

Commercial Surrogacy and Socialism from Below

August 22, 2020



Sara Lee continues a debate with Alexandra Holmstrom-Smith on commercial surrogacy started in our Summer 2020 issue, sparked by Holmstrom-Smith's review of Sophie Lewis' recent book Full Surrogacy Now: Feminism Against Family (Verso, 2019).

Some of Alex Holmstrom-Smith's criticisms of my reply were, I think, fair. I agree that one shouldn't 'flatten out' the distinctions between different types of work, and acknowledging these differences is an important part of organizing within a particular industry. In her original article, Alex had shed light on how commercial surrogates' ability to go on strike is limited because it would entail mass abortions. But the question that I had wanted to pursue in my article was whether or not commercial surrogates should be allowed to enforce their contracts of 'employment.' That they are able to enforce their contracts constitutes an acknowledgement of their entitlements as workers and would make it easier for them to organise as a class.

During the discussions within the DSA Socialist-Feminist Working Group on this issue, it was highlighted by comrades that bourgeois contract law upholds capitalist relations of production. I agree with this - I myself radicalized through the work of Soviet legal theorist Evgeny Pashukanis on "the legal form." Yet, readers of Pashukanis will know that it is not the juridical equality that exists under capitalism that is oppressive - it is the fact that this juridical equality masks substantive inequality. You can respond to this in either one of two ways: you can either work to overthrow substantive inequality or you can merely denounce juridical equality as "bourgeois law".

Juridical equality is unique to capitalism. It did not exist under feudalism, where classes were juridically unequal. Much has been written about the historical usefulness of capitalism in giving us juridical equality, and how juridical equality is potentially a seed of capitalism's own destruction by compelling workers to fight for actual equality. I won't rehash those arguments here. I simply find absurd the suggestion that commercial surrogates should not be allowed to enforce their contracts at law because of the bourgeois nature of contract law. Commercial surrogates' legal right to be paid for their labor is key to their status as workers and their ability to organize as workers.

At several points in both her articles, Alex drew parallels to another line of precarious work – Uber. It is well-known that Uber drivers are precarious workers because of Uber’s reluctance to acknowledge their drivers as their employees. Her answer to this problem is that the left should try to prevent Uber from setting up in cities where they have not already set up. Some go a step further than Alex: not only should we prevent Uber from setting up shop, we should also campaign for a Universal Basic Income to benefit those who would lose their jobs. I take a different approach to the Uber question: I think Uber drivers should collectively demand to be recognized as employees of Uber, so as to bring an end to their precarity. Efforts to organize Deliveroo riders in the UK have been successful, despite the fact that their employment and immigration statuses are often precarious. Even in Singapore, where the freedom of speech and the right to unionise is heavily restricted, food couriers find ways to collectively express their grievances and make collective demands. We cannot prematurely discount workers’ ability to organize just because the jobs that they do are particularly oppressive.

But Alex is right to draw parallels to the gig economy. The gig economy is a good example of how there is a tendency under capitalism for reproductive labour to be outsourced to the profit-making sector. Lise Vogel cites the growth of fast food, laundromats and fast fashion as examples of how reproductive labor in the household is removed to the profit-making sector. This creates new opportunities for capital accumulation. It also allows women – who traditionally perform reproductive labor – to undertake wage labor, creating even more surplus value for capital. It is not difficult to imagine that commercial surrogacy is yet another instance of reproductive labor being outsourced to the sphere of capitalist production. Alex suggests that the way for socialists to stem this never-ending drive for capital accumulation is to stop businesses from breaking into certain markets and industries. The left should resist ‘commodification’ – it should resist the setting up of a market for commercial surrogates as well as the setting up of Uber. Does this approach really help to stem the sustained drive – the attrition – of capitalist accumulation?

It is striking to me that the words ‘short of a revolution’ or “short of overthrowing capitalism” appear three or four times in Alex’s article. In response to my point that commercial surrogacy already exists in the Global South, Alex argues that we should work “with workers in the Global South to improve their working conditions until similar regulations can be effectively implemented there (or until the revolution).” This bears a striking similarity to the time Kautsky famously wrote “we can quite safely leave the solution of the problems of the proletarian dictatorship of the future.” Kautsky himself lived in fear of that proletarian revolution, trying as hard as he could “to fight for a government willing to meet the proletariat halfway,” as Lenin put it. Alex shows herself to be sympathetic to this tendency when she writes “I think most on the left believe we should also take positions on state policies. For example, from 1992 up until this year, New York had a statute that directed courts not to enforce surrogacy contracts. As socialists, are we happy that this statute was repealed or not?” What a way of framing the issue! It limits us to the paucity of choices that the bourgeois state gives us. That is something we are seeing too much of now, with leftist apologists for Biden/Harris “trailing in the wake of the bourgeoisie.”

Of course socialists take a stand on government laws and policies. But we do this with a view to educating, agitating and organizing the working class. We want workers to be the ones fighting for or against those laws and policies. In the process of winning concessions from the bourgeois state, we want the working class to gain confidence in their collective power. Ultimately, we want workers to smash the bourgeois state and to replace it with their own state. Yet, the possibility of workers taking the lead and making themselves fit to rule, is precluded when one argues that workers shouldn’t even be allowed to do the work that they do.

I reject Alex’s suggestion that I am touting some version of the right-wing “right to work.” The ‘right to work’ narrative is used to deflect working-class demands for greater social welfare, whereas I

seek to broaden these demands to include precarious workers such as commercial surrogates. Alex suggests that commercial surrogates should not even be able to assert their juridical equality, let alone their substantive equality. She also argues that minimum wage laws are an example of how legal limits on the freedom of contract are good for the working class. There is a difference, however, between the state positively affirming workers' rights to a living wage and the state merely "foreclosing a particular avenue of work." Alex argues for the need to "foreclose people's options to self-exploit." I doubt that 'self-exploitation' is the way a socialist would talk about sex work, commercial surrogacy or any kind of wage labor. The sex worker does not "self-exploit." The commercial surrogate does not 'self-exploit'. Workers in general do not 'self-exploit.' Workers are exploited by capitalism, and their exploitation is not resolved by foreclosing a "particular avenue of...making needed money."

Much of Alex's argument is about 'eliminating a certain industry that we agree is not good for the world.' She argues that the left opposes the creation of less desirable jobs - such as jobs in fossil fuels industries. The left, she says, campaigns for socially useful production. I'm not sure why commercial surrogacy is necessarily "not good for the world." But perhaps the more important question is: who determines what is good for the world and what isn't? The workers do. In campaigning for a Green New Deal, we demand that the working class - who bear the brunt of climate change - should have control over what is produced, how it is produced and how much to produce. We can only achieve socially useful production through democratic control by the working class. This is because we know that the decisions made by the working class will be more rational than those made by the infinite logic of profit.

"The surrogacy industry has always relied upon and promoted a culturally white, heteronormative, patriarchal, Neo-Eugenicist, genetically defined concept of family that is inimical to the inclusive, caring society that socialist feminism seeks to create." What Alex neglects to mention is that this inclusive and caring world cannot be legislated into existence, least of all by the bourgeois state. Maybe it is true that commercial surrogacy is "not good for the world," maybe it isn't - in any case, that is not a question for a handful of parliamentarians in the New York state legislature to decide. It is bizarre to me that some in this debate have denigrated the oppressiveness of the bourgeois legal form while simultaneously looking to 'state policies' to reorganize society from above.