

**Achieving Parenthood in the US:
Surrogacy, Biogenetic Connection and Reproductive Justice**

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Abstract

The imagery of surrogate mothers is characterized using a language of extremes. A surrogate's pregnancy is portrayed either as the actions of an apathetic woman willing to commoditize her womb, or as the paradigm of altruism (Lewis, 2019). To better understand their perspectives, I conducted eighteen interviews with surrogates and intended parents across the United States. Using a grounded theory framework for data analysis, I found surrogates described their motivations as primarily altruistic and insist on principles like offering affordable prices to intended parents. They reported viewing surrogacy as an opportunity to provide individuals struggling with infertility or from marginalized backgrounds the possibility of biogenetic children. I also found that surrogates and intended parents discuss biogenetic relations as a tool. For surrogates, it is leveraged to justify their decision to gestate and then return the baby to the intended parents. Intended parents, on the other hand, choose to rely on biogenetic relations to assert their maternity or paternity. Intended parents point to biogenetics to ascribe permanence to their connection with the child and analogize their surrogate to an "an oven," signifying their transient role. From interviews with gay identifying intended parents, I show that biogenetics is employed to assert the normalcy of gay men's families. This paper contributes to the literature about the impact of assisted reproductive technologies (ART) on our cultural, social, and legal conceptualizations of familial and kinship ties and addresses whether surrogacy is exploitative. Additionally using my data, I provide policy recommendations for regulations that could protect both surrogates and intended parents' interests. These prescriptions stem directly from the data collected during my interviews. An aim of this paper is adding to the growing body of qualitative research (Ashby, 2011) centering policy around the recommendations of those most likely to be impacted.

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Introduction

Approximately one in eight couples residing in the United States struggles with infertility. Infertility is defined as the inability to get pregnant after more than one year of having regular sex without contraceptives. The infertility rate in the United States is increasing and is projected to continue increasing amongst both men and women by an average of 1% annually (Swan, 2021). Individuals struggling with infertility increasingly rely on assisted reproductive technologies (ART), including gestational surrogacy, to conceive. Gestational surrogacy involves in-vitro fertilization (IVF) because an embryo made with gametes not originating from the surrogate is implanted into their uterus. Surrogacy has been covered in popular news outlets such as *The New York Times* (Dodge, 2021) and *The Atlantic* (Rico, 2013) with a heterogeneous mixture of excoriation and eulogization. There are stories about positive experiences with surrogacy highlighting the altruism of surrogate mothers willing to carry children with whom they share no biogenetic connection. In contrast, there are stories about coercion and exploitation in surrogacy arrangements. Conflicting accounts of surrogacy are difficult to disentangle, in part, because of the unique patchwork of state policies that govern surrogacy. In the United States, ART technologies are not regulated by the federal government (Hecht, 2001). Therefore, significant disparities exist in the stipulations around surrogacy, including the legality of compensation.

Despite the challenges of understanding surrogacy policy in the domestic context, the contentious nature of surrogacy has catalyzed a body of sociological research on the subject. Early research suggests that surrogacy is principally an altruistic endeavor with women reporting motivations such as trying to assist infertile couples and helping members of communities that have historically been marginalized in reproduction. Furthermore, this research shows that surrogates did not regret giving up the baby and reported no adverse mental, psychosocial, or

physical outcomes (Jadva, 2003; Imrie, 2014; Berend, 2014). However, scholars have pointed out that this research does not adequately reflect the experiences of surrogates in the transnational market. Infertility trends in the United States are representative of what is happening in other OECD countries: such as France, China, and Great Britain (Inhorn, 2011). The growing demand for surrogates in these countries has pushed consumers to participate in surrogacy arrangements with women living in nations that are less economically developed, like India and the Philippines. Ethnographers investigating conditions in the transnational market have uncovered instances of abuse, including reproductive injustices, and have argued that the market exploits vulnerable women (Pande, 2010).

My aim in this paper is to understand the experience of surrogates and intended parents (the latter are the individuals using surrogacy to have children) in the domestic ART market. In doing so, I hope to understand the ways in which surrogacy practices are shaping discourses in relation to familial and kinship bonds. An additional objective was to understand the advantages and disadvantages of existing state statutes around surrogacy. I conducted a total of nineteen interviews, ten with surrogates and eight with intended parents; three interviews were specifically with gay identifying intended fathers. Another interview was conducted with a surrogate living in China to situate the domestic context within the broader international surrogacy market. I found that biogenetic relations have been leveraged as a tool to assert legal claims over children born through surrogacy arrangements. Most surrogates viewed their own family units as distinct from the intended parents' household; the women I spoke with voiced their ability to make a distinction between the role of "gestational carrier" and "mother," drawing on a discourse centered on biogenetic relations. Similarly, intended parents sought to claim possession, including custody, of the baby by creating mechanisms centered on their biogenetic

connection to the child. Almost all intended parents I spoke with voiced their desire to be recognized as a parent and to place the surrogate's role in reproduction as something transient. Several intended parents choose to remain in contact with their surrogate but voiced that their communication was limited and that the surrogate played no active role in parenting. Overall, the findings presented here challenge theories about ART's ability to "queer reproduction," which entails challenging the dominance of heteronormative kinship and familial structures.

Historical Background & Sociological, Demographic and Psychological Investigations into Gestational Surrogacy Arrangements

Most surrogacies in the United States are gestational, meaning that the surrogate has no biogenetic connection to the fetus. The technology to make this procedure possible was developed through a combination of in-vitro fertilization (IVF), egg harvesting, and implantation techniques pioneered in the 1980s. In 1985, when the first surrogate gave birth, traditional surrogacies in which the surrogate was also the egg donor became the norm¹. Individuals and couples considering surrogacy, however, encountered an altered legal landscape after the 1990 *John v. Calvert* case, which established that gestational surrogacy agreements were legally binding. Therefore, in the event of a contract breach, the intended parents and surrogate had clear legal recourse - which was not the case for traditional surrogacy (Morgan, 1994). The courts' perspective on traditional surrogacy was more precarious. This was in part due to the publicity and controversy over whether the surrogate or intended parents should be granted custody in New Jersey's "Baby M" case. In the "Baby M" case, the surrogate contested the intended parents' custody, and a lengthy legal controversy ensued in which the courts were forced to re-inspect statutes related to the legal definition of "mother." The sheer divisiveness that the case

¹ This source provides a summary of the medical and legislative history of surrogacy in the United States: "The History of Surrogacy: A Legal Timeline." The History of Surrogacy: A Legal Timeline, www.worldwidesurrogacy.org/blog/the-history-of-surrogacy-a-legal-timeline.

caused nationally meant that public officials wanted to avoid the subject of surrogacy².

Gestational surrogacies were viewed as instances with less ambiguity as the surrogate has no permanent genetic or biological (biogenetic) relations to the child. Considering this fact, very few cases of contested custody in gestational contracts arose akin to the public spectacle of “Baby M.”

Gestational surrogacy agreements have become standard since the 1990s, even in instances where the intended mother’s eggs are not viable (the egg that is used is often from a donor and not the surrogate). Furthermore, it is projected that the number of gestational surrogacy agreements will continue to increase annually. The normalization of gestational surrogacy agreements has promoted a wave of research on the demographic characteristics of surrogates and intended parents. Generally, surrogates tend to be under 35 years old, a finding which is consistent with reports from the UK concluding that surrogates on average are younger than 30 years old (Perkins, 2016; Jadva, 2003). Generally, intended parents using gestational surrogacy cycles are older than 44 years of age. The proportion of intended parents who are non-US residents is greater for gestational surrogacy arrangements compared to traditional. Most gestational surrogates are White (48.3%); Asian, Hispanic, and Black women account for 8.1%, 5.6% and 2.6% of gestational carriers, respectively (Perkins, 2016). Only about 10-20% of surrogacy agreements involve gay men, in part because of the expenses attributed to IVF treatment (Symons, 2016). The motivation of surrogate mothers has been investigated in qualitative interview-based studies and analysis of published anecdotes from surrogate mothers about their experiences (Berend, 2014; Parker, 1983; Teman, 2008). These studies have

² “The Baby M case records and decision are public record; legal scholars have produced numerous annotations to the case and it has been cited in court decisions regarding custody and adoption. Read more: Matter of Baby M.” Justia Law, law.justia.com/cases/new-jersey/supreme-court/1988/109-n-j-396-1.html

generally reported that surrogates did not regret carrying or giving up the baby (Berend, 2014). Furthermore, surrogate mothers tended to report altruistic motivations such as the desire to help members of marginalized communities or infertile couples start families (Jadva, 2003; Imrie, 2014; Berend, 2014). Women also consistently reported that they decided to become a surrogate because they enjoyed being pregnant and thought that a surrogate pregnancy would be a fulfilling experience (Jadva, 2003; Bromfield, 2016). Regarding the relationship with the family and the child post-partum, surrogates reported a comfortable frequency of contact with the intended parents and there is limited evidence that surrogates regret giving up the child after birth. Such instances, generally, tend to be the exception rather than the rule (Bromfield, 2016; Imrie, 2014). In 1996, the British Medical Association also suggested that surrogacy agreements could impact the mental and psychosocial well-being of any children born to the surrogate mother prior to the agreement (Riddle, 2017). However, in interviews with children born to mothers who later acted as surrogates no adverse psychological or developmental outcomes were reported (Riddle, 2017). Similarly, the children born to surrogates and raised by their intended parents have, to date, reported no adverse developmental or psychosocial outcomes relative to their peers (Kalantry et al. 2020). With respect to birth outcomes, the birth weight between infants delivered by a surrogate is comparable to that of women delivering their biogenetic child (Viveca, 2015). Since birth weight is used as a benchmark for assessing population health, this would indicate that children born through surrogacy will have similar health outcomes as their peers.

Additionally, in investigations about the relationship between the intended parents and children conceived through surrogacy, mothers of babies delivered by a surrogate show higher levels of maternal positivity and affection compared to mothers who conceived without IVF.

These results applied regardless of whether the mother designated by the contract – the intended parent - was the egg donor and thus had a genetic link to the child (Golombok, 2011).

Investigations into the relationship between intended parents and the surrogate revealed that the frequency of contact decreased after birth. In the UK, 10-year-old children conceived through a surrogate pregnancy, generally, reported having a positive relationship with their surrogate. In the study, 13 of the 14 children conceived through surrogacy who were told about the surrogate and were introduced reported having a positive relationship with their surrogate (Jadva, 2012).

Despite the mounting evidence against arguments that surrogacy agreements have adverse consequences for the parties involved -surrogate mothers, children conceived through surrogacy, children of women who become surrogates, or intended parents - a significant portion of the public and legislators do not support enforcing surrogacy agreements (Caron, 2020).

The Most Controversial Question in Surrogacy: Is it Exploitation?

Legislators and officials hesitant to acknowledge surrogacy as a legitimate method for conceiving a child often cite one primary excoriation of surrogacy: it results in the exploitation of vulnerable women (Leahy 2022; Ekman 2016). Some argue that this perspective is a legacy from the “Baby M” case where the surrogate, Mary Beth Whitehead, was relatively low-income compared to the intended parents. Many Americans rallied behind Whitehead because they believed she had been taken advantage of by the intended parents, a wealthier couple who could not conceive. Numerous reports of abuses of low-income and historically marginalized women enduring abuse in the transnational surrogacy market continue to contribute to skeptics’ questions about the morality and ethics of surrogacy (Banerjee, 2010). One solution is to prevent the legalization of compensated surrogacy arrangements, which would mean that surrogacies are carried out on a voluntary basis. Voluntary surrogacy arrangements are often referred to as altruistic. The rationale for allowing altruistic but banning compensated surrogacy is that it

prevents women from choosing to become surrogates out of necessity. Thus, intended parents would not be able to coerce surrogates into unfavorable arrangements as they would have no leverage and the surrogate would have no incentive to comply.

Despite speculations that compensated surrogacy creates the possibility for exploitation, it has been legalized in most US states. However, the question of whether it has resulted in exploitation remains unresolved. Legal scholars have weighed in to provide various frameworks for contextualizing the morality of surrogacy. The first is moralistic exploitation which considers colloquial views of surrogacy including rhetoric about surrogacy as “baby-selling”, “womb-renting” and “prostitution (Wertheimer, 1996).” The moralistic exploitation view takes surrogacy to be inherently harmful to the surrogate as the transaction itself is immoral. Under this view, the object that is being exchanged, the baby, is something that should not be commodified. Therefore, the surrogate is inherently being exploited in such an exchange as she is forced to commodify the child. This framework has been most leveraged to justify admonishments of women who choose to become compensated surrogates (Lewis, 2019). These often take the form of comparisons to prostitutes. Surrogacy as “womb renting” and “baby selling” has created a dichotomous view of surrogates: the women who do it for love and the women who do it for money. The latter are not moral women. Even in the transnational surrogacy market, women have expressed the desire to maintain confidentiality about the nature of their pregnancy as they are concerned that neighbors will judge them for “womb renting (Pande, 2010).” Opponents of the moralistic exploitation framework have pointed out that objections to compensated surrogacy reflect social anxieties about women rejecting gendered norms around parenting (Anleu, 1992; Ramskold et al. 2013) Commercial surrogacy contracts challenge the image of women as natural mothers and caretakers because it removes questions of maternity from the private realm of

family and places it in the public competitive marketplace. As evidence, they point out that compensated surrogates are castigated for “womb-renting” and “baby-selling” but are less often judged in instances of altruism. Thus, supporters of the moral exploitative framework have been casted as not principally concerned with preventing exploitation of the women who become surrogates. Instead, they are concerned with maintaining traditional notions of womanhood, in particular the idealization of women as possessing strong maternal instincts or compassion; an image of maternity that makes it morally objectionable for a woman to willingly give up a baby.

An alternative view of surrogacy is that it is a mutually exploitative endeavor (Wertheimer, 1996). This perspective offers the possibility that surrogacy can be accomplished without harm to the surrogate if there is compensation. For a surrogacy agreement to be non-exploitative, the surrogate’s compensation must be the monetary equivalent of what the intended parents gain. There are two central issues with this perspective: (1) the outcome of a surrogate pregnancy is a child and there are no universally accepted methods to quantify the value of life, and (2) surrogacy agreements involve the surrogate giving up custody and maternal rights which is also difficult to assign a monetary value. These difficult questions about exploitation and compensated surrogacy have been taken up by feminist scholars in the United States. They are concerned that compensated surrogacy not only exploits the surrogate but that it has the potential to reify stratified reproduction. Stratified reproduction is defined as low-income and marginalized communities being disproportionately burdened with reproductive labor (Rudrappa et al. 2015). In other words, legalization and legitimatization of commercial surrogacy could further cement norms of exploiting low-income and marginalized women. Many of the concerns voiced about exploitation emanate from stories about the violations of agency and autonomy of numerous women in the transnational surrogacy market. Instances of abuse in India, for example,

involve women being pressured into surrogacy contracts because of economic desperation (Pande, 2010; Saravanan, 2013). These women are then required to live inside boarding homes while they gestate babies for foreign clients. The conditions inside of some of these homes have been considered inhumane and the restrictions imposed on the women limit their autonomy. In rejecting views of surrogacy as exploitative, some feminists have relied on a reproductive justice theorization to make the case that women are rational beings who are in control of their own emotions and bodies (Mohapatra, 2012). Reproductive justice is defined as the normative concept that all women should have the ability to make healthy decisions about their bodies and families (Mohapatra, 2012). Under the reproductive justice framework, women regardless of income or background can enter into a surrogacy agreement if they deem it best for themselves and their families without the arrangement being exploitative. Women can also choose to dissociate parental rights and responsibilities after gestating a baby, in exchange for capital without their surrogacy being exploitative. However, it is critical to note the importance of power to reproductive justice. The framework not only acknowledges that women should have a right to choose what happens to their bodies and families, it also posits that women should have the power to do so. Therefore, reproductive justice theorists would predict that surrogacy is not exploitative when women have the power to determine if it is the best choice for themselves and their families. The notion of power raises unresolved and complicated questions about limited choices, for instance, would women who choose to become surrogates out of economic desperation be victims of exploitation?

The moral and ethical dilemmas involved in contemplating questions of exploitation have significant ramifications for policy makers and participants in surrogacy agreements. These questions cannot be merely dismissed as subjective as they are involved in important legal

considerations such as questions of choice and coercion, factors that get weighted in determining whether compensated surrogacy should be legal within a particular jurisdiction and how it should be regulated. Surrogacy policies in the US are made around question such as, if surrogacy is inherently immoral, are the women who choose to become surrogates being exploited? If so, what is the source of that exploitation? My paper contributes to the literature by addressing questions about exploitation in surrogacy agreements in the United States, where compensated gestational surrogacy is legal within most jurisdictions. I present the perspectives of surrogates about exploitation.

Surrogacy, Kinship, and the Law

In addition to its policy implications, questions about the morality and ethics of surrogacy also impact laws about custody and legal recognition of familial bonds. This is particularly important as the consumers of assisted reproductive technologies (ART) expand to include members of the LGBTQ+ community. Many sociologists studying the evolution of ART consumerism have begun to track its impact on kinship and familial relationships. For instance, questions about how maternity is defined in surrogacy have become profoundly important since prevailing medical pedagogies including Maternal Role Attainment Theory (Rubin, 1967; Mercer, 2004), teach nurses that pregnant people begin to form bonds with the fetus during pregnancy and develop maternal identity during those months. Surrogacy throws a wrench in these understandings as the pregnant individual (gestational carrier) is different from the intended mother. In fact, intended mothers, often expect that the surrogate will not form any permanent bonds to the fetus during gestation. Consequently, the increasing use of surrogacy has prompted legislative scholars to weigh in on the medical debate about how maternity gets defined.

In the United States, surrogacy and ART have been referred to as the “Wild West,” due to the lack of federal regulations (Hecht, 2001). This includes federal statutes about parentage and custody in gestational surrogacy agreements. Legislative frameworks have been proposed at the state level and states have adopted these practices in accordance with prior statutes. Intent-Based Parentage recognizes the legal parents of a child as those that intend to rear the child; for their parentage to be valid, a legal contract must be established with the surrogate. While Intent-Based Parentage has a legal basis in contract law, there are social implications to defining parentage through intent (Larkey, 2003). For example, in the event of a breach of contract, both parties could challenge the intent clause. Therefore, proponents of this framework, have suggested another argument that shores up the intended parents claim. It is often referred to as the genetic contribution test. The genetic contribution test determines parentage according to the biogenetic connection between the child and individuals whose gametes the former resulted from. Part of this argument is staked on the notion that the gametes and genetics are private property, consequently the resultant child belongs to the intended parents and not the surrogate. This line of reasoning prevailed, in the previously mentioned *John v. Calvert* (1990) case; however, the case has had implications beyond protecting the parentage rights for intended parents. *John v. Calvert* (1990) challenged the Gestational Mother Primacy framework which was the common law prior to 1990 (Larkey, 2003). Under this framework, parentage was assumed to belong to the person who gave birth. With the advent of gestational surrogacy agreements, the genetics argument became a focal point in surrogacy contracts. However, many have pointed out that gestational carriers undergo unique physiological processes associated with pregnancy and labor that legitimizes their right to a permanent relationship with the child (Hammons, 2008). Some jurisdictions, including Michigan, Nebraska, and Louisiana, continue to recognize the

Gestational Mother Primacy Framework. This means the default legal parents of the child are the person who gave birth and the individual they recognize as the child's other parent.

Both the Intent-Based Parentage and Gestational Mother Primacy frameworks are more than legal stipulations, they have the potential to influence kinship and familial structures. For instance, with reciprocal IVF, a lesbian couple chooses to harvest eggs from one partner that are fertilized with a sperm donor's material. The embryo, if viable, is then implanted into the other partner's uterus (Bottomley, 2018). There are two potential complications here. First, under the Intent-Based Parentage framework which often makes the argument that the intended parents have a biogenetic claim to the baby, one partner despite their intent to be a parent has custody and maternity claims that are inherently less legitimate. Secondly, under the Gestational Mother Primacy framework, the birth mother would be recognized as the legal parent. The genetic mother's claim to the child would depend entirely on the other partner's recognition of them as the parent, which puts their custody and parental rights in a precarious position. The example of reciprocal IVF emphasizes the significance of legislative frameworks in defining kinship relationships like "parent" and "mother". Arguments using genetics or gestation as evidence for parentage impact how people can configure their families. They also have the potential to impact whether historically marginalized groups have avenues for securing custody and parental claims over their children.

Another way that legislation and policy impacts family configuration is through the institutionalization of heteronormative definitions of kinship. Heteronormativity is understood to be something that conveys privilege, opportunity, and freedom from stigma to those who conform to particular social rules and regulations (Rubin, 1984). Surrogacy's utilization by gay men, single fathers and lesbian women has promoted its use in theorizations about how ARTs are

able to “queer reproduction” and kinship relations (Mamo, 2018; Mamo, 2015; Mamo, 2013). Ethnographic scholarship, however, suggests that surrogacy operates as a form of inventive pragmatism. Inventive pragmatism is defined as “active strategies and actions that might be considered clever manipulations of an existing social structure in order to access social and material resources for oneself or one’s family (Pfeffer, 2012; pg 578).” Inventive pragmatism as a mode to examine surrogacy predicts that people using surrogacy do so to legitimate their families using existing statutes for recognizing kinship and familial relations. Surrogacy allows intended parents, regardless of their identity, to make a claim of parentage by arguing that they have a biogenetic relationship to the child. Establishing biogenetic relationships is a form of inventive pragmatism that allows individuals to gain custody and parentage rights. It allows people to leverage existing statutes that allocate parentage and custody rights to heterosexual couples, including genetic contribution stipulations, to gain legal recognition of their maternity or paternity.

With this project, I also aim to contribute to the literature elucidating the role of a concept like biogenetic relations in gestational surrogacy. I examine how the concept affects parental relations between the surrogate, intended parents and the child in the interview data presented below.

Data Collection

Recruitment and Interview Process

This project’s global aim is to contribute literature elucidating and contextualizing the experience of surrogates and intended parents in the US with Assisted Reproductive Technology (ART). As previously discussed, in most US states compensated surrogacy agreements are legal and enforceable through litigation. Despite the increasing frequency of compensated surrogacy in the US there are two major gaps in the literature: (1) the research elucidating the mechanisms

surrogates and intended parents use to distinguish and legitimate their parental or kinship roles is limited (2) there are conflicting accounts about whether surrogacy is exploitative. Initially, I conducted fifteen semi-structured interviews with ten surrogates and five intended parents living in the United States. My objective was to understand how surrogates and intended parents begin to situate their relationship with children resultant from surrogacy. Individuals were considered eligible for the study if they were a surrogate or had a history of surrogacy, had used surrogacy or were using surrogacy to start a family. Eligibility was restricted to individuals whose experience with surrogacy was in the United States and who were willing to provide permission to record the interview.

My initial recruitment strategy involved calling surrogacy clinics and agencies listed in Google's business directory. Surrogacy agencies and clinics listed in the directory were dialed randomly. The agencies or clinics selected were contacted and asked to distribute a flyer about the study. A spreadsheet was made in Notion that includes a list of all agencies contacted, the phone numbers dialed, whether there was a response or if a message was left and an indicator of whether the clinic or agency was willing to distribute my flyer. In all cases, the flyer was shared with the agency or clinic through email if a staff member or executive agreed to participate in the recruitment process. All emails were saved as a .pdf files and uploaded onto Notion. In summary, the Notion page serves as a record of all contact made with surrogacy agencies or clinics about recruitment. While this strategy did yield respondents that were enthusiastic about volunteering to be interviewed, the majority were former surrogates employed at surrogacy agencies. Therefore, I shifted my recruitment to include social media advertisements. An ad about the study was placed on Facebook and was shared with administrators of relevant groups on social media. All respondents, whether recruited through partnership with a clinic or agency

or through Facebook, were asked to complete an interest form. The interest form included information about the study and served as record of potential interviewees contact information. In the event of confirming interest in participation, the form collected information about availability to be interviewed and requested permission to record the interview. A limitation of the study is that the recruitment strategy restricted potential respondents to individuals in communication with clinics, surrogacy agencies or social media support groups. Furthermore, some agencies and clinics declined to assist with recruitment. Still, the interviews conducted provide valuable data that can be used to direct future research and shape hypotheses about policy interventions that would benefit surrogates or protect the interests of intended parents.

I conducted interviews between November 2021 and January 2022 over the phone or virtually using Zoom. Whether the interview took place over the phone or through Zoom was determined by the participant's preferences. In each interview, I told participants that their identity would not be disclosed and confirmed with participants that I had their permission to record the interview. Each participant provided verbal affirmation and each interview consisted of a minimum of ten and a maximum of fifteen questions from an IRB approved guide supplemented by probes and follow-up questions. A summary of relevant demographics and information about participants is summarized in the appendix.

Coding

Interview recordings were uploaded to Otter.ai to obtain a transcript. The text transcript was subsequently converted into a Microsoft Word document where all identifying information was replaced with pseudonyms. Prior to analysis, the transcripts obtained from Otter.ai were manually edited to correct for inaccuracies. I made all manual edits using the audio file as reference to preserve, to the greatest extent possible, the language used by interviewees. I coded the transcripts in Microsoft Word and choose to rely primarily on tables to organize my data. I

began by color coding words or ideas that were referenced across several transcripts, pulled those words out and looked for similar ideas across other transcripts. Those ideas became a header in a spreadsheet that I used to organize relevant quotes that were instances of participants describing or alluding to the theme.

My initial objective when I began writing about surrogacy was to understand the economics of compensated surrogacy, however, my analytic lens shifted in accordance with theoretical sensitivity. Upon reviewing the data collected, I began to observe themes that I contextualized and situated within the existing theories. These were theories developed to explain the intersection of kinship, family, identity and assisted reproductive technologies (ART). As such, I frame my analysis as an instance of applying grounded theory and acknowledge the value of theoretical sensitivity to my analysis as I simultaneously completed my data analysis and developed another iteration of my literature review (Tie, 2019). Furthermore, themes emerged from my analysis that prompted me to conduct interviews with gay identifying intended parents in March 2022. I contacted a member of the Board of Directors for the non-profit organization Men Having Babies. The organization supports single men and gay men through the adoption or surrogacy process. The director provided three contacts that agreed to be interviewed. Their pseudonyms and ages are provided in this paper's appendix.

Findings and Analysis

Surrogates: Covert Agents of Reproductive Justice

The surrogates I interviewed voiced a strong commitment to reproductive justice and were adamant that surrogates' compensation should be affordable for the intended parents. Surrogates demonstrated a belief that intended parents should have the ability to exercise their rights outlined under the reproductive justice framework ensuring (1) the right to have a child (2)

right not to have a child (3) the right to parent a child in safe and healthy environments (Ross et al. 2017). Surrogates pushed back against the idea that they were being exploited and rejected portrayals of gestational carriers as women lacking agency. The surrogates I interviewed viewed themselves as people who made the decision to carry a baby for someone who could not because they believed in the first tenant of reproductive justice.

Samuel, a 50-year-old businessman from Alaska, is a single father and was an intended parent in 2016. Samuel decided to use surrogacy because he encountered, what he describes as, “*stigma*” against single men seeking parentage while trying to adopt. He detailed several instances of adoption agencies favoring couples over single men. When asked about how the public, including his family and friends, viewed his decision to use IVF to conceive and surrogacy to gestate his son, Samuel said:

“There was the whole other group [opposing his decision], that was the people that watch the after-school specials, or the Lifetime movies...you know, the movies about people paying a surrogate a bunch of money [and] the person running off with it [the baby]. And ransoming, you know, all the different things about how the process can go wrong.”

Samuel’s family and friends expressed concern that the surrogate would ransom the baby after giving birth. Interestingly, their concern was not that the surrogate would develop an attachment or maternal connections with the baby. Instead, they worried about her demanding exorbitant amounts of money. Based on my conversations with surrogates, Samuel’s family’s and friends’ views were based on a misunderstanding of surrogates’ motivations. When asked, most surrogates interviewed reported not considering compensation a principal motivating factor for becoming pregnant. Chloe, for example, decided to become a surrogate to honor her sister who died in a car accident as a teenager. Before dying, her sister voiced her enthusiasm about motherhood and childbearing. Chloe describes her sister as someone who loved children and wanted to become a teacher. Chloe felt that surrogacy was a way to “...*put these humans into the*

universe that she did not get the opportunity to” and that she does not “... *look at [surrogacy] as a paycheck or job or anything like that.*” Paula, another surrogate, said regarding her motives for becoming a surrogate, “...*for me, it was just...about like, helping another family. It wasn't all about the money.*” Both Chloe and Paula voiced painful experiences that compelled them toward surrogacy; for them, surrogacy was a way to help bring children into the world and participate in the construction of families. Both women regarded compensation as simply a ‘nice bonus,’ refuting stereotypes about surrogates as individuals with malicious intentions of swindling intended parents. Additionally, their statements are not consistent with the views expected under the reproductive labor framework where pregnancy is conceptualized as a form of work done in exchange for compensation.

It is notable that both Chloe and Paula also referenced Lifetime movies to reject another misconception about surrogates. Surrogates objected to their portrayal as women who are vulnerable, lack agency and who are forced into contracts exploiting their labor. When asked to describe their understanding of the public’s perceptions of surrogates, several participants referenced Lifetime movies. Their point was that these movies depict a melodramatic version of surrogacy that is not a realistic representation of the women who elect to become surrogates.

Paula remarked:

“...people just see the sensationalized, like, Lifetime movie version, where somebody decides they want to keep the baby or they're extorting people for money, or whatever. And so, I don't think people understand like, there's a very clear legal contract.”

This statement demonstrated Paula’s clear opposition to claims that surrogates are vulnerable women being exploited by intended parents. Her decision to use the word “*extorted*” highlights that, in her view, surrogates voluntarily choose to gestate and give up a baby; they are not women who are coerced into contracts violating their bodily autonomy and agency. Chloe similarly critiqued Lifetime movies as depicting a surrogate as some “...*hard on her luck college*

student who's never had kids.” Chloe argued that these portrayals made it possible for audiences to conclude that intended parents are exploiting surrogates, an idea that she appeared to regard as ludicrous. The portrayal of surrogates as vulnerable women who are being exploited or women who want to earn great sums of money is not supported by my data.

Instead, my data demonstrates that surrogates believe in the tenants of reproductive justice and view surrogacy as a legal and ethical way to ensure that people are granted their right to become parents. One place where this is evident is in surrogates’ decisions about who they wanted to be the intended parents. Sophie demonstrates this in her statement “...*the second time around [pregnancy], I was matched through the agency, and I told them my criteria and it was [that] I had a preference which was to carry for a gay couple.*” A similar sentiment was shared by Charlie regarding her preference for the intended parents, “*I really wanted to carry for a gay male couple...there's not like a particular reason for it I just felt really inclined to help that type of family.*” Sophia’s and Charlie’s willingness, enthusiasm, and preference to carry for a gay couple was shared by six of the surrogates I interviewed. They expressed a dedication to helping gay couples who could otherwise not have biogenetic children. Their support for gay men trying to become parents implies a commitment to providing people access to ART and an opportunity to choose whether they become a parent. In contrast, Sarah, another surrogate, remarked:

“My personal preference was that I did not want to carry for [a] same sex couple. Mainly because of my religious beliefs. Being a Christian and just feeling that, you know, a man and a woman should be how [it is] intended...to be.”

Sarah’s decision not to include gay couples in the group of people she wanted to be a surrogate for is another example supporting Paula’s and Chloe’s assertions about a surrogate’s agency. Sarah wanted to help a couple have the choice about whether they became parents however, she factored in her religious beliefs and was tenacious in having them respected. Unlike most women I interviewed, Sarah circumvented working with a surrogacy agency, electing instead to reach

out to a local clinic. She established a surrogacy network at that clinic and worked with the staff to facilitate her journey. The clinic acknowledged and honored her religious beliefs and she ended up carrying for a Christian heterosexual couple. Sarah, like the women who choose to carry for gay couples, made personal choices reflecting her commitment to reproductive justice. Although Sarah made a different set of choices about who she felt comfortable providing an opportunity to become a parent, all the surrogates interviewed expressed the opinion that they had full agency in the process.

As previously mentioned, the surrogates I interviewed did not view themselves or the endeavor of surrogacy as exploitative. Surrogates felt that surrogacy agreements were part of a legal and ethical process; many referenced the importance of surrogacy contracts in ensuring that their interest were protected. For example, Sophia told me:

“Um, there's, if you're doing surrogacy, ethically, and there's all sorts of things, rules in place, contracts [are] sign[ed] that make this a very serious and protected venture. So, it's not just like, you know, she got pregnant with a turkey baster...”

Sophia’s statement encapsulates sentiments echoed by most surrogates I interviewed, all of whom were women who described themselves as being motivated primarily by altruism. Her statement also highlights the significance of technology and medicine to the experience of surrogates. Surrogates become pregnant after an embryo implantation; therefore, they are aware that reproductive endocrinologists and qualified medical professionals will be present throughout their pregnancies. It also means that conception does not require surrogates to engage with any unwanted sexual advances or unsterile medical procedures (“turkey baster”) debunking popularly depicted myths about how surrogates become pregnant.

While the surrogates I interviewed felt like they were doing something to help other families and trusted that the American judicial system would ensure that their interests were

protected, they also acknowledged that surrogacy has the potential to be exploitative and unethical. Charlie said,

“And there's the people in the public.... who think you know, bad things are happening from it [surrogacy] ...women are being forced into it, which these things can happen. You know, like, I'm not naive to these things. They don't happen in my world, but they happen in other parts of the world for sure.”

In this statement, Charlie simultaneously legitimizes and refutes the concern that surrogacy is exploitative – she does this by acknowledging that surrogacy can be practiced unethically but pivots to say that exploitation does not happen in her social contexts. Furthermore, she does the work of establishing that her view of surrogacy as not exploitative is not based on her individual experience as a surrogate, instead, it is grounded in her participation in surrogacy as an agent. Hence her choice of the phrase, “*my world.*” In Charlie’s view, there are two surrogacy industries, her world and the “*other parts of the world.*” Therefore, she locates a lack of ethics in surrogacy as external to the industry in which she works. She points to the fact that there are specific factors in the United States that separates it from other countries in which surrogacy exists. All the women I interviewed were surrogates in the world that Charlie described and echoed her opinion that surrogacy was an ethical exchange. However, many also voiced their opinion that surrogacy would only be fair for intended parents if the surrogate’s compensation was affordable, which again demonstrates a commitment to reproductive justice. My data indicates that surrogates genuinely do believe that people who cannot conceive without ART should have access to this technology.

For instance, Chloe, told me:

“But you [the surrogate] also have to be reasonable. And at the end of the day, these are parents wanting to have a family and I don't think it's fair that they should have to spend, you know, \$200,000 just to have a baby.”

In this statement, Chloe expresses her view that surrogates have a responsibility to be responsive to the needs of intended parents. In her view, surrogates must be conscious of how their demand

for compensation places an undue burden on people trying to have children. It is also clear from this statement that Chloe is committed to the principles of reproductive justice, take for example her use of terms like “*fair*” and “*just*,” the latter implying her belief that having a child is a right. It is precisely because of this perspective that she thinks intended parents should be able to affordably access ARTs.

Similarly, Charlie said:

“And some surrogates can get, in my opinion, a little bit greedy about certain things.... Even though I do believe surrogates should definitely be compensated like it is, it is a big job... These intended parents [though] just want to have a baby, and it's already gonna cost them so much money. And to me, there's no reason to make it cost them even more money.”

She acknowledges that surrogates should be paid, however, she voices a strong opposition to surrogates demanding unaffordable prices from intended parents. Charlie’s commitment to the tenants of reproductive justice is very evident in this quote which highlights her perspective that price should not be an impediment for intended parents. Her use of the word “*just*” suggests a belief that people should be able to access the technology and services they need to have children. She takes the view that some surrogates are unreasonable and uses a term laden with negative connotations, “*greedy*,” to describe these surrogates. Many of the surrogates I spoke with voiced similar opinions, often using the term “*fair*” to describe their views on compensation; in particular, the surrogates I spoke with felt that compensation should be affordable for the intended parents.

Sophia is friends with other surrogates online; she provides an anecdote illustrating their critique of ART’s expense as a barrier to access for intended parents. Sophia and her friends view price as an impediment preventing people from having the families they “*deserve*.” She told me about being involved in Facebook groups where surrogates shared stories about becoming extremely stressed over money and begin to blame themselves for the intended

parents' financial concerns. She told me, "...most intended parents are...getting second [or] third jobs, or like reverse mortgaging their house, selling everything they can to be able to afford this [ART] so they can have a child." Sophia's statement regarding conversations where such points are discussed on Facebook emphasizes the community's awareness of the financial difficulties intended parents' encounter. In response, the surrogates I talked to tried to balance their expectations for compensation, the need for compensation to reimburse lost wages during a pregnancy and their belief that people should be able to access resources to start or grow their families.

In summary, my data indicates that surrogates in the United States do not consider their agreements as exploitative. Interviewees viewed surrogacy as a legal and ethical way to expand reproductive justice. Surrogates did so in two primary ways: (1) choosing specific communities they wanted to help, working to ensure that they could assist individuals within those communities have children and (2) being conscious of how compensation affect intended parents' ability to access ART.

Biogenetic Connections, Surrogacy and Parenthood

The advent of Assisted Reproductive Technology (ART) as a means for creating families within the LGBTQ+ community has catalyzed a body of literature about queer identity, reproductive capacity, kinship, and family. An important concept in the literature is "queering reproduction," which refers to the gradual accumulation of choice availability for LGBTQ+ individuals seeking to become parents. Moreover, queering reproduction involves destabilizing the link between heterosexuality, heteronormativity, and parenthood. Queering reproduction make it possible to imagine a future where LGBTQ+ individuals are increasingly able to exercise their rights outlined in a reproductive justice framework – in particular, the right to be parents.

Surrogacy, for instance, allows gay men greater latitude in their decision making about whether to become parents. Social scientists and journalists suggest that as more members of the LGBTQ+ community choose to become parents they are incrementally shifting Americans' perceptions of family and kinship structures. My data, however, suggests that surrogates and intended parents locate parenthood in biogenetic connections to fetuses. Therefore, re-affirming a link between heteronormativity and parenthood. In both surrogacy and unassisted sexual reproduction, a central component of establishing one's parenthood is biogenetic connection.

The Language of Biogenetics: A Tool Leveraged by Surrogates

The interviews I conducted suggest that surrogacy and other reproductive technologies reify existing modes of establishing legitimacy in parental claims. Scholars studying ART have described the centrality of biogenetics in the formation of familial relations (Dempsey, 2013). Queer feminist theorists studying ART have cited ethnographic research conducted in fertility clinics to make the argument that reliance on biogenetics in establishing social relations between intended parents and the products of surrogacy, children, parallels how heterosexual couples build families (Pfeffer, 2012). Their critique is that surrogacy reinforces the normalcy of parental relations established because of biogenetic connections (Mamo, 2018; Pfeffer, 2012). Hence, it conveys privileges to families with biogenetic connections to their children. By analyzing the way that surrogates discussed biogenetics, I provide evidence that it is invoked as a way of understanding and communicating their connection to the child. In doing so, surrogates create boundaries between their roles and that of intended parents. Biogenetics, I argue, is not why surrogates view intended parents claims to children as legitimate; my research is unable to shed light on what makes a legitimate parental claim from the perspective of surrogates. What my data does show is the unique way in which surrogates leverage biogenetics as a tool to legitimate their

decision to gestate and subsequently reject parental or kinship claims to a child. Surrogates also rely on biogenetics to situate their family as a distinct entity from the child's.

Both surrogates and intended parents locate parenthood as encoded in biological or genetic relations. Of the ten surrogates I spoke with, all were gestational surrogates and only one had seriously considered carrying in a traditional surrogacy arrangement. The surrogates echoed similar sentiments when I inquired about whether they considered gestational or traditional surrogacy arrangements. They generally, expressed that gestational surrogacy was the only route they felt comfortable with because they would have no genetic relation to the child. Paula stated,

“But I also think just from the perspective of, you know, did you ever want to keep it [the baby] and knowing that there isn't a genetic tie, I think makes it a much cleaner break of like, this isn't my baby, I have no tie to this baby. This is fully somebody else's child.”

This statement does several things. Firstly, it demonstrates that Paula contemplated how gestating the fetus could elicit an attachment to any resultant baby after giving birth. Therefore, she intentionally constructed a way to create separation between herself and the fetus. She did so in anticipation of needing to distance herself from the child after giving birth; she described this feeling as the need to make a “*clean break*.” Hence, while pregnant, she conceptualized the baby as something she “*had no tie[s]*” to because the baby was “*somebody else's child*.” Secondly, Paula was able to create a sense of detachment from the fetus because she had no “*genetic tie[s]*” to the baby. To her, she understood parentage as being tied to genetics creating two separate categories in her mind: the person who gestates, who is Paula herself, and the parents, the people with genetic ties to the fetus.

Charlie expressed a similar sentiment to Paula when she remarked in our interview,

“I have no genetic relation to the babies... Because that would have been hard for me. And I would have...wondered about them way more and been more worried about them if they were genetically related to me. If they were genetically related to me, you know, I would have felt more like... [they were] my responsibility.”

For Charlie, who carried twins, giving up the babies was only possible because she envisioned herself as being separate from the children. She made no permanent connection to the children because they were not biologically related to her. She developed a detachment from the children and distanced herself from the caretaking responsibilities allocated to mothers. The caretaking role of the mother, including worrying about their child's well-being, is one that Charlie seeks not to claim. She justified her decision to abstain from investing significant amount of time worrying about the children by pointing to the fact that they are not genetically related to her. To support such an interpretation, she commented earlier in the interview when asked about whether she would consider carrying in a traditional surrogacy arrangement, "*[I] wasn't really comfortable having my genetics out there and not being with me, you know, it's my own children.*" Charlie's use of the possessive pronoun "my," shows her asserting a claim of ownership for any children that have a genetic connection to her. This stands in direct contrast to her rejection of maternity in the case of the twins she carried.

Charlie's statements also reveal something about the relationship between gender and parenting. Women are systematically judged and characterized as good or bad mothers. Good mothers, and moreover good women, develop strong connections postpartum and have an affinity for providing care (Defalco, 2012). It is assumed that after gestation and giving birth a 'good' mother will have an attachment to the child and naturally assume a caretaking role. Charlie also told me: "*I was not interested in having twins [so] that made it even easier for me. Like you [the intended parents] go ahead and have these two babies. But I do remember that day, like, going away from them [the twins], thinking, I'm so bad.*" In this statement, Charlie voices her recollection of the anxieties associated with giving up the children which she

experienced. It is clear from her statement that Charlie quelled this fear of being “*bad*” by reasoning that the babies do not share a biogenetic connection with her.

Allie, another surrogate, described a similar concern as Charlie telling me:

“I would have only done this with her egg. His sperm. I have no genetic ties. I mean, if I had genetic ties to this baby, maybe I mentally could be in a very different place. So no, I don't think I would have done it any other way than this way.”

When we spoke, Allie was carrying her younger sister’s baby. Though she admitted to a hatred of pregnancy describing it as “*not for me,*” she decided to carry her sister’s, Ellie, baby. During delivery of her first child, Ellie suffered from severe hemorrhaging. To save her life, the doctors performed an emergency hysterectomy. Consequently, Ellie was unable to carry another pregnancy. Ellie and her husband used IVF to conceive their first child; in the process they made several viable embryos. The initial transfer into Ellie’s womb was successful and she carried the pregnancy to term before her hysterectomy. Having several remaining embryos and a desire to expand her family, Ellie needed to use surrogacy. Allie felt compelled to help Ellie and her husband. Yet, despite the close connection between the sisters, both their interpersonal relationship and shared genetics, Allie’s sentiments regarding genetics and her relationship to the baby after it is born resemble Paula’s and Charlie’s. Allie expressed uncertainty about her ability to part with the baby if she “*had genetic ties,*” which is ironic. Allie does have genetic ties to the baby. Hence, it is critical to reexamine, what the term “*genetic*” connotes in this situation. It is a substitute for a more abstract concept: maternity. Defining maternity in terms of biology leaves us at a social scientific impasse because maternity is a social construct. In the case of surrogacy, interviewees located it in biogenetics, meaning that the attainment of maternal identity becomes pushed back to the moment of fertilization. Thus, the question of maternity is answered by determining whose gametes were involved in the fetus’s creation.

The significance of the term “*genetics*” in relation to the experience of surrogates reveals something strikingly unsettling about the theories that position ART as a way of queering reproduction. Theories about queering reproduction recommend reimaginations of kinship structures. However, the ideas voiced by surrogates I interviewed, suggest a perceived necessity for maternity and paternity to hold meanings that link them to biogenetic relations. This is in part due to the way that surrogates have come to view pregnancy and, and how they answer the question so aptly phrased by Inese: “...*how are you just going to give this baby away?*” Inese, like many surrogates I interviewed, voiced a sense of resignation at being asked questions about how they were able to give up the baby after birth. These questions are loaded with accusatory implications. As Inese shows, there is an accusation implicit in such questions. Shallan’s echoes these feelings of being accused:

“I definitely think it's not talked about enough. And I think that women that choose to do it are looked at, like, negatively. I felt like during my journey [pregnancy] because I shared it public[ally], I feel like people were watching me so close. And it was like, if I wasn't upset after the journey, something was wrong with me,”

Shallan shares her view that surrogates are looked at negatively in the public; she hints at the fact that surrogates are expected to be upset after their “*journey.*” Not being upset implies some sort of moral failing which Shallan understands as “*something wrong with me.*” The public discomfort with acknowledging that women can gestate and not become attached to the fetus is encoded in the questions Inese describes and the negative view of surrogates Shallan talked about. Sophia describes how she experienced public discomfort with gestational carriers who did not become attached to the fetus:

“...a lot of people assume that it's done in some really weird, strange way, and that it's an immoral thing to do, especially if they think you're giving away your baby. And then if you explain, it's not my baby [and] I'm not related to it some people will still push and say, ‘Yeah, but you create a bond with it for nine months, how can you just give it up?’”

Here, Sophia points out that questions regarding how women can gestate and then give up a baby are phrased as admonishments of the women who choose to be surrogates. Sophia provides her perspective on why this is the case; in her view, people are unnerved by the thought that women can gestate fetuses without becoming attached to them.

Examining the source of the questions Inese describes also elucidates Charlie's anxieties related to giving up the babies and feeling like she is "*bad*" for choosing to distance herself from the children. Questions like these illustrate a societal norm of viewing women as naturally inclined towards childcare (Dalla Costa et al. 1973); descriptions of gestation often describe it as an act of caretaking. This is deeply problematic for surrogates. Surrogates, therefore, are likely to link biogenetics to maternity as a method to escape societal reproach for not expressing regret or sadness at giving up the children they carry. Surrogates are subject to scrutiny because they defy gendered expectations about maternal attainment. Gender roles have encouraged a romanticization of pregnancy and have dictated that maternal attainment is an accomplishment. Therefore, the rejection of maternity needs to be justified, or it implies some sort of immorality. I contend, therefore, that the salience of "biogenetics" to surrogates can be attributed to gendered conceptions of femininity and maternity. Until questions, like the one Inese discussed, are no longer directed at surrogates, a future where kinship and biogenetic connections become unlinked in ART and the public sphere is impossible.

The Language of Biogenetics: A Tool Leveraged by Intended Parents Too

While surrogates referred to genetics as a way of conjuring a boundary between their role as gestational carriers and maternity, intended parents referred to biogenetics as a method for establishing the legitimacy of their parental claims over any a surrogate could assert.

Samuel's statement,

“... probably one of the biggest things about the whole process is the surrogate carries the embryo that was made from me and the egg of the donor. But once that process is done, this [egg donor] connection lasts forever and ever and ever. Because that person [the egg donor] is biologically, you know, my son's mother. That's what that person is. And yet this is such the impersonal side [egg donation], where this [surrogacy] is the real personal side.”

is reflective of the way that he ascribes maternity to women. A close inspection of Samuel's language demonstrates that he refers to the egg donor as his son's “*mother*.” Paradoxically, he also describes the egg donation process as “*impersonal*” and surrogacy as “*personal*,” revealing that for Samuel biogenetic connections transcend interpersonal interaction in defining who is a “*mother*.” The permanence of biogenetic connections cannot be disputed, as an individual's genetics do not change within their life course. However, an interesting contrast is set up in this excerpt. The surrogate's role is transient, her connection to the child temporary. It suggests that after giving birth the surrogate has no connection to the child, yet this conclusion would not be accurate. By framing the surrogate and egg donor's role in the dichotomy of “*personal*” versus “*impersonal*,” he indicates that there is an interpersonal connection between the gestational carrier and the child. That connection, however, is simply not enough to compete with the innate permanence of biogenetic relations. Somewhere else where this idea is apparent is in the worries Moraine, a surrogate, voiced experiencing during her pregnancy “*I didn't want to get stuck with the baby...what if the parents [the intended parents] changed their mind? Like, what if she [the intended mother] because she used an egg donor, doesn't have that instant connection.*” In this statement, Moraine reveals that, from her point of view, genetics are a crucial component of establishing a connection between the child and intended mother. Therefore, the lack of a biological connection made her worry that the intended mother would not have that “*instant connection*”³. Generally, it is assumed that this connection is innately within women (Dalla

³ Her employment of this phrase hints at the colloquially understood ‘mother's instincts.’

Costa et al. 1973) however, Moraine links it to biogenetic connection. In aggregate, Samuel's along with Moraine's statements reveal their perspective that motherhood is something that stretches beyond interpersonal care, it is something that is innate and in both these instances, it is implied that motherhood is encoded in biogenetic relations between a child and parent.

Most intended parents echoed the view of maternity being encoded in biogenetic connections and wanted their maternity to be acknowledged during the pregnancy and birthing process. Therefore, intended parents wanted their maternity established before that developed any interpersonal connections with the child. The intended mothers I spoke with did not stake their claim to the child on their intention to develop those interpersonal connections. Instead, they largely relied on biogenetic connection to legitimize their maternity. For example, Leah told me:

"I always made a point when I was telling my friends or family about it to distinguish the difference between a surrogate and a gestational carrier. So gestational carrier being someone who has no genetic link to the baby, [the fetus] being our embryo 100%. So, we use the term surrogate, but we had a gestational carrier in our case."

The phrase "gestational carrier," makes it clear to Leah that the woman carrying the baby had no biogenetic connection to the baby. Leah emphasizes the lack of connection declaring that it was "100%" and "our" embryo. She also expressed a desire for her friends and family to continuously recognized her surrogate as only a carrier. By choosing to use the term "gestational carrier" instead of "surrogate," Leah was able to establish maternity over the baby as she consistently conveyed the message that the surrogate's role was transient compared to hers, which was permanent. The permanence of her connection to the baby was something that she like Samuel located in biogenetic relations.

The significance of genetics to how intended parents establish their identity as mothers is evidenced in Rea's recollection of her daughter's birth:

“...we were not allowed to have our names on the birth certificate, so much like [we needed] an adoption, even though this is our genetic material, and she, my surrogate would always say, I am a carrier. And even when we were in the delivery room, and the staff continually called her the mother, even in labor, she was screaming at them, ‘I am the oven. That’s the mother.’ So, the verbiage was tough.”

Rea’s story indicates that one of the aspects of needing to use surrogacy that was tough for her was not being acknowledged as her daughter’s “*mother*,” to her, it seemed obvious that she should be granted custody and maternal recognition because the baby was made from her “*genetic material*.” She found the process of needing an adoption to be absurd. The significance of not being recognized as her daughter’s mother underscores the language Rea used to describe her surrogate. Like Leah, Rea preferred the term “*carrier*.” Rea told me “*...and she [the surrogate] was always just the oven, you know, this is just cooking this thing for you. So, it was nice to hear that,*” clearly establishing that she craved reassurance from other people that she was the child’s mother. Rea’s desire to be acknowledged as her daughter’s mother is complicated by the feelings she expressed about womanhood and maternity:

“There’s frustrations, you know, as a woman we are separate from men because we can create, that’s what we do, we hold babies. And when you find that you can’t do that, you find yourself very invalid and not just in life or the world but in your own self. Because that’s what we’re supposed to do.”

For Rea, the potential to carry children is not only what separates men from women, but also what defines the value of women. Therefore, as someone who is unable to carry a child, she feels as though her womanhood has been invalidated. Rea, therefore, is deeply attached to the idea of maternity and wants to be acknowledged as her child’s mother; even during the birthing process she was troubled by the hospital staff’s recognition of the surrogate as the mother. Rea’s concerns are rooted in a desire to feel respected and accomplished as a woman. Consequently, her genetic tie to the fetus become an important tool for asserting her motherhood. One instance where this is evident is a conversation with her rabbi. In it, they established that her baby is Jewish, even if the surrogate is not, because of the “*material [genetic material]*” of the fetus.

Conversations like the one with her rabbi are exemplary of the ways that Rea tried to secure her claim to the baby throughout the surrogate's pregnancy, and it often involved justifications linked to biogenetic connections.

Ellie had a similar experience as Rea, and she told me about her experience talking to lawmakers in Michigan about it. She said:

"...lawmakers didn't even know that this was a problem. They didn't even realize because it's just not talked about enough. It's not common enough. They didn't know that this was even an issue... that we [intended parents] people in my situation could be denied the parental rights to their genetic baby and must go [through] the adoption process."

Ellie articulated her frustration to lawmakers. She explained to them that she and other intended parent were forced to go through the adoption process to be recognized as the legal parents of their "*genetic baby*." Ellie critiqued statutes that she, like Rea, felt were absurd because they allowed for her to be "*denied... parental rights*." In other words, custody which is the state's way of recognizing people as the legitimate parents or guardians of a child. Therefore, both Rea and Ellie viewed the necessity of an adoption as an affront to the maternity they felt was established by their genetic connection to the child. Both women voiced an eagerness to see the law change and reflect their perspective that maternity belongs to the people who are genetically related to the child and not the surrogate.

Willy, a former intended parent, and current surrogacy attorney told me, like Inese, that surrogates often get asked questions like: "*Gosh, how could you give the baby up after you've carried it for nine months?*" In an exasperated tone, he explained: "*And the best answer to that question is, they're not giving the baby up. They're giving it back. Right?*" Willy's response to the question illustrates that as an intended parent, like Samuel and Rea, he believes that a claim of parentage can be exerted over the baby. The choice to use the phrase "*giving it back*" asserts possession of the baby however, he pauses and seeks justification from me asking, "Right?"

Silence is often as informative as speech in qualitative research. It is, therefore, informative that Willy pauses before adding, “*This is... (pause).... this is the intended parent’s child, it's their [genetic] material.*” The pause indicates the desire for affirmation of his argument’s cohesion, however, though he previously asserted possession of the baby, he had failed to provide a justification. In the silence, he thought to add a reason for his claim of parentage. The reason he expressed was that the baby is the result of the intended parents “*material.*” In other words, their egg and sperm or genetic material.

All the intended parents I interviewed located maternity or paternity in biogenetic relations and not gestation. Consequently, they rejected the explanations postulated based on Maternal Role Attainment about the significance of bonds between a fetus and the gestating person in the development of maternal identity. The ability of intended parents to locate parentage as something encoded by their shared genetics with the fetus provides evidence that surrogacy as a mode of reproduction relies heavily on biogenetic connection to establish kinship relations. From this data, it is evident that as surrogacy has become more commercially available and accessible, surrogates and intended parents have come to draw on concepts that establish maternal and paternal relations in heteronormative, unaided sexual reproduction. The centrality of biogenetic continuity, the passage of one’s genes onto their offspring, to kinship building in surrogacy arrangements suggests that there are limitations on this technology’s ability to queer reproduction. Therefore, the importance ascribed to genetics in my interviews demonstrates that ART has not shifted maternity and paternity’s location to interpersonal relations and caregiving. Based on these findings, I postulated that because surrogates and intended parents understand maternity or paternity as being encoded in biogenetics, gay men using surrogacy to start their families legitimize their claim to the children they plan to care for through biogenetic

connections. In interview with three gay identifying men, I found evidence supporting this hypothesis and additional insight into how gay men utilize the concept of biogenetics.

Exploring Biogenetic Connections from the Perspective of Gay Intended Parents

Most of the literature about the theoretical significance of biogenetics in surrogacy has focused on gay men. They have been the subject of sociological inquiries about surrogacy's potential to reconfigure kinship (Dempsey, 2013; Murphy, 2013). This is because of the shift in rhetoric that has been observed amongst gay men. Studies published in the 1990s, generally, suggested that gay men considered methods of planned procreation involving biological relatedness as subsidiary to alternatives such as adoption and co-parenting. Yet as early as 2009, an emphasis on biological relatedness in reproduction was observed amongst American and Australian gay couples. The desire for gay men to have biogenetic connections to their children has been linked to the increasing societal disillusionment that homosexuality is synonymous with childlessness. The term that has been applied to describe this phenomenon is "procreative consciousness" and it was initially developed to describe parenting practices in lesbian communities (Murphy, 2013)." The saliency of biogenetics in my interviews with surrogates and intended parents prompted me to interview men who self-identify as gay to better understand their perspectives on the subject.

My interviews revealed an enduring tension among gay men who used surrogacy to become parents. Like other intended parents, gay men in this study leveraged biogenetic connections to assert their claims to paternity over a child. At the same time, interviewees acknowledged critiques of biogenetic-based claims as heteronormative efforts to reify a "dichotomy between chosen and blood family" (Berkowitz, 2009; pg 127). Consequently, interviewees found themselves difficultly positioned between dominant heteronormative

narratives about family in a biogenetic sense, and queer theories about familial organization. Interviewees both acknowledged the validity of claims that desiring biogenetic connections to children was heteronormative while simultaneously expressing the importance of such a connection to adduce their family's sense of normalcy. For this paper, normalcy is defined as "just like any other family (Bower et al. 2009)."

Jon, a 47-year-old gay man decided to have a child through surrogacy with his partner of 18 years. When describing surrogacy's meaning to him, he told me:

"Surrogacy is a very intimate process of creating a family. And, yes, that the option of adoption is out there. But surrogacy to us gave us the opportunity to have what's called a pseudo-normal family, I guess, or what we would call a pseudo-normal family for us because obviously, two men cannot create a baby. So, we did need help through surrogacy and wanting to have that genetic connection to our child, whether it's me or my husband, or eventually both of us, was kind of important to us."

Jon notes that adoption is a viable alternative to surrogacy. However, in contrast to surrogacy, adoption does not provide the guarantee of biogenetic connection. His use of the phrase "*pseudo-normal-family*" indicates that biogenetics, in this context, functions not only to enhance the social legitimacy of Jon and his partner's family but, also to assert their normalcy. Moreover, it indicates that biogenetic connections are at the foundation of what Jon perceives to be a normal family and it is through his use of the prefix "*pseudo*" that he highlights the fact that gay men are alienated from participating in institutions and conventions that are constructed for normal families. This is elucidated, in part, because of the history surrounding the concept of "*pseudo family*," which emerged in a 1931 article by Lowell Selling. The article was about the formation of kinship and familial ties amongst juveniles. In it, Selling described the pseudo-family as not pathological and organized analogously to conventional families. For instance, older juveniles were acknowledged as "mother" and "grannie." Pseudo families, therefore, are organized and defined by their resemblance to the normal family. For example, the adaption of some in society

to equivocate homosexual couples to heterosexual parents and to assign maternal or paternal roles to the men. However, the pseudo-family is also distinct from the genuine family because it is not normal. Evidence for this comes from Parker, a 51-year-old single gay intended father who at the time of our interview was undergoing to implantation stage of IVF with his surrogate, who told me:

“But it often feels like I and lots of us [gay men] have to justify why we want to have a biological child. But if I was a straight man, no one would question that. In fact, if someone said ‘No, I want to adopt’, they’d say, ‘why don’t you want to have your own child? And so, I’ve been asked by so many people, why do you want to have your own child when there’s so many children to adopt?’”

Parker’s statement outlines a disparity in the way that society conceptualizes reproduction for gay men and people who identify as heterosexual. He believes that an assumption is made that gay men, who are people in relationships disproportionately characterized as pseudo-families, build, or grow their families through adoption. In contrast, adoption is seen as the less desirable alternative for heterosexual individuals. Therefore, Parker’s experience points out an existing divergence in the way that people understand what methods of reproduction are desirable for heterosexual and gay men. For heterosexual people, the assumed norm is that they have biogenetic connections to their children and that is preferable to adoption. In contrast, lack of biogenetic connection is the assumed to be the preferred alternative for the pseudo-family.

Hence, Jon coins the phrase “*pseudo-normal family*;” in the procreative consciousness of Jon, and similar gay men, surrogacy acts to create a pseudo-normal family by establishing similarities between gay men’s and heteronormative modes of reproduction. This is largely expressed through an emphasis on the desire for biogenetic connections which is synonymous with the goal of achieving normativity or reducing the disparity between the normal family and the families headed by homosexual men. Further evidence for this comes from my conversation with Noah. Noah is a 38-year-old man who used surrogacy, along with his partner, to have twin

boys because they “...*wanted to have biological children.*” Noah recalled an instance of recognizing that his community was organized such that resources available to couples in a heterosexual parenting arrangement were not available to him. His sister is involved in a mom group for stay-at-home parents organized through her employer. The group meets regularly, and the parents discuss advice about raising children and communally care for their babies. Noah brought the group’s existence up to his husband and they inquired about the existence of a similar group for dads. Noah described the employer’s response as uncomfortably implying “...*why don't you find it yourself by setting up your own group.*” This brought him to the epiphany that he has not “*had the opportunities that I would have otherwise [if he was heterosexual, like his sister] have been able to access.*” Noah’s experience, alongside Jon’s use of the phrase “*pseudo-normal family*” indicates that the pursuit of biogenetic connections amongst gay men is not only about ensuing the legitimacy of their parental claims but, also about minimizing their family’s lack of normalcy.

Similarly, Parker told me that he valued having a biological connection to his children.

Parker pointed out his awareness of critiques that his decision was heteronormative, telling me:

“I never really [was] sure why I need to have a child that's biologically related to me since I certainly believe in fostering and adoption and yet it felt important. It felt like it was important [but] if you asked me to think about this too much there all sorts, I would say... I don't know because I grew up in a heteronormative world that we're supposed to believe that having our biological children...except that's what I always wanted.”

In this statement, Parker acknowledges that there are alternatives to surrogacy such as adoption and fostering for gay men, however, he expresses a compulsion towards having a biological child that also puzzles him. Although Parker voices confusion over his desire to have biological children, he connects the concepts of biogenetics and heteronormativity. Parker thinks that part of the desire to have biological children stems from his socialization in a world that privileges the heterosexual nuclear family. Parker’s ideas are consistent with Jon’s characterization of his

family as “*pseudo-normal*” and Noah’s concern that gay men have fewer parenting resources. However, Parker in this anecdote suggests that biogenetic connections in surrogacy is not only about achieving normalcy but, also about justifying the existence of families with same sex parents. Parker described one experience when he was considering surrogacy with a partner before opting to go through the process single.

“My ex-partner and I, we had this whole elaborate discussion about having children that were biologically related to both of us. We both have sisters, and we had this whole like, fantasy. It's so far out there. So maybe his sister would donate her egg to me, and my sister would donate her egg to him. So, the children [would be] biologically related to each other, and to both of us. Oh, my God, that's complicated. Because when you try to make those things into realities, they don't fit models, our psychological, sociological models for us to do it. We're reinventing the wheel over and over again. We're actually...inventing how to have children and make it okay and justify it.”

Parker’s vision describes a scheme that not only ensures that both parents have a biological connection to the child but, also creates a method for justifying both partners’ decision to reproduce. By describing their plans as a “*fantasy*,” Parker portrays biogenetic connection as an ideal. Hence, the desire to achieve biogenetic connection is cited as the rationale for participating in surrogacy. Attainment of biogenetic connection, therefore, becomes a suitable justification for using surrogacy despite its inherent complications. This is partially because it requires gay men to invent different methods of reproducing (“*reinventing the wheel*”) as opposed to demanding a re-evaluating of statues that privilege biogenetic, heteronormative modes of reproduction and nuclear families.

In summary, as I described previously, biogenetics is a tool. Surrogates use it to justify their decision not to assume a maternal role. Intended parents use it to establish the social and legal legitimacy of their parental claims. Amongst gay intended parents, biogenetics is leveraged to establish parallels between their familial structures and heteronormative families to create or sustain a version of normalcy.

Discussion and Conclusion

When Laura Mamo introduced her book “Queering Reproduction” in 2007, she described her theory as capable of revealing how “medical technology reconfigures social formations, individual subjectivity and notions of kinship.” The saliency of biogenetics to the experience of surrogates and intended parents challenges the notion that ART have the capacity to reconfigure kinship. Concepts central to heteronormativity, such as the privatization of care⁴ within family networks are reinforced through the systematic deployment of biogenetics in surrogacy. For example, surrogates utilize biogenetics as a tool to create clear distinctions between their roles as gestational carriers and the mother’s role. Surrogates insisted that they were not the child’s mother since they shared no biogenetic connections with the fetus. Therefore, surrogates voiced no responsibility for the child’s well-being after birth. In contrast, intended parents used biogenetics to assert their claim over the child, including their maternity and paternity, even prior to the surrogate giving birth. The keen interest of surrogates and intended parents in ensuring such distinctions are clear illustrates that the privatization of care is a key component of surrogacy. For instance, intended mothers do not want to share custody with their surrogate, even in instances where the surrogate and intended mother have a deep interpersonal connection, like the sisters Allie and Ellie. As such, current practices in surrogacy reifies more than challenges existing kinship structures by promoting the formation of families that resemble the nuclear family.

While my analysis does undermine the claim that ART’s employment by LGBTQ+ individuals can catalyze progress towards reconfiguring kinship socially and legally, it supports

⁴ The concept of the privatizing of care is prevalent in many works of feminist science fiction and queer theory. Broadly the concept can be summarized as encapsulating ideas of: “privatization of care within the family;” where the family is the legally recognized unit and individuals can asset ownership of each other. For more details (see Priya Kandaswamy’s essay entitled “Neoliberalism, Reproduction and the Future of Queer Politics”).

inventive pragmatism. Inventive pragmatism, as discussed in the literature review, is the theory that LGBTQ+ individuals cleverly manipulate existing social structures to access social and material resources. Gay men, in the study, pursued surrogacy because of their desire for a pseudo-normal family. Participants described a myriad of schemes involving gamete donation and surrogacy that would result in a biogenetic connection to their child. The emphasis on biogenetic connection and consequently normalcy alludes to the men's desire to situate their families within existing social, psychological, and cultural models. In fact, by expressing their support for fostering and adoption, participants acknowledged that having genetic connections to children was not synonymous with parentage. However, they felt that having a biological connection to their children granted them a greater degree of privilege or normalcy. Thus, the behavior of gay intended parents using surrogacy is comparable to gay men getting married, in part, because it is socially expected, celebrated, and sanctioned.

It is critical to point out that the aspiration towards pseudo-normalcy through surrogacy is not pragmatic though. The process is expensive and not accessible to many, regardless of the efforts of many surrogates to be cognizant of how their compensation impacts intended parents' ability to have children. Hence, if achieving broader social de-stigmatisation and inclusivity is linked to obtaining normalcy, it is something that only a small segment of the population can purchase. To conclude, I want to acknowledge that there is much debate about whether inventive pragmatism and queering reproduction's tenant of reconfiguring kinship are compatible. My research does not suffice to answer this question and I suspect it will be contested in the literature over the next decade.

Further Analysis: Policy Recommendations using Data

There is no federal oversight of surrogacy practices and policies and there is sparse local regulation. Consequently, there is an alarming lack of cohesion in the research about policies and practices in surrogacy. Most of the surrogates I interviewed worked for surrogacy agencies. Similarly, most of the intended parents I interviewed were involved with the surrogacy industry in some capacity either working as attorneys or lobbyists. Due to their professional experiences, intended parents and surrogates provided detailed explanations about different components of the surrogacy industry's operations in the United States. Furthermore, they outlined practices and policies that they favored, or which challenged the interests of surrogates and intended parents. An awareness of Participatory action research (PAR), a model for centering the understandings of how to improve situations by the people most affected, prompted me to write policy recommendations that were data centered.

Framing the Background: Context for Policy Recommendations

The development of Assisted Reproductive Technologies (ART) has enabled couples to circumvent an infertility diagnosis and have a child with whom they share a biogenetic connection. While the market for ART is predominantly controlled by heterosexual couples with an infertility diagnosis, a new set of consumers has entered the market – LGBTQ+ people. ART, including gamete purchasing and surrogacy, has allowed lesbian and gay couples to have biogenetic connections to their children. Considering that both sets of consumers are likely to continue demanding ART, it has become the subject of scrutiny and ethical debate. In particular, the ethics of transactions such as gamete selling and compensated surrogacy in the global marketplace has been the subject of contentious debate amongst social scientists (Inhorn, 2011).

The economics of ART spans continents, especially, because the demand for this technology is concentrated in Europe (France, Germany, Italy, Spain, and the United Kingdom), China, and Japan. However, in most of these countries access to ART is restricted. There are two

primary factors that limit the accessibility of ART in Europe, Asia, and some states in the US. The first are national policies enacted to regulate the ART market, for example, statutes in France that prevent compensated surrogacy. The second issue is the cost. ART is expensive. Therefore, European, Asian, and American consumers have established a norm of “reproductive tourism,” which involves traveling to countries with low to middle income GDPs to purchase gametes or utilize surrogacy. Upon inspection, the evidence gathered highlights the potential for reproductive tourism to become exploitative and to reify the norm of stratified reproduction (Pande, 2010). I conducted one interview that exemplifies exploitation in the ART industry. I spoke with a 29-year-old woman from the Philippines who moved to China, Alex. Alex left the Philippines to work as a surrogate in China telling me, *“I need the money for my family. And for my son.”* While working as a surrogate in China, however, there were very few protections in place to secure Alex’s interests and to guarantee her agency in the process. She was not able to choose the intended parents. Furthermore, during our conversation she hinted at the limited autonomy she had throughout her pregnancy. She said,

“They just let us go out and sometimes they bring us somewhere to roam around to have fun.... They just brought us to the mall and then just pick us up. Like, they just give us a few hours. And then after they will pick us [up] to go home. “

While Alex did not critique her conditions, it was a stark contrast to the experience of the American surrogates, I spoke with. The fact that she was consistently monitored throughout her pregnancy, was required to live in a dormitory with other surrogates and afforded limited freedom during her pregnancy, hints at the alarming possibility that routinized surrogacy could become deeply restrictive for surrogates and potentially result in the violation of their autonomy during pregnancy.

The capacity for reproductive tourism to be exploitative has been exemplified not only by excerpts from my conversation with Alex but by studies about how surrogacy is practiced in the

transnational market. For instance, the transnational surrogacy market in India has been heavily critiqued for its exploitation of economically vulnerable women. Ethnographers working at an Indian boarding house for surrogates reported the standardization of practices to recruit economically vulnerable and desperate women as surrogates for people living overseas (Saravanan, 2013). In my research, I found no instances of such exploitative practices and I recommend here that this data be used to elucidate meaningful policy considerations that mitigate exploitation in surrogacy arrangements. As I highlighted above, surrogates and intended parents operating within the United States I spoke with, generally reported having a positive experience. They credited existing legislation and judicial statues.

Protecting Surrogates: Recommendations from Lessons in the US Context

A key finding from my interviews is that agencies work with surrogates throughout the process to secure their agency and their interests. Shallan, a surrogate, provided an overview of her matching process:

“So, my agency matched us [her and the intended parents]. They take my profile and [look] at things I'm okay with [and] things I'm not okay with to match with parents that kind of feel the same. Some of those big things [like] termination is brought up. If you're okay with it, if you're not okay with it, they want to match you with parents that feel the same way. One of the stipulations for me was that I wanted the parents to have [their] embryos genetically tested, because I did not want to be faced with terminating a baby with Down syndrome because I don't think I could have done that.”

Shallan's description of how the matching process allowed her agency in determining the criteria for intended parents and to make stipulations that fit her needs and theirs, including what constitutes grounds for termination, forms the basis for my policy prescription. Intended parents, the consumers, can select a candidate for interview and after completion of the interview process, intended parents can choose their appropriate surrogate. Agencies, therefore, can facilitate a fair exchange of services. The agency, as Shallan and several interviewees brought up, also ensures that intended parents and surrogates can establish their priorities prior to entering an agreement.

Difficult to broach conversations, especially in instances where there are disparities in power between the surrogate and intended parents, like conditions in which a pregnancy should be terminated, are mediated by agencies.

Agencies require intended parents to provide a base fee as payment for their services and require proof of investment in an escrow fund to pay the surrogate. This means surrogates are assured of their compensation prior to starting the process. In some situations, agencies operate independently and allocate a fund to pay the surrogate as a proportion of the rate quoted to intended parents. Samuel told me about that experience saying: “...*and the surrogate process was all handled through the escrow. They knew the money was available. And I couldn't touch it once I gave them the money...it was a really good service.*” Samuel’s approval indicates that intended parents also benefit from agencies mediating transactions between them and their surrogate. With this arrangement, people deciding to become surrogates are guaranteed compensation. Furthermore, the system ensures surrogates are aware of how much they will be paid a priori, in fact during my interviews several women disclosed the agencies quote about how much pay they would receive.

I argue here that surrogacy agencies are a key component of ensuring that surrogates are protected from exploitation. I also posit that agencies should be endorsed in the marketplace for surrogacy because standardization of how surrogacy arrangements are made enables: 1) greater capacity for state and federal level regulation 2) competition that drives down prices for consumers in the marketplace until some equilibrium price is reached. ART, in the United States, has been referred to as the “Wild West” because of inadequate regulations (Hecht, 2001). There are currently no federal statutes for uniformly regulating surrogacy in the United States (Teman et al. 2021). The federal government needs to intervene to address the lack of regulation. A feasible

way of regulating surrogacy is to require registration with a national registry of agencies that are certified and routinely inspected or audited by federal officials. Furthermore, to address concerns that agencies could charge intended parents' unfair prices (Teman et al. 2021), there should be strict price ceilings on agency fees and price floors for surrogate compensation.

Additionally, surrogates and intended parents should be required to register with a surrogacy agency before proceeding with the contract, regardless of whether the surrogate and intended parents intend to pursue an altruistic agreement. In the event of altruism, a fixed fee, determined by the state should be paid to the agency, however, no additional costs should be incurred for services provided by the agency not utilized in the case of altruism such as matching. Agencies finances, hiring, legal and healthcare practices must be reported on annual re-certification documentation. Furthermore, I recommend all agencies be affiliated with attorneys, operating independently from the agency, to provide counsel to surrogates about any agreements they are considering. Surrogate consultations with attorneys should be confidential and not disclosed for billing purposes to the agency. This ensures that surrogates feel confident attorneys are providing the best legal advice about arrangements. It also prevents agencies from coercing attorneys into nudging surrogates towards agreements that benefit the agency at the expense of the surrogates mental or physical well-being.

Willy, speaking as a surrogacy attorney pointed to a common critique amongst interviewees about agencies: “... *it's very expensive when you see the price to work with an agency. It's shocking.*” Willy explains that using a surrogacy agency is more expensive than intended parents often anticipate; he points out that the expense creates barriers preventing less economically privileged people from accessing ART. Therefore, it is important to consider strategies to increase accessibility while advocating for agencies to become the organizing unit

of the market. To counteract monopolization, and consequently high prices, competition amongst agencies is required. Surrogacy agencies should be encouraged to provide a diverse range of services that cater to their clientele and to be creative, yet not deceptive, in marketing tactics. One indication that agencies are promising is the fact that consumers do have specific racial, ethnic, religious and creed preferences for their surrogate. Chloe, pointed out in my interview with her that Jewish surrogates were paid more because of high demand but low supply. Hence, there is room for specialization amongst agencies in this marketplace. The more agencies operating in the US, the more accessible ART becomes to consumers as the supply of available surrogates, I predict, would be higher, driving down prices. Furthermore, increasing commodification of ART limits the needs for intended parents to travel overseas to use surrogacy. To prevent foreign exploitation of individuals with uteruses, the federal government, should also require that all international agreements be registered with a licensed agency in the US. Without such certification, the intended parent's legal custody and citizenship of their foreign-born children should not be recognized without a formal adoption process. Under the proposed system intended parents retain the option of reproductive tourism, however, there would be statues in place to counteract exploration of foreign uteruses.

Securing Intended Parents Interests: Recommendations for the US Context

An additional consequence of inadequate regulations for ART in the United States is that there is heterogeneity in policies about custody in surrogacy arrangements. Whether or not the surrogate or intended parents are recognized as the child's legal parent(s) depends on where the baby is born. Custody was the chief policy concern addressed by the intended parents I spoke with during my interviews. For instance, in 2018, New Jersey Governor Phil Murphy signed the Gestational Carrier Agreement Act which reversed a statute from 1988 banning compensated surrogacy. The bill also stipulated that intended parents can request and be granted a pre-term

birth order, regardless of whether the contract is gestational or traditional. Pre-term birth orders are document recognizing the intended parents as the legal parents of the child prior to the surrogate giving birth. In practice, pre-birth orders mean that intended parents do not have to go through an adoption process to be formally declared the legal parents of a child. This is significant because without securing custody, the intended parents do not have the capability of making important medical decisions that could impact their baby's long-term health. Furthermore, intended parents are not able to make legal arrangements for childcare and guardianship if they were to become incapacitated and were unable to take care of the baby. The alternative process for securing parental rights is adoption which on average takes 18 months. The adoption process not only results in lost time for intended parents, but it also creates additional legal and financial burdens that intended parents (and surrogates) must circumvent.

The significance of policies allowing intended parents to circumvent adoption is evident from Rea's case. Rea undertook her surrogacy journey prior to the implementation of the Gestational Carrier Agreement Act in New Jersey. As previously discussed, not being recognized as the legal parent of the baby both during and after the birth had adverse psychosocial outcomes for Rea who felt like her claim to maternity was being denied by the state. Rea expressed relief about the policy change, however, several states including Michigan continue to limit access to pre-term birth orders and mandate an adoption process after the surrogate gives birth. In Michigan, it is also the case that surrogates are given a window of time after giving birth in which they can change their decision about whether to give the baby to the intended parents. Michigan's policy is one Ellie became aware of during her surrogacy journey; she advocated arduously to have policies preventing pre-term orders redacted and the remove the requirement

that intended parents adopt the baby that is legally recognize upon birth as the surrogate's. Her frustration about these policies is evident in her assessment of Michigan's policies:

“And so that was really frustrating because the laws haven't been looked at since 1988. It leaves your hands tied, because it leaves the opportunity for a judge to decide who the legal parents to the baby should be. And many, many times in Michigan, what happens is the judge will grant parental rights to the surrogate. And in default, the husband isn't married, which then causes the intended parents, me and my husband have to go through the entire adoption process to adopt own baby back.”

In this statement, Ellie critiques the policy. In her view, it places intended parents, like herself, in a difficult situation, because after the baby is born, custody is left to the discretion of judges' that perfunctorily grant custody to the surrogate based on existing statutes in the state. Intended parents are then forced to go through the adoption process. The uncertainty of whether their biogenetic connections will translate into custody places a significant burden on intended parents. Pre-term birth orders, specifically, ones that establish the intended parents' custody of the baby a priori helps ease this burden. Therefore, it is imperative that states revise their policies so that custody is allocated based on the intentions outlined in surrogacy contracts before the baby is born.

Suggested Future Direction for Research

ARTs have a broad range of social implications, however, the subject that sociologists have written extensively about is kinship. Throughout my analysis, I have alluded to my data's ability to elucidate surrogacy's complication of concepts such as motherhood, maternal identity, and gendered notions of parenting. I explicitly and concisely summarize these ideas by evoking the concept of the “motherhood mystique (Skott, 2016).” The “motherhood mystique” supposes that all women want to be mothers and that motherhood is the ultimate fulfillment of a woman's life. The theory predicts that women experience bouts of guilt about incompetence as mothers and feel as though motherhood should be central to their identity. A clear representation of the motherhood mystique was in Rea's statements locating femineity in the capacity to bear children

and parent. The notion that women strive to become mothers and view it as an accomplishment is complicated by the surrogates who expressed that their chief concern was being ‘stuck’ with the baby. Surrogates, after gestating were able to give the child to the intended parents. Several women voiced feeling little or no connection to the baby, some viewed the baby as a nephew, someone they wished the best for but, had not desire to care for extensively. The women, however, all provided a justification as to why they felt this way: they had no biogenetic connection to the child. The fact that women feel the desire to justify their choice to gestate and give up the baby demonstrates the continued salience of the motherhood mystique. It is precisely because of theories, like this, that position motherhood as an achievement for women, that surrogates experience guilt about their decision. As ART become more common, it becomes imperative that the nation re-evaluates what motherhood and maternal identity means. Not only are gendered notions of motherhood and maternity exclusive to non-binary and transgender individuals, but the framing of women as uniquely adapted to caretaking makes it possible for the public to shame women who choose to become surrogates. Furthermore, surrogates experience microaggressions in the form of accusatory questions about their ability to give the baby back to intended parents. To address these issues, it is imperative that further research is conducted to examine motherhood, maternity, and gender through new lenses in both legal and social contexts.

Appendix

Surrogates and Intended Parents Interviews

Pseudonym	Age	Identification	Gender
Chloe	36	surrogate	woman
Samuel	50	intended parent	man
Paula	36	surrogate	woman
Rea	45	intended parent	woman
Willy	44	intended parent	man
Sarah	40	surrogate	woman
Leah	32	intended parent	woman
Sophia	41	surrogate	woman
Ellie	35	intended parent	woman
Allie	37	surrogate	woman
Inese	37	surrogate	woman
Ariah	37	surrogate	woman
Charlie	36	surrogate	woman
Moraine	42	surrogate	woman
Shallan	27	surrogate	woman

Gay Identifying Intended Parents

Pseudonym	Age	Gender
Jon	47	man
Parker	51	man
Noah	38	man

Surrogate in China

Pseudonym	Age	Gender
Alex	29	woman

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