

Commercial Surrogacy: A Reply to Sara Lee

August 26, 2020



Alexandra Holmstrom-Smith replies to Sara Lee's "Commercial Surrogacy and Socialism from Below." This is the final entry in a debate that began in our Summer 2020 issue, sparked by Holmstrom-Smith's review of Sophie Lewis' recent book Full Surrogacy Now: Feminism Against Family (Verso, 2019).

In her reply, Sara accuses me of writing off the possibility of organizing workers in particularly precarious industries. However, in my piece I specifically stated, "Where workers are already doing a certain kind of commodified work - including commercial surrogacy — socialists should support their organizing for better wages and working conditions." I absolutely agree that leftists should support workers organizing in every industry, even-or perhaps especially-the most oppressive. What I have proposed is that when it comes to economic policy, the left should *oppose policies that will lead to job creation* in highly exploitative or otherwise undesirable industries. I don't think this should be a controversial position.

Sara also says that by denying the legal status of workers to commercial surrogates, we would preclude the "possibility of workers taking the lead and making themselves fit to rule." I agree with Sara that the path to liberation comes through workers' struggles. However, to say that keeping commercial surrogacy illegal is preventing commercial surrogates from taking the lead in the class struggle is like saying that prohibitions on child labor are preventing working class children from becoming the leaders in the proletarian struggle. Does anyone think that is a problem? The labor movement demanded laws against child labor because they wanted their kids to go to school. Working-class demands don't only come from just the workers on the shop floor, they also come from the experience of the working-class as a whole. Many of these demands are about gaining a better quality of life under capitalism, and this has often meant opposing the advance of commodification. My point is that the libertarian left should not abandon the working class in this struggle.

Sara says it's "absurd" that I think commercial surrogates shouldn't be able to enforce their contracts for wages. As I explained in my piece, contracts are usually enforceable by both parties or

by neither, so my argument was that making them unenforceable would prevent the greater harm of a surrogate losing custody of a child based on contract enforcement. I don't think this is an absurd thing to be concerned about. Beyond that, I think that industries which are as legally complex and expensive as surrogacy simply will not function without enforceable contracts. Thus, making contracts unenforceable means no surrogacy industry in the first place. In my own research I have not been able to find any evidence that underground black-market surrogacy is happening with any regularity in places like New York State, where up until this year it was illegal. Thus, the concern for surrogates with unenforceable contracts being stiffed on their wages is *purely hypothetical*, and I don't quite understand why Sara and others are so worried about it.

Moreover, as an argument for legalization, this is like proposing to legalize organ-selling because we are worried that people who try to sell their organs on the black market could get stiffed by buyers. This is obviously an absurdly libertarian solution to the hypothetical problem of people getting cheated by organ buyers. I think there are other legal solutions we could come up with to try to get compensation for people who have been harmed by an illegal transaction without legalizing and therefore encouraging those transactions.

Sara also argues that my proposal for the state to "foreclose certain avenues of making needed money" is oppressive and unlike other types of protective labor legislation. Yet an effective ban on organ selling is precisely an example of the state foreclosing an avenue for income. I don't think anyone on the left would argue that opening up legal markets in organs would be good for the working-class people who might seek to sell theirs. Sara may quibble with my use of the phrase 'self-exploit' but the point is that labor law is meant to put a floor on the level of exploitation present in the market, even if it means limiting the (false) choices of individual workers. These policies do not end exploitation, but they limit it, and that is what we are fighting for right now. Now, we can agree or disagree about whether surrogacy is so exploitative that it should be restricted in this way, but the left should never fall for the libertarian argument that the state has no right to make such restrictions.

Regarding how such policy decisions are made, Sara suggests that I am somehow promoting "socialism from above" by being against legalizing commercial surrogacy. Yet in New York State, it was the bourgeoisie, through its executive council the state, which successfully pushed for legalization. This should surprise no one, since the bourgeoisie are the consumers of commercial surrogacy services. If you put the question of legalizing commercial surrogacy to a vote of the working-class tomorrow, I suspect that a large proportion of them - perhaps a majority - would vote no. I think many people would worry that the uterus-havers in their lives might be harmed by taking up this type of work. In any case, I was never proposing that the left should engage in some kind of backroom politics "from above" to achieve a surrogacy ban - as if socialists had that access anyway! My proposal is that the left engage in educational campaigns, as Sara rightly emphasized is our role.

What would we say in such an educational campaign? Marxists, Black feminists and other theorists have articulated many reasons why commercial surrogacy is "not good for the world." Angela Davis worried that "poor women—especially poor women of color—might be transformed into a special caste of hired pregnancy carriers." She also argued that when employed in a patriarchal capitalist society, reproductive technology tended to put additional pressure upon women to try everything to become mothers and compounded the pain of infertility by promising that "motherhood lies just beyond the next technology." Dorothy Roberts argued that the fertility industry reflected and promoted racist values, by "proclaim[ing] the unmistakable message that white children merit the spending of billions of dollars toward their creation." The philosopher Elizabeth Anderson cautioned that "Commercial surrogacy substitutes market norms for some of the norms of parental love."

Feminists have rightly argued that norms of maternal love can be oppressive towards women, yet

replacing the norm of maternal love with a mercenary attitude towards children as resources to exploit is hardly an improvement. From a legal perspective, commercial surrogacy reifies money and genetics at the expense of the labor of pregnancy by making the “intended parent” and not the surrogate the legal parent. In practice, this tends to elevate the power of cis men (the main genetic “inputs” of surrogacy) vis a vis their children, as Katha Pollitt wrote, “What [an intended father] wanted...was not just a perfect baby...He wanted a perfect baby with his genes and a medically vetted mother who would get out of his life forever immediately after giving birth. That’s a tall order, and one no other class of father-natural, step-, adoptive-even claims to be entitled to. Why should the law bend itself into a pretzel to gratify it?” Why indeed.