her that everything was listed in the contract so that she did not have to negotiate directly. Like SMO surrogates, she, too, believed that the contract affects the surrogate–IP relationship. However, rather than seeing contract negotiations as predictive of the relationship, she sees the state's mediation as enabling her and the IPs to maintain a "purer" relationship:

> It was very comfortable having the contract already made. I mean, there's a standard contract that I don't have to deal with too much because to price something like that, I can't, it doesn't make sense to me. [. . .] I also like that the sum is . . . in an escrow account and from that moment we don't have to deal with the money . . . We are able to focus on our connection, pregnancy and things that really matter. So, for me it was just the way I needed it to be, that someone determined it, and I didn't make too many changes to the contract, I didn't feel the need. I did go over the contract thoroughly. Every surrogate needs to sit down and know exactly what she is getting into and go through the contract and understand each and every clause . . . but basically the contract covers everything [. . .] God forbid there [are] . . . all kinds of things we do not want to think about [. . .] So it's good that everything is agreed upon before. . . . There is also a section that the surrogate and her family are entitled to psychological care up to six months after birth. And I don't have to ask anyone for it . . . I can just send in a receipt and get the money . . . I really believe in this contract, it is powerful and important in this process.

Israeli surrogates not only defended the surrogacy law but also advocated for its extension. In a grassroots collective effort organized through private Facebook and WhatsApp groups for "surrogates only" in the summer of 2018, over 40 Israeli surrogates joined in posting public testimonies supporting the extension of the law to gay men. All posts were public and shared widely, some reaching circulations in the thousands. These messages were directed to Israeli society but particularly to government officials. Surrogates also went on radio and television talk shows, wrote op-eds, and posted videos online.

In their posts, surrogates claimed that it was the country's national duty to extend the surrogacy law so that gay men would not have to pursue surrogacy in countries where surrogates' rights are less protected than in Israel. Dalia pointed out that Israeli state involvement in surrogacy was superior to unregulated practices:

> The bureaucratic procedure, the supervised inspection of the process and the psychological assessment that are strictly observed in Israel prevent any chance of exploitation . . . Surrogacy in third world countries is another story and it is sad. As long as the Israeli surrogacy law is not extended, we are forced to continue to be part of that exploitation.

Hadar, in a widely circulated post, attested to the benefit, as she saw it, of the state's responsibility to make sure that the surrogate knows what she is getting into:

> At the final stage, just before signing the surrogacy agreement, is a piercing conversation with members of the committee—a doctor, a psychologist, a lawyer, another lawyer, and another lawyer. Everyone is there to make sure the woman chooses this path with a clear mind and not for lack of clarity, is aware of all the risks and possible repercussions. They make sure she has received explanations and understands her rights well. Even if the primary motive is financial compensation—it cannot be the only motive. If that is her sole motive, she won't be able to withstand it emotionally, and they will know how to screen her out in the psychological evaluation stage, or at the least in the committee interview.

Attestation to the state's efficacy at preventing harm to surrogates was also central to a surrogate's Facebook post that was picked up by a national newspaper:

> The State of Israel (and I am not one to give unnecessary praise to it) has successfully built a surrogacy process with maximum consideration for the surrogate (to the dismay, sometimes, of the IPs, as this sometimes comes at their expense). Tons of selections, insurances, consultations and forms . . . all in order to make sure that it is the surrogate's decision, that she was not pressured into it, that everything is clear to her, that the danger is as minimal as possible, that there is a support system, that there are exit points, and even that her life comes before that of the fetus she carries . . . So don't use [the need to protect] us, the surrogates, as an excuse for a law that denies equality [to gay men].

State regulation, then, is rendered by Israeli surrogates as a citizenship right that comes with citizenship obligations; they consider it the state's responsibility to give all of its citizens the right to have children through surrogacy if they are unable to procreate otherwise. A surrogate wrote in a public Facebook post about why she believes surrogacy should be permitted for single men and gay male couples:

> [It is wrong] to prevent people from undergoing this amazing process, here in Israel, with a supportive, loving, and caring surrogate that they can give the same back to, whom they can communicate with in the same language, whom they can pay much less (monetarily and mentally) in the same country where they pay taxes, serve in the army, serve in the military reserves, and sometimes sacrifice their lives for.

Israeli surrogates, in sharp contrast to their US counterparts, see the state as "an instrument of governance . . . as a custodian of civility against disorder: as having a mandate to conjure moral community" (Comaroff and Comaroff, 2000: 39). The public testimonies highlight that the quest for extending the surrogacy law to gay Israeli men is framed as necessary for preserving the Israeli moral community in which citizens who sacrifice for the country can count on the country to assist them, especially in the national goal of producing more Jewish citizens and thereby perpetuating and protecting the Jewish state. As Ella, who marched in protests during the summer of 2018 supporting gay men's rights to enter local surrogacy arrangements, wrote in her blog: "As a surrogate, I choose daily to sacrifice myself in order to create life for another family." She contrasted the local context from "third world countries": "The Israeli story is different. There is such a thing as a different kind of surrogacy." She concludes that gay men "should have the right to do surrogacy in Israel just as any other citizen in the country has that right."

Discussion

Our comparative discussion of surrogates in the United States and Israel—where cultural understandings and socio-political realities shape approaches to, meanings, and interpretations of the law differently—ultimately reveals how social actors' legal consciousness can contribute to the ongoing "durability and ideational power of law" (Silbey, 2005: 358) in nearly opposite ways. While US

surrogates consider individual responsibility as a guarantee of best practices, Israeli surrogates focus on state regulation. Yet in both countries surrogates articulated a moral vision *not* of fair labor practices codified simply in legal contracts but of rights and obligations among private citizens who came together to create families. Surrogates mostly want fair compensation for their efforts, together with mutual care and trust. They consider appreciation, even friendship, the appropriate counter-gift for the sacrifices they make. Beyond the differences in their approach to legal regulation, surrogates in both countries similarly evaluate practices and relationships in moral terms. They also articulate the state's role in these arrangements; thus, surrogates' views reflect not just the organization and meaning of these assisted arrangements but also the complexities of citizenship and governance.

Surrogates in both countries also assess risks as well as institutional protections. Notions of risk and risk management are highly context-dependent, shaped by social relationships, collective discourses and practices, power relations, cultural values, and trust in institutions (Boholm, 2003; Douglas, 2013). As we have shown, US surrogates are generally in favor of more oversight of agencies and clinics to reign in "shady practices" that result in mismanaged funds and irresponsible medical decisions. They want more regulation of practices that they are unable to otherwise control or even fully know about. Nevertheless, they are skeptical of comprehensive regulation, especially of contracts, which they believe they can learn to understand and which they see as the codification of the relationship itself. Their notions of risk management and hence regulation are colored by mistrust in government and by the relational context in which it becomes thinkable, even admirable, to assume risks and make sacrifices for creating children for "deserving IPs." SMO surrogates embrace their moral responsibility for the journey, insisting that smart, independent, and resourceful women can make informed decisions and that by pooling information and knowledge, can do much of the oversight collectively. In the pervasively privatized framing of US surrogacy, family, and childbearing, which surrogates support and even promote, they fear that comprehensive regulation would deprive them of agency, turn them into pawns of bureaucracies, and undermine relationships with IPs.

In these two highly developed countries, that in many ways have similar economic, family, and legal systems, and where surrogates have similar socioeconomic standing, the surrogates we studied accept and mostly support different regulatory solutions to surrogacy-related issues. While there are several similarities in terms of the meaning of surrogacy, Israeli surrogates welcome pronatalist state regulation of family formation in a national context, while their US counterparts favor privatized responsibility in a private family context.

Conclusion

Beyond the myriad political and institutional dynamics that could prevent instituting centralized regulation in the United States, our data reveal that surrogates are unlikely to fully support it. Interestingly, it is technologically mediated communications among surrogates (Berend, 2016), free-market mechanisms of competition among clinics (Guerzoni, 2020a), and legal standardization of contracts by surrogacy lawyers (Berk, 2020) that have brought about some regularization of practices. As Jesook Song (2006: 54,55) argued, neoliberalism is also a "sociocultural logic" that is "enunciated by a variety of social actors." SMO data demonstrate that surrogates embrace the form of individualism that emphasizes self-sufficiency and personal responsibility (Engel 1984: 558).

Conversely, Israeli surrogates are in favor of government oversight of surrogacy contracts and see comprehensive regulation as an important agent of protection. They maintain that it is the state's moral responsibility to help citizens have children and protect those who do it as surrogates

by mandating state-supervised medical and psychological evaluations and regulation of the surrogacy process. In this framing of Israeli surrogacy, the state is a trusted partner, its power is seen as legitimate and directed for the praiseworthy purposes of protecting the women who help citizens realize their "right to parenthood." Surrogates not only accept the body politic's surveillance and control of their individual bodies (Scheper-Hughes and Lock, 1987) but contend that the state should expand regulation to allow all reproductively challenged citizens to contract with surrogates in the same safely regulated manner, including gay men who were until very recently barred from it. Israeli surrogates are not only building families but also the nation.

Our comparative article highlights how surrogacy in Israel is an outlier and a symbolic "outpost" of a political economy that has largely become neoliberal but still retains bastions of the earlier collectivist, socialist, Zionist, nationalist welfare state. As part of the nationalist agenda, and a result of a combination of historical and geopolitical specificities, pro-natalism informs state regulation of assisted reproduction. As Birenbaum-Carmeli notes (2016), most of the Israeli economy has moved toward privatization, yet pro-natalist and pro-family goals impact state subsidies in health care and especially reproduction. Israeli women's pursuit of surrogacy is in line with both neoliberal ideology and state interests and aligns with Engel's (1984: 558) "rights-oriented approach to individualism." They speak of becoming a surrogate to fulfill a personal goal "at their own discretion as well as responsibility and risk" (Birenbaum-Carmeli 2016: 22), while simultaneously expecting and demanding that the state take an active role in closely regulating surrogacy, screening them for it and contractually protecting them. They are choosing to be selected and protected by the state to advance a personal goal, the "dream" of the IPs, and a national mission.

Our findings also demonstrate how legal meanings are situated in the context of other aspirations and norms, and as Marshall and Barclay (2003: 625) argued, show that "people make claims on the law, but not necessarily rights claims; that the law leads people to accept and acquiesce to existing social and economic arrangements." Israeli surrogates accept and welcome state control of the national pro-natalist enterprise, with surrogacy normatively understood as a citizenship right, while US surrogates embrace individual moral accountability in the context of private family-building aspirations, to help "deserving" couples.

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References

Austin DM and Brisman MB (2013) Essential elements of informed consent in egg donation and surrogacy. In: Sauer M (ed.) *Principles of Oocyte and Embryo Donation*. London: Springer, pp. 335–337.

Berend Z (2016) *The Online World of Surrogacy. London:* Berghahn Books.

Berk HL (2020) Savvy surrogates and rock star parents: Compensation provisions, contracting practices, and the value of womb work. *Law & Social Inquiry* 45(2): 398–431.

Birenbaum-Carmeli D (2016) Thirty-five years of assisted reproductive technologies in Israel. *Reproductive Biomedicine & Society Online* 2: 16–23.

Boholm Å (2003) The cultural nature of risk: Can there be an anthropology of uncertainty? *Ethnos* 68(2): 159–178.

Chua LJ and Engel DM (2019) Legal consciousness reconsidered. *Annual Review of Law and Social Science* 15: 335–353.

Comaroff J and Comaroff JL (2000) Millennial capitalism: First thoughts on a second coming. *Public Culture* 12(2): 291–343.

Conley JM and Barr W (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago, IL: University of Chicago Press.

Corea G (1985) *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs*. New York: Harper & Row.

Cover RM (1983) Foreword: Nomos and narrative. *Harvard Law Review* 97: 4–68.

CPC Court Statistics Project (2018). Available at: https://www.courtstatistics.org/__data/assets/pdf_file/0014/40820/2018-Digest.pdf

Deomampo D (2016) *Transnational Reproduction: Race, Kinship, and Commercial Surrogacy in India*. New York: NYU Press.

Douglas M (2013) *Risk and Blame*. London: Routledge.

Engel DM (1984) The oven bird's song: Insiders, outsiders, and personal injuries in an American community. *Law and Society Review*: 551–582.

Ewick P and Silbey SS (1991) Conformity, contestation, and resistance: An account of legal consciousness. *New England Law Review* 26: 731–749.

Giddens A (1999) Risk and responsibility. *The Modern Law Review* 62: 1–10

Gooldin S (2013) Emotional rights,' moral reasoning, and Jewish–Arab alliances in the regulation of in-vitro-fertilization in Israel: Theorizing the unexpected consequences of assisted reproductive technologies. *Social Science & Medicine* 83: 90–98.

Guerzoni CS (2020a) Gift narratives of US surrogates. *Italian Sociological Review* 10(3).

Guerzoni CS (2020b) Interconnected experiences, interconnected bodies the case of US surrogacy. In: Guerzoni CS and Mattalucci C (eds) *Body Politics and Reproductive Governances: Ethnographies on Flesh,' Technologies and Knowledge*. West Yorkshire: Emerald Publishing. (in press).

Hovav A (2019) Producing moral palatability in the Mexican surrogacy market. *Gender & Society* 33(2): 273–295.

Inhorn MC, Birenbaum-Carmeli D, Birger J, et al. (2018) Elective egg freezing and its underlying socio-demography: A binational analysis with global implications. *Reproductive Biology and Endocrinology* 161: 1–11.

Jacobson H (2016) *Labor of Love: Gestational Surrogacy and the Work of Making Babies*. New Brunswick, NJ: Rutgers University Press.

Kahn SM (2000) *Reproducing Jews: A Cultural Account of Assisted Conception in Israel*. Durham, NC: Duke University Press.

Lustenberger S (2017) "We are citizens"—vulnerability and privilege in the experiences of Israeli gay men with surrogacy in India. *Journal of Comparative Family Studies* 48(3): 393–403.

Mahmud Z (2021) Regulating gestation: Surrogacy across the Atlantic. In: Presented at the Ottawa-McGill Graduate Colloquium in Health Law, Policy and Ethics. May 21.

Majumdar A (2017) *Transnational Commercial Surrogacy and the (Un)making of Kin in India*. New Delhi, India: Oxford University Press.

Marshall AM and Barclay S (2003) In their own words: How ordinary people construct the legal world. *Law & Soc. Inquiry* 28: 617–628.

O'Neill O (2003) Some limits of informed consent. *Journal of Medical Ethics* 29(1): 4–7.

Pande A (2014) *Wombs in Labor: Transnational Commercial Surrogacy in India*. New York: Columbia University Press.

Recommendation for practices utilizing gestational carriers: A committee opinion by the Practice Committee of the American Society for Reproductive Medicine, DOI: 10.1016/j.fertnstert.2016.11.007

Rose N (1999) *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge University Press.
Rothman BK (2000) *Recreating Motherhood*. New Brunswick, NJ: Rutgers University Press.
Rudrappa S (2015) *Discounted Life: The Price of Global Surrogacy in India*. New York: NYU Press.
Saravanan S (2018) *A Transnational Feminist View of Surrogacy Biomarkets in India*. Berlin: Springer.
Scheper-Hughes N and Lock MM (1987) The mindful body: A prolegomenon to future work in medical anthropology. *Medical Anthropology Quarterly* 1(1): 6–41.
Schurr C (2018) The baby business booms: Economic geographies of assisted reproduction. *Geography Compass* 12: e12395.
Schurr C and Militz E (2018) The affective economy of transnational surrogacy. *Environment and Planning A: Economy and Space* 50(8): 1626–1645.
Siegl V (2018) *Fragile truths. The ethical labour of doing transnational surrogacy in Russia and Ukraine*, Doctoral thesis, Institute of Social Anthropology, University of Bern.
Silbey SS (2005) After legal consciousness. *Annual Review of Law and Social Science* 1: 323–368.
Song J (2006) Family breakdown and invisible homeless women: Neoliberal governance during the Asian debt crisis in South Korea, 1997–2001. *Positions: East Asia Cultures Critique* 14(1): 37–65.
Teman, Elly (2016) Surrogacy in Israel: State-controlled surrogacy as a mechanism of symbolic control. In Sills, Eric Scott (Ed.), *Handbook of gestational surrogacy: International clinical practice & policy issues* (Pp. 165–173). Cambridge: Cambridge University Press.
Teman E and Berend Z (2021) Surrogacy as a Family Project: How Surrogates Articulate Familial Identity and Belonging. *Journal of Family Issues*, 42(6): 1143–1165.
Teman E (2010) Birthing a mother: The surrogate body and the pregnant self. Berkeley: University of California Press.
Teman E (2019) The power of the single story in surrogacy. *Medical Anthropology: Cross-Cultural Studies In Health & Illness,* 38(3): 282–294.
Vora K (2013) Potential, risk, and return in transnational Indian gestational surrogacy. *Current Anthropology* 54(S7): S97–S106.
Weis CC (2017) *Reproductive Migrations: Surrogacy Workers and Stratified Reproduction in St Petersburg*. De Monfort University.
Whittaker A (2014) Merit and money: The situated ethics of transnational commercial surrogacy in Thailand. *The International Journal of Feminist Approaches to Bioethics* 7(2): 100–120.