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List of abbreviations

AI(D) – artificial insemination by a sperm donor
ART – assisted reproductive technologies
ICSI – Intra-cytoplasmic sperm injection
IVF – “In vitro” fertilization
PGD – pre-implantation diagnostics
RF – the Russian Federation
WPR – “What is the Problem Represented to Be?” approach

Note on translation

All translation of Russian sources is mine, including titles of legal acts and documents. Names and bibliography in Russian are transliterated from Cyrillic without diacritical marks.
Preface

Ten years back a potential, yet inevitable, future of getting a child was an undoubted destination to arrive at in my 30s. These, obviously assisted, projections pictured me in a company of a young handsome male partner and two cute blond children. The moment was flooded with light and happiness… akin to the cornflakes advertisement. Yet, the ways of arriving to that promising must-point were gloomy… I saw no ways, actually. I had a female partner. This, however, didn’t hamper our normative heterosexual dreams.

The possibilities horizon was considerably widened with my arrival to Norway. Despite of my cornflakes-projections I was surprised to know how little (well, just a huge sum of money) it takes to try ART. In the beginning I was quite suspicious about the level of freedom I was provided with in respect to my reproductive plans. It was enough just to say I was gay and I wanted a baby to my ART consultant at the clinic in Denmark! My intentions were treated with respect and understanding. Why would I be surprised?!

Even though my AI trials have been not successful so far, access to ART has to some extend cured my inferiority complex. I do not hallucinate that way any more…at least, while staying in Norway.
I. Introduction

This study sets ART in the context of the contemporary policy-making in Russia. It seeks to trace the ways of inscribing that or another norm into the legal code and fathom the work of this norm within the social context of nowadays Russia.

My engagement with this issue was provoked by the article on the web forum devoted to ART in Russia (Lebedev 2014). The article described its author’s participation in the round-table at the parliamentary level devoted to surrogacy regulation. Besides the precarious decisions taken as a result of this meeting, there was something else, something grievous about the arguments provided and the process itself. It tacitly said something beyond the problem of surrogacy in Russia. This meeting was, in a way, representative of the family policy-making in the recent years.

I’ve set a goal of exploring these productive and representative silences and logical short-cuts the policy-makers operated with on the case of this round-table and the problem it aimed to solve. Namely, the problem of surrogacy in Russia, though it turned out that the whole ART regulation was meant to change.

The most suitable analytical framework for such an exploration is, I believe, the “What is the Problem Represented to Be?” approach by Carol Bacchi (Bacchi 2009). So, the whole study is subjected to the scheme she proposed.

Part II of this work is devoted to carving the research question, theoretical foundations and methodological guidelines for the research. Apart from my personal predisposition to foucauldian theorizing, the epistemological point of departure had to be suitable for the WPR scheme. Luckily, the governmentality analytics and the concept of biopolitics developed by Foucault provided a helpful and an effective means for mapping out the legislative context, as well as gave some insights on legislation as such.

The first chapter situates analysis within the theoretical context, clarifying my epistemological position regarding governmentality, biopolitics, law and gender in this research and also justifying my choice of this conceptual apparatus. The literature overview serves to locate this study within the academic field, establishing connections to the existing corps of literature, which inspired and supported my research.
Chapter 2, methodological concerns, describes the WPR scheme and the Bacchi’s guidelines for the analysis in detail, pointing at possible drawbacks of the approach. The chapter also provides the data overview, which my analysis builds on. In addition, I ponder upon ethical issues underpinning my position regarding the study.

Parts III, IV are operationalizations of Bacchi’s analytical model on two levels. While part III aims at answering the second and the third questions of the WPR scheme, providing biopolitical context of the suggested representation of surrogacy and ART “problem”, part IV is subjecting the main document, the Recommendations of the round-table, to the whole set of WPR questions. So, basically, analysis starts from the part III – grounding the context – not only because the WPR model requires it to be a part of the analysis (questions 2 and 3), but also because contextualization is an analytical task itself.

Since the WPR model requires making cross-national comparisons and providing a possible alternative representation of the “problem”, part IV also includes sub-chapters on comparison and on the “problem” representation that challenges the one imbedded in the document.

Part V summarizes results of the WPR analysis.

I hope this study will provide some valuable insights on the legislative process and its underpinnings in the sphere of family policy and reproduction in the nowadays Russia.
II. Theory and Method

1. Research question

The aim of this study is to look at how need for the change regarding assisted reproductive technologies and surrogacy regulation is argued for, how the “problem” is being allocated and the legislative intervention justified; and what kind of practices are rendered normative by insisting on some representations of the “problem” within the framework of contemporary legislative initiatives in the sphere of assisted reproduction and surrogacy in Russia.

To answer the questions I need to pursue an analysis of the existing “problem” representation. This is possible by situating it in the context of the contemporary biopolitical project of the Russian state. Thus biopolitics and therefore governmentality analytics, which hosts the concept of biopolitics, have to be explored.

2. Theoretical part

Governmentality analytics

This research is theoretically anchored in foucauldian concepts of governmentality and biopolitics which provide a general epistemological context for the study. In this part I suggest a detailed overview of the concepts.

In his course of lectures “Security, Territory, Population, 1977 – 78” Michel Foucault defines governmentality in a threefold manner:

1. “The ensemble formed by institutions, procedures, analysis and reflections, calculations, and tactics that allow the exercise of this very specific, albeit, very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument;

2. The tendency, the line of force, that for a long time and throughout the West, has constantly led towards the pre-eminence over all other types of power – sovereignty,

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1 I use inverted comas to highlight that I mean a specific configuration of a “problem”, one of many potentially possible.
discipline, and so on – of the type of power that we can call “government” and which has led to the development of a series of specific governmental apparatuses on the one hand, and on the other, to the development of a series of knowledges;

3. The result of the process by which the state of justice of the Middle Ages became the administrative state in the 15th and 16th centuries and was gradually “governmentalized”.

(Foucault 2007, 108 – 109)

Historically, or rather genealogically, the “government” as Foucault defines it takes shape sometime from the end of the XVth throughout XVIIIth centuries in the West.

This type of the state, the configuration of power relations, henceforth co-exists with its predecessor sovereignty which rests upon apparatus (dispositif) of security and discipline. It’s due to further development of the former that the government comes into being: along with the binary code of the law (to permit – to prohibit) and the discipline, security coins new perceptions of the state.

Foucault describes how the new knowledge evolves and that it becomes of a major concern to the ruler (or governor). This knowledge includes: circulation, milieu, statistics and population, which co-constitute each other along with what comes to be called political economy.

All in all, the government in foucauldian sense is an art of governing which bears on the emerging knowledge-power complex called population, employs economic language as an instrument (from mercantilism to political economy), is built on the accounts of apparatuses of security and functions through the apparatus of police and military-diplomatic apparatus within the open political and economical context of competition between states with the aim of maintaining (expansion of) itself in a world of indefinite historicity (Foucault 2007).

How will this perspective be utilized in this study? Well, it provides a general epistemological context where the state is seen through the reflexive prism rather that taken for granted in an essentialist manner – what I call the governmentality analytics. As Foucault
suggests, I assume that the state does not exist *per se* (which doesn’t mean it is not a thing), I undertake a “shift to the outside” in order to describe the technology of power.\(^1\)

Thus in my project the state becomes “…the principle of intelligibility of what is, but equally of what must be; one understands what the state is in order to be more successful in making it exist in reality. The state is the principle of intelligibility and strategic objective that frames the governmental reason that is called, precisely, *raison d’État*” (ibid, 287).

In my attempt to comprehend the Russian state I perform the double analytical move: I perceive it as the logics of the existing rule, shaped by its genealogy, and as the goal this rule strives to achieve. This work therefore will hardly be finished as the goal of the government is to maintain itself through the constant reiteration of this goal. So, nowadays Russia is not only a product of the “historical heritage” being amplified in the nowadays power relations, but also the constant proclamation of the ever changing image it has to achieve.

Apart from that, my epistemological context is *pro tanto* influenced by the conceptual apparatus developed by Michel Foucault: most notably, his concepts of power and knowledge that inform concepts of population and statistics, science and subjectivity. Furthermore, Foucault develops a concept of biopolitics which is extensively used in this paper in order to delineate the scope of governmental interventions I considered to be relevant.

**Biopolitics**


As Foucault points out in the period from XVI to XVIII centuries the European political thought of that time perceived the states as existing in the open political and

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1 This is an analytical strategy described by Foucault in his course of lectures “Security, Territory, Population, 1977 – 78.” It also was utilized in his previous genealogical analysis of madness and punishment – see Foucault 2007, p.177;

2 In this course of lectures Foucault never arrived to the actual “birth of biopolitics”. Most of the lectures were devoted to liberalism, which became an only possible “bedrock” for emergence of biopolitics. Actually, as Foucault confessed, the whole course revolved around issues which supposed to be only an introduction to the course.
economical space in the condition of competition with each other\textsuperscript{1}. The question of forces for expansion and growth of the state became linked to the one of the internal order which was meant to ensure production of material goods for the trade. This internal order, the splendor of the state, was, in turn, concerned with the felicity of the population. So, it was not only about people living, but about more people living well.

Therefore the well-being was an indispensable part of the emerging discourse on freedom, the freedom for self-regulation given that the population was perceived as a natural phenomenon (along with the self-regulating market). The well-being was guarded by the apparatuses of police as \textit{coupes de d’État}\textsuperscript{2}.

The well-being of the people, the splendor of the state and its expansion would thus amount to a proper management of the people in all their totality. This involved avoiding depopulation and seditions which could be respectively transferred into control over bodies and opinions\textsuperscript{3}.

Here “emergence” of population plays a crucial role. Population is not people inhabiting a territory, nor is it composed of individuals or legal subjects. Population, in foucauldian sense, is an epistemological reality which was made intelligible through development of knowledge (statistics, demography, epidemiology) and composed of measures, proportions and norms.

Thus, being a derivative of the population, biopolitics\textsuperscript{4} was not associated with life as something essential and universal embodied in an individual. Instead, it concerned with birth and mortality rates, norms, diseases, average longevity and so forth provided by statistics – the measurable and objective science which was meant to become independent evidence to justify regulatory intervention of the government.

\textsuperscript{1} Instead of rivalry as during the sovereignty period;
\textsuperscript{2} A complex concept that Foucault introduces when talking about exceptional measures of \textit{raison d’État} protecting itself;
\textsuperscript{3} I’m reflexive about Cartesian dualism here. When Foucault mentions “opinions” in regard to the notion of population he deciphers: “…ways of doing things, forms of behavior, customs, fears, prejudices, and requirements; it is what one gets a hold on through education, campaigns, and convictions” (Foucault 2007, 75). He divides between “the species and the public”, biological rootedness and, I would say, political;
\textsuperscript{4} As T. Lemke suggests, Foucault was not the first one to bring together “life” and “politics”, but he was the one to break with naturalist and politicist interpretations of biopolitics. Nevertheless Lemke mentions that Foucault was not consistent in his use of the term. It also seems that he used terms “biopower”, “bio-power” and “biopolitics” interchangeably. The concept of “biopolitics” has been further theorized by Giorgio Agamben, Michael Hardt and Antonio Negri, Agnes Heller and Ferenc Fehér, Antony Giddens, Didier Fassin and many others (see Lemke 2011). Needless to say, the concept has been paramount for numerous researches;
Power over life concentrated in two basic forms:

1. The one centered on the body as a machine (optimization of its capabilities, extortion of its forces, increase of its usefulness and docility), which was ensured by the procedures of power characterizing the disciplines: *anatomopolitics of the human body*.

2. The other formed a focus on a species body, the body imbued with the mechanics of life and serving as the bases of biological processes (revealed through statistics and demography) their supervision was effected through an entire series interventions and regulatory controls: *a biopolitics of the population*. (Foucault 1978, 139).

Thus we see that the power over life effectively tackles both the problem of bodies and the problem of opinions.

Additionally, biopolitics is conceptualized through its relation to sexuality (Foucault 1978). Foucault describes how a process of life becomes an axis for power application in form of administrating and protecting biological existence of population, race and species. With the rise of knowledge this management of life happens through normalization: where norm is a statistical average. Gradually what is right is substituted by what is normal. This was incorporated in the judicial system resulting in “normalizing society”.

In this context sexuality, which, as Foucault points out, produces effects both on an individual bodily level and on a level of population, becomes a matter of meticulous control, regulation, normalization and normation¹.

Another dimension of biopolitics, revealed by Foucault in the course of lectures “Society Must Be Defended”, is the state racism – a discourse of the permanent need for purification of the state from internal threats to the norm and obedience to maintain it homogeneous and monist (Foucault 2003, 61 – 62).

Thus foucauldian biopolitics turns out to be a very multifaceted concept: it appears anew and reveals its new effects and dimensions in different works and lectures by Foucault.

¹ Foucault uses this term to describe the effect of disciplinary power – to posit a model which is constructed to obtain certain results with the reference to multiplicity (Foucault 2007);
(see Dean 1999). In this study I use the concept in relation to the governmental incentives directed to regulate reproduction (and therefore sexuality and family).

The governmentality analytics, as I call my epistemological context informed by the works of Michel Foucault, gives new perspectives to the social policy analysis (Dean 1999, Lewis, Gewirtz and Clarke 2000, Martson and McDonald 2006, Inda and Xavier 2005, Rose and Miller 2008). These perspectives relocate the state within relationship of power and trace technologies of citizenry formation through diverse policies that create subjects to be governed.

“What is the problem represented to be?” by Carol Bacchi (Bacchi 2009) is a work providing the analytical tool for this study. It is situated within governmentality analytics and operates by a range of Foucault’s concepts. Bacchi contends that her analytical model derives from foucauldian theorizing about the government, power, knowledge and discourse. However, her understanding of policy–government relation differs from the one of Foucault. She suggests, contrary to Foucault, that some exogenous conditions do not spark the government to tackle the issue, but rather the very idea of policy becomes the one of shaping the problem in order to address it (Bacchi 2009, 265).

Gender

A sexual intercourse between a male and a female can lead to reproduction. Even this untroubled pathway suggests that the concepts of gender, sexuality and reproduction are interconnected. All of them seem to loop around the nature – culture divide and depend on the way the subject and desire are theorized.

The nature – culture dichotomy of sex and gender articulated by the means of the physiological dimorphism (read biology, nature) and the “socially constructed” gender roles (West and Zimmerman 1987) is destabilized in the work of a historian Thomas Laqueur (1990).

Laqueur argues that the two sexes, as we know them (in the West), were literally invented during the period of Enlightenment. Since then the new naturalistic explanations (the ones of difference) justified the social status of women. As Laqueur states, the hierarchical (from male to female) became incommensurable (male opposite to female): “the battleground of gender roles shifted to nature, to biological sex” (Laqueur 1990, 152), thus
proclaiming the emergence of biological determinism in all-around debates. In this respect the scientific language of reproductive physiology became instrumental in providing a wide range of means to describe (and thus legitimate) the sex difference.

Placing western perceptions on sexes (gender) in the historical context Laqueur shows that before XVIIIth century “sex, or the body, must be understood as the epiphenomenon, while gender…was primary or “real” (Laqueur 1990, 8). There could be multiple genders but only one sex: female as inverted male. After Enlightenment the female was positioned as an opposite sex. By this transition Laqueur claims that biology (as a science and as its object) was adjusted to “cultural needs”. From the XVIIIth century it became more “culturally” appropriate for the female to find herself within the “purity” and “restraint” context, so that she was distanced from her sexuality by naturalizing the absence of orgasm.

As Merete Lie shows in her article (2009) the picture of sex differences being theorized within the nature – culture divide got more complicated with the rise of biotechnologies (hormones and, later, genes became a new vocation for the biological sex; reproduction gets more and more associated with the meeting of two gametes).

Biology (as a science and its object) often appears to be a foreground of gender, which, in turn, is understood as a social construct. This conceptualization inculcates an idea that gender is superficial in relation to the biologically predetermined sex. Nowadays academic understanding of gender suggests another scenario.

Judith Butler, one of the most cited theorists within the gender-related studies, combines performative theory with Hegel’s philosophy and produces a new vision of gender – as a performative practice. In her influential work “Gender Trouble” (1990) Butler shows how citation calls (gendered) subjects into being, but this citation creates an illusion that a (gendered) subject pre-exists its naming. Butler claims that there is no sex prior to gender – not in a sense that the material does not exist before the language, but in a sense that sex does not exist before it is invoked in language, therefore sex is always gender.

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1 Language and the way it operates is at the core of Butler’s method. However, Butler’s performative theory differs from the one of Austin and Derrida. Adopting speech-act theory she proclaims language to be intrinsic to the material existence by forming (gendered) subjects. Calling into being is a performative discursive practice. As Loizidou suggests, Butler inverts un-material and un-discursive theory of Derrida (Loizidou 2007, 35). For the discussion see Loizidou (2007) and Sedgwick (2003).
“Performativity must be understood… as the reiterative and citational practice by which discourse produces the effects it names. …regulatory norms of sex work in a performative fashion to constitute the materiality of bodies and more specifically, to materialize the body’s sex, to materialize sexual difference in the service of consolidation of the heterosexual imperative.”

(Butler 1993, 2)

A gender is intelligible only if it supports the heterosexual matrix, otherwise it constitutes an abject – something that is outside the intelligible and therefore can not be called into existence by naming. Abject is deemed to have no agency, to be non-existent. Butler utilizes Foucauldian genealogical analysis to critically approach formation of gender subjectivity.

Sexuality, as suggested by Foucault, appeared as a dimension of the biopolitical project aiming at regulating life and creating docile subjects, which led to normalizing society. Sexuality, Foucault claims, plays its normalizing role both on the level of the body and on the level of population. Evidently, reproduction of population, enabling sustainable functioning of the state, became the foci of biopolitics. Thus regulation of reproduction (and therefore sexuality) is at the core of governmentality.

ART seem to challenge conventional perceptions on reproduction, sexuality, gender and, not least, kinship (Franklin 1998, Thompson 2005, Spilker 2008). Even though ART is a technology that aims at life (at giving birth to the new citizens), it shakes the grounds of the whole system of governmentality, the settled system of power technologies, knowledge, institutions and rules targeted on sexuality. Therefore ART requires regulation (read limitation and control).

As Yuval-Davis (2008) argues, gender plays a crucial role in construction of a nation\(^1\). She suggests that the national biopolitical projects are tightly connected to the cultural and the biological, as she calls it, reproduction of citizens. Following her, female bodies are usually the subjects that are mostly targeted by the policies dealing with this two-fold reproduction process. She, then, develops a typology for these policies\(^2\), ascribing the

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\(^1\) She distinguishes between the nation, nationalism, nationalist project, state, belonging and citizenship;

\(^2\) This typology includes: people as power (birthrate stimulation), eugenicist discourse (based on incentives to “breed” population) and the Malthusian discourse (incentives to reduce birthrate). These three diverge,
Russian state to the “People as Power” type with its pronatalist inclinations. Valerie Sperling (2015), who has undertaken a feminist study of Russian politics from a gender perspective, demonstrates how gender is employed as a strategy to legitimate (or contest) power. She has analyzed “machismo” and “topping” as it has been strategically utilized by Putin in his image-making campaign. Sperling demonstrates how, within the patriarchal order that sustains itself, notion of femininity and homophobia are used as de-legitimating strategies, and how these gender norms and stereotypes, being readily available and widely recognized, are incorporated in the national idea.

The Law

In this sub-chapter I want to give some theoretical insights on legislation and the law. These insights stem from the governmentality analytics and are influenced by Butler’s theorizing.

It is important to note that the law in foucauldian sense is tightly connected to the norm. The norm in this context refers to a statistical average which becomes a role model (what is normal) and is gradually substituted by what is right1. As Foucault suggests, there is normativity intrinsic to any legal imperative: the function of the law is to codify the norm. Thus techniques of normalization develop from a system of law (Foucault 2007).

However, the juridical code is not the only vocation of the norm. Discipline operates through normation within the cultural and the social body. However, as Butler proposes, subjects have potential for resistance. Therefore the norm is not static and might be reshaped.

While disciplinary power aims at what has to be done, the legal code is based on the negative thought: it imagines the negative in order to prevent it. “In the system of the law, what is undetermined is what is permitted; in the system of disciplinary regulation, what is determined is what one must do, and consequently everything else, being undetermined, is prohibited.” (Foucault 2007, 46). Order is what remains when everything that has to be prevented is prohibited.

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1 According to her, in the way a state treats reproduction. Being analytically suspicious to classifications, I don not claim that this typology covers the whole range of complexity around reproduction in Russia. I introduce this point to actualize the connection between gender and the state.

1 This process takes place within sovereignty – governmentality transition. Normalization should not be confused with what Foucault calls normation – the effect of the disciplinary power which involves positing a model that is constructed in terms of certain results.
Sovereignty vs government appears as obedience to the law vs employing laws as tactics, arranging things so that this or that end might be achieved through a certain number of means (Foucault 2007, 98). In this respect legal regulation of assisted reproduction is seen as a set of tactics to achieve certain ends in regard to managing the population and the life.

Judith Butler was inspired by foucauldian theorizing\(^1\). She approaches the legal code with a question whether it can serve as a means for more livable and viable lives and a site of resistance (Loizidou 2007). In her work Precarious Life: The Powers of Mourning and Violence (2004) Butler exemplifies how governmentality performatively brings sovereignty into being in the moments of the law withdrawal\(^2\). In so doing she combines her performatory speech act theory with foucauldian philosophy. She analyses speech acts that invoke the power of law to legitimize some actions though these speech acts are not themselves grounded in the law.

This analytical strategy gives an additional dimension to my analysis since I am dealing with the legal code in the sphere of assisted reproduction in Russia in the process of its shaping and lobbying through, obviously, speech acts.

**Literature overview**

The question of legislative regulation of assisted reproduction in Russia has gained some interest from the field of legal studies. There is a number of works devoted to this matter. So, Samoilova (2012) and Sergeev and Pavlova (2006) explore legislative caveats of the existing ART laws from the point of family legislation, Konnov and Gracheva (2013) focus their analysis on the question of how Russian legislation fits into the judgments of the European Court on Human Rights, Svitnev (2010, 2012) evokes the “right for maternity” as a focal point for his analysis of the ART legislation in Russia as well as Chikin (2008) and Pavlova (2007) do. Sokolova and Mulenko (2013) identify negative and positive points of the legislative provisions in the sphere of ART in their article. Romanovsky (2010) explores the legal intersections between demographic policy and ART. Legal study of sex-change in Russia by Palkina (2010) and Kirichenko (2012) contributes to a wider understanding of today’s biopolitical perspective of the Russian state. I also want to mention a note by

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\(^1\) For the criticism of her usage of foucauldian concepts of sovereignty and governmentality see Loizidou 2007.

\(^2\) On the case of Guantanomo detainees in the aftermath of 9/11.
Havansky (2013) regarding possible interpretations of the “Propaganda Law”. These works are rather essentialist in respect to the question of gender. They do not take into account issues of discourse production and meaning making. Some of them refer to inactive legislation. However, they helped me to navigate within the past and present legal acts in the sphere.

There are few works contemplating ART from a more cultural perspective. A volume “Making Bodies, Persons and Families” (2000) consists of such articles. An article by Brednikova, Nartova and Tkach (2009) is devoted to the legislative overview, which is a bit outdated in terms of legislation. Their articles in the same volume focus on the reverberations of ART in the Russian media. De Jong and Schmidt study a theoretical question of “normalization” in relation to ART. One more work by Brednikova and Nartova (2007) investigates discriminatory discourses that emerge in regard to ART application in Russia.


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1 Federal Law № 135 “On protection of children from information causing harm to their health and development” which subjects “propaganda of untraditional sexual relations” to administrative liability;
I also want to mention an article by Chernova and Shpakovskaya (2010) exploring discursive prescriptions in the official documents dealing with the family policy, a work by Gurko (2008) researching on the contemporary family policy in respect to “young parents”, an essay by Yarskaya-Smirnova (2010) on family policy in Russia and an article by Rozenholm and Savkina (2011) tackling the issue of nationalism in the rhetoric of contemporary policy-making. Studies by Turbine and Riach (2012) as well as by Kozina and Zhidkova (2006) expose gender discrimination in nowadays Russia. Latest publication of Valerie Sperling (2015) explores today’s Russian political life, policies and strategies that explicitly and implicitly incorporate gender. At last, I refer to the written statement by the Heinrich Boell Foundation (2012) in questions regarding legislative restriction of reproductive rights. This feminist literature provided some vectors of critique of the contemporary policy in the sphere of reproduction and family and grounded the context for critical interrogations of the “problem” representation.

Apart from these works, studies of Stella (2014) and Baer (2009) on the queer identity in post-soviet Russia has considerably contributed to the discussion about the biopolitical project of the state. Funk (2004) expresses some skepticism about applying liberal feminist claims to the Russian social reality. Critical perspective on the queer theory in the context of “Eastern Europe” is discussed in the volume edited by Mesquita, Wiedlack and Lasthofer (2012) with especially relevant article of Kulpa, Mizielinska and Stasinska. An article by Wiedlack and Neufeld (2014), inspired by the ones mentioned above, criticizes western interpretations of the Russian feminist activism. In regard to the Russian feminist activism I want to mention a comprehensive study by Turbine (2015).

Foucault is the main theorist in this study. Therefore works of Colas, Etkind and Yangulova (same volume, 2002) and Plamper (2002) were very helpful as well as analysis by Prozorov (2014). They focused on the way foucauldian analysis could be applied to theorize the Russian state in its different periods. Inda (2005) and especially Lemke (2011) provided an extensive interpretation of foucauldian concepts. Lemke (2011) focused on biopolitics and the way it was conceptualized and reconceptualized before and after Foucault. The concept of governmentality and the governmentality logics inform studies of Dean (1999), Rose and Miller (2008), a volume edited by Lewis, Gewirtz and Clarke (2000), and a volume edited by Inda (2005). Not explicitly building on foucauldian concepts Yuval-Davis (2008) incorporates a gender dimension in her comparative analysis of biopolitics.
Assisted reproduction and its effects on the systems of kinship were explored by the well-known anthropological work of Franklin (1998) and an ethnographical study by Thompson (2005).


No doubts, my research is to a great extend inspired by the works of the Norwegian academia. Some of these studies explore Norwegian biopolitical project: Melby (2007 and 2009), Annfelt (2007), Leira (1992). Other works relate to the assisted reproductive technologies: Lie (2002 and 2009), Spilker (2008), Spilker and Lie (2007), Conradi (2013) and the legislative study of Melhuus (2012).


2. Method

WPR questions

The aim of the “What is the problem represented to be” approach by Carol Bacchi is to interrogate a problematization of a social issue by policy-makers who legitimate a legislative intervention via this problematization. In this perspective the government has no other option, but to bring “problems” into existence, it is deemed to problematize in order to govern. “Problematization is the totality of discursive and non-discursive practices that introduces something into the play of true and false and constitutes it as an object of thought (whether in a form of moral reflection, scientific knowledge or political analysis)” (Bacchi
The analysis is geared to distance us from the authority of problem representations judged by the policy-makers to have harmful effects, opening them up for critical interrogation and to strategic interventions.

Bacchi suggests to tease out the “problem” representation by subjecting prescriptive texts or, as Bacchi interchangeably calls them, practical texts (legislative initiatives, laws, recommendations, etc.) to 6 questions:

1. What is the problem represented to be?
2. What presuppositions underline this representation of the “problem”? 
3. How has this representation of the “problem” come about?
4. What is left unproblematic? Can the “problem” be thought about differently?
5. What effects are produced by this representation of the “problem”? 
6. How and where is this representation of the “problem” produced, disseminated and defended?

Bacchi provides some guidelines to the questions:

Question 1 gives a starting point to the analysis. The answer to the first question (Q1\(^1\)) logically derives from the way a prescriptive text is formulated – it is something the policy-makers are aiming to change. For example, in this study, one point of the prescriptive text is formulated as “Limit application of ART to married couples”. Then, answering Q1, the problem implicated in the text is unlimited access to ART.

Answering Q2 requires looking at what meanings must be in place to make this “problem” representation intelligible by analyzing categories (“married couples”, “single women”, etc.) hierarchies (fertility – infertility) and key concepts (“family”) used in the prescriptive text. The intention of Q2 is to analyze, as Bacchi puts it, the “deep-seated cultural values” akin to foucauldian concept of “archive” (Bacchi 2009, 5).

To answer Q3 one has to look “back” in time to recover the wider system of practices out of which the problematization emerged. As Bacchi points out, this question might be

\(^1\) I’ll use integrated form of analysis (Bacchi 2009, 155) and use notations Q1, Q2, etc. when I refer to a WPR question;
linked to what Foucault calls genealogical analysis. It also requires analysis of the way
statistics is employed in support for a concrete problem representation. In this study I will try
to map out biopolitics of the Russian state (from the soviet period until today) concerning
reproduction.

Q4 is aimed at discovering weaknesses of the “problem” representation and the
alternative ways of seeing it which invites for cross-national comparison. I will point to the
silences of the given problematization and anticipate how the “problem” could have been
seen otherwise basing on examples from past and present.

Q5 concentrates on the effects produced by the given “problem” representation.
Bacchi divides between discursive, subjectifying and lived effects. Applying this question to
the case of the paper, I will try to formulate how the problem representation informs the
nowadays social context of Russia (in other words what is being henceforth designated to the
area of the taken-for-granted by prioritizing the given problem representation), how it creates
subjects to be governed and how it effects people’s lives.

And, finally, Q 6 seeks to explore means through which a particular problem
representation reaches its audience and claims legitimacy (Bacchi 2009, 19). That is to
answer this question I will describe the process of lobbying particular recommendations to
introduce changes in the nowadays legislation in the sphere of ART in Russia. This concerns
procedure, settings of the incentive and status of the documents that propose change. This
question is addressed in the data section, in the sub-chapter “Bacchi and the policy areas” and
in “Here comes the round-table”.

My intention is to pose the questions to the prescriptive text and to the arguments
used by the policy-makers in favor of the legislative intervention.

No doubts, the WPR approach is a valuable method allowing for destabilization and
rearticulation of the most normative field of human practice – the legislation. I use Bacchi’s

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1 However, I suppose that undertaking genealogical (Question 3) or archaeological analysis (Question 2) is a too
ambitious project for this study. Therefore I am not using these complex concepts of power-knowledge
formation and I am not claiming to undertake these kinds of analysis;
2 Even though I operate by the foucauldian concept of “discourse” as well as Bacchi does, it is not the intention
of this study (nor the Bacchi’s approach) to carry out the discourse analysis. Bacchi defines discourse for her
approach as: “socially produced forms of knowledge that set limits upon what is possible to think, write or
speak about a ‘given social object or practice’” (McHoul and Grace in Bacchi 2009, 35);

method as an inspiration to my analysis. While operationalizing her guidelines I have to mention some problematic issues.

First, WPR questions often intersect and derive from each other. It might look very structured but I’ve discovered that it is not possible to consequently pose these 6 questions to the prescriptive text. So, questions 2, 3, 4 are interconnected: all of them require pondering upon presuppositions fueling concrete representation. These presuppositions could be grasped only by situating them in a historical and geographical context (Q2) which means finding out how they came about (Q3) with identifying temporal and contextual positions for their alternatives and disruptions (Q4). Furthermore, effects from the “problem” representation (Q5) result from the categories employed (Q2) which are made up by statistical data (or, at least, by invoking the concept of population) (Q3). And, finally question 6 (of the problematization distribution) interrelates with the question 4 as well as the question 3 (when it is asked to find out how the “problem” representation was produced).

Second, answers to some WPR questions could be too extensive. So, genealogical (Q3)/archaeological (Q2) analysis of a “problem” might become an issue of a separate study (see Carabine 2001 and Annfelt 2007). And the cross-national/cultural comparison (Q4) is a very problematic terrain, both due to the volume it might require (in finding the common grounds for the comparison) and the complexity that has to be reduced in order to make this comparison possible.

At last, a prescriptive text (as we talk about legislation) is a rather complicated source. As a rule, it is composed of several propositions that might be aimed at different issues and be based on different “problem” representation. Moreover, some of these propositions might describe procedures which can not form a “problem” representation per se.

**Bacchi and the policy areas**

It is rather disputable to claim that biopolitics has most of its effects within the field of social policy, but since the focal point of this study is regulation of ART in Russia, it seems to be the most appropriate domain. However, social policy as such is a very broad area of study and must be limited to the study of policy within the sphere of reproduction.
Legal acts regulating ART in Russia are situated within the healthcare legislation, which is probably not unique in the global perspective. The fact that issues connected to reproduction are dealt with by invoking the idea of health is interesting in itself. According to the Russian legislation\(^1\) health is perceived within a social paradigm, which, in contrast to biomedical paradigm, incorporates social factors and aims at well-being (not just absence of a disease). At the same time, medical assistance (also medical services and the health protection) is defined as measures aiming at health maintenance and its restoration, while medical interference is medical manipulations for prophylactic, scientific, diagnostic, therapeutic purposes and (separately mentioned) pregnancy termination\(^2\).

I find it rather problematic to locate technologies of assisted reproduction within these definitions, even though some, let’s say, medical interference takes place. As a rule, reproductive pathologies (if this is the case) are not cured by ART. Assisted conception (childbearing) is what it is actually called – the assistance.

Furthermore, as Bacchi notes, the Alma-Ata Declaration of 1978, produced by an International Conference on Primary Health Care (the World Health Organization), declared health to be a fundamental human right (Bacchi 2009, 130). This is reflected in the Russian healthcare legislation as well, among other, by providing healthcare free of charge, which means that, being a part of the healthcare, ART have to be a part of this “human right” pattern too.

It is also important to mention that a preventive approach to healthcare (in comparison with curative) is central to the healthcare systems worldwide. Preventive approach within a biomedical paradigm might include immunization and screening, but if we take a social stand towards health (which the Russian healthcare legislation seems to embody), then the preventive approach expands to lifestyle and rising awareness of one’s habits, responsibility and self-regulation. Thus risk factors of one’s lifestyle choices divide population on “active citizens”, managing the risks and the targeted individuals, who require intervention.

Then, if the social determinants of health are recognized, it might be fair to claim that health is being affected by the wide range of factors: environment, inequalities, poverty, etc.

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\(^{1}\) Federal Law N323, chapter 1, art. 2;  
\(^{2}\) Ibid;
Hence all policies have to be implicated in population’s wellbeing, or health, which suggests that the “health policy” is an instrument of governance (Bacchi 2009).

In the Russian Federation healthcare is being implemented via Ministry of Health, which is the body of the executive authority\(^1\). At the level of legislative power there are numerous Committees at the Russian Parliament dealing with the issues of social policy: on budget and taxes, on nationalities, on public associations and religious organizations, on housing politics, on informational politics, on culture, on science and technologies, on education, on labor and social politics, on sport and youth, and on the healthcare\(^2\). Notably, the committees are strongly male-dominated with the exception of the Committee on Family, Women and Children, where women take more positions than men. This committee is followed by the Committee on Culture where proportion of women and men is almost equal, then comes the male-dominated Committee on Education with a high proportion of women. All these committees generate legislative work within their jurisdiction, which is reflected in their titles (on transport, on budget and taxes).

The Committee on Family, Women and Children\(^3\) deals with the legislative issues in the area covering: questions related to the Family Code of the Russian Federation, questions of social support of orphans, material benefits to parents of minors, rights guarantees of minors and other matters concerning minors and family support\(^4\). The committee is chaired by Elena Mizulina\(^5\), a deputy of the Russian Parliament, Doctor of Law, professor. She is a well-known politician adhering to a social democratic political party “A Just Russia”\(^6\), which takes 64 seats at the State Duma (out of 450). She is a member of multiple interdepartmental work groups under the President of Russia, aimed at implementing national priority projects in the sphere of demographic policy, healthcare and minors’ rights.

The title of the Committee “on family, women and children” suggests that there is a certain policy domain covering a piece of social reality that has to be addressed separately. It

\(^1\) Since Health is defined from the social paradigm, it might be necessary to list other ministries whose areas of competence could be seen as overlapping with the social policy, however, any area could be argued to overlap with the social policy: Ministry of Culture, Ministry of Science and Education, Ministry of Mass Media, Ministry of Economical Development, Ministry of Housing Construction, Ministry of Labor and Social Protection and other. The whole list in English - [http://government.ru/en/ministries/](http://government.ru/en/ministries/);


\(^3\) The official webpage of the Committee - [http://komitet2-6.km.duma.gov.ru/](http://komitet2-6.km.duma.gov.ru/);

\(^4\) See The Committee Regulations, chapter 1, art. 3 - [http://www.komitet2-6.km.duma.gov.ru/site.xp/052048055.html](http://www.komitet2-6.km.duma.gov.ru/site.xp/052048055.html);

\(^5\) The official webpage of E.Mizulina - [http://elenamizulina.ru/](http://elenamizulina.ru/);

\(^6\) Official webpage of the party - [http://www.spravedlivo.ru/](http://www.spravedlivo.ru/);
implies a kind of “problems” in the social of the Russian Federation that concern women as a group, (their) children of both sexes and the institute of marriage. This creates the subjects to be governed and ties together all the three, producing a discursive effect, designating women to the family and highlighting their exclusive role in reproduction\(^1\). Strangely, the initiative to regulate ART in Russia came from the Committee on Family, Women and Children (not the Committee on the Healthcare). This fact discursively transposes ART to the jurisdiction of the committee and therefore the familial domain.

**Data**

As Bacchi suggests, one has to choose a specific piece of legislation to subject it to the WPR analysis. However, it is necessary to examine related texts as, for example, parliamentary debates, media statements, etc., which accompanied the main prescriptive text to built up a fuller problem representation (Bacchi 2009, 20). She also mentions that the process of selecting supportive texts is an interpretative task, therefore, it is important to “consider the web of policies, both historical and contemporary, surrounding an issue” (ibid., 20 – 21).

The main prescriptive text that triggered the analysis is the Recommendations of the round-table “Legal regulation of surrogacy: a family-legal aspect” to the Parliament of the Russian Federation (henceforth Recommendations) accompanied with the verbatim reports of the debate. As Bacchi highlights it is most fruitful to relate a prescriptive text to the debate about it to see the legislative proposal in the process of making which alerts us to the way the policy-makers reason for it.

Recommendations of the round-table had at least two editions: in the version available on the official webpage of the Committee on 24.11.2014 some of the points\(^2\) were excluded. I will include these points in the analysis. The most recent version, the one that was re-worked by the work group of the Committee and sent out to the round-table participants in about a month after the meeting, consists of preamble and 17 points. I grouped these 17 recommendations into 3 main categories: 1. recommendations addressing an issue of

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\(^1\) It has to be mentioned that men (as a group) do not constitute a subject to be governed in titles of other committees;

\(^2\) These were: 1. introducing a special board consisting of social workers and the Orthodox Church assignees which was meant to decide whether a married couple was eligible for surrogacy program or not; 2. prohibition of any intermediary services in regard to surrogacy; 3. only a relative of a couple could become a surrogate – see Lebedev 2014;
access; 2. recommendations addressing surrogacy; 3. recommendation addressing an issue of “informational propaganda” of ART. I will deal with these categories separately.

The picture of the round-table would have been incomplete without the two verbatim reports from the meeting. The first verbatim report from the round-table debate is made by one of its participants and is in the free access in his blog in form of a written text. Thus the status of this source might be rather informal but it provides the insight to the meeting. It would be presented by the extracts and the “problem” implications as they were worded at the meeting. Bacchi suggests that the “problem” could also be presented as a cause of negative outcomes: as something that results in undesirable consequences. Thus the “problem” is brought into existence by invoking imaginary effects.

In this respect let me address a few problem implications, as they were stated by some of the participants of the round-table in regard to ART, though there were pro-ART voices (in minority) presented at the round-table:

- ART is desanctification\(^1\) of motherhood that would destroy Russia;
- When it is for same-sex couples it is a national threat;
- The child could become a commodity. (Verbatim report)

All these are imaginary projections of ART application that involve an interpretative effort coupled with the causal shortcuts (like the ones between desanctification of motherhood and the fall of the state). These negative outcomes are meant to locate the “problem” in today’s state of affairs – a “problem” that has to be (and can be) addressed by the legislative intervention in order to prevent undesirable consequences.

Second report from the meeting is a collective account of the Russian Association of Human Reproduction\(^2\) representatives who participated in the debate\(^3\). It is written after the round-table debate as an impression from the meeting with a detailed description of it. This report is rather precise in regard to the names of speakers. It is a well-structured written document that does not contradict to the Verbatim report, which I will refer to in this study.

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\(^1\) Rus. “десакрализация”;
\(^3\) Even though registration is required to access some content at the webpage of the Association, the report could be found by simple web search. I provide a web link to the document;
In order to contextualize the given “problem” representation, I will cross-relate Recommendations to other prescriptive texts. First, The Concept of Family Policy until 2025 is an ongoing public project initiated by the Committee on Family, Women and Children. The text of the document suggests and justifies a strategy for the family policy in Russia until 2025 based on “traditional values”. This strategic document reveals the conceptual logics of the policy-making in the coming years. Second, The Concept of Demographic Policy until 2025 is an official document signed by the President. It elaborates strategies of overcoming demographic decline and proclaims dealing with the demographic situation an issue of national priority. Third, the “Propaganda Law” passed in 2013, accompanied by the verbatim report from its parliamentary readings. The law subjects “propaganda of untraditional sexual relations” to administrative liability. It evoked huge resonance on the national and international levels bringing the issue of “homosexualism” to the forefront of the public discussion. The document and the parliamentary readings of it unveil the homophobic attitudes of the contemporary family policy, channeled by the Committee on Family, Women and Children and Elena Mizulina.

Apart from these documents, I will refer to a set of legal acts: Constitution of Russia, the Family Code, laws regulating ART application and its outcomes, some court decisions, and laws dealing with health, education and family. All this legislation provides a context for the study. It has been an analytical and, I would even say, detective task for me to realize existence of some legal incentives and to bring them together.

I am also addressing some media resources: an interview with Mizulina at the national television, an article based on the interview with her to the informational agency ROSSBALT. Other journalist articles: Chernyh (2015), EKO v Rossii (IFV in Russia) from 2013 with the interview of Korsak, and the article by Lebedev (2014) which was the starting point of this research.

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1 This document (a kind of a white paper) is a public project which implies public discussion and possibility to introduce changes. I am referring to the edition, available at the official webpage of the Committee on the 09.02.2015;

2 This term was used in the wording of the law before the third parliamentary readings. I am at pains with the term, though it is widespread in the Russian public rhetoric and legal documents. I intend to use it throughout my research on purpose of highlighting its denigrating character and inadequacy of incentives that are built on it;
Reflexive part

Ethical challenges are at the core of the qualitative inquiry, both because of the sensitive character of its objects, its methods (or the data it seeks to obtain) and the academic norms of research writing.

It is also about establishing the Truth, the knowledge that I claim to have power\(^1\). As Scott points out, it is the experience (as uncontestable evidence) that tends to be the starting point of explanation (Scott 1991, 777). It is through appeal to my experience that my vision becomes the bedrock of evidence on which explanation is built (ibid.). Therefore, as also Donna Haraway indicates (1988), it is so important to situate my experience and to appoint myself a body – the project of feminist objectivity.

And I do have a body, the marked one. Not to slide down in the banality of a discrete identity: female, white, Russian…(categories which, one might claim, have decisive effect on this text), I, instead, want to give an account of my position – not purely epistemological, but also a political one.

For better or for worse, I have no informants for this research. I deal with the “cold monster” of the law. I wrestle rhetoric of those in power who give shape to the state I am a citizen of. Whence the political motive seeps in. And it is hardly possible to cover up my rude awakening of and toxic oppositionality to the general course of the family policy in today’s Russia. However, being a docile subject of the feminist critical school, I have to, using Haraway’s metaphor, peel one more layer off the onion. My criticism has to be subjected to criticism.

As I have already mentioned, this research is situated within the critical theory (informed by post-structuralist European philosophy with a gender perspective). And here is the question: To what extent can I theorize Russian social “reality” in terms of European philosophy?

For the first, the language issue. This kind of research would definitely pose difficulties (for me) to be conducted in Russian. Russian language borrowings of and

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\(^1\) Again, adopting foucauldian perspective, it is always an aspiration to power inherent in a scientific discourse. In other words, by invoking “science” some of the knowledges are being disqualified (Foucault 2003). In his other lectures – the knowledge is the product of will, determining the effect of truth through falsification (Foucault 2013);
approximations to the concepts of contemporary European philosophy do not feel at home: governmentality (говернментальность?), power\(^1\) (власть?), gender (полов?)\(^2\), queer\(^3\) (квир?) etc. – as empty signifiers that have no referents. However, I do not argue for capitulation of the Russian-language research and do not want to diminish the importance of the works of those who have undertaken such a demanding endeavor\(^4\). The only thing I aim at is to productively expose this foreignness in order to produce a self-critical knowledge.

For the second, foucauldian analysis is Eurocentric\(^5\). He mentions the Russian state in some of his works (in “Security, Territory, Population” – regarding pastoral power, which, as he suggests, functioned somehow differently in the Eastern states; and in “Society Must Be Defended” – concerning the totalitarian Soviet State and the race wars)\(^6\). However, as Dominique Colas argues (Colas 2002), the Soviet state (and socialism) had great influence on the works of Foucault and on Foucault himself. Colas also testifies that, being concerned with the micro power mechanics, Foucault found his analysis to be absolutely suitable for the description of the power processes in USSR, which he was very critical about. As Foucault mentions, “Socialism might have a theory of the state, an economic rationality, a historical rationality, but when it comes to the rationality of government, it remains reliant on those developed either in the liberal Europe or, perhaps even more so, on the pre-liberal rationalities of the police state” (Foucault in Prozorov 2014: 8).

However, I have to be very considerate situating Russia under the roof of the western epistêm as both Etkind, Yangulova (2002) and Prozorov (2014) point to considerable differences in the constitution of knowledge, power dynamics and disciplinary practices in the Russian state (and even inadequacy of applying foucauldian concepts). Furthermore, as

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1 I have to mention that works of Foucault are, actually, translated from French which involves some interpretation too;
2 Discussion about gender and sex in Russian language would probably resemble the one for the Norwegian language;
3 Not going into academic discussion about “queer”, this term, as opposition to rigid boundaries of identity formation, has not gained much popularity in the political context of Russia. Needless to say, Russian state has not (yet) adopted a kind of a stance towards gays that would justify necessity of “queer” response to identity politics. This makes “queer” in the Russian context and language not just uncomfortable to pronounce and explain, but also inadequate to describe the political process in this sphere; Robert Kulpa, Joanna Mizielińska and Agata Stasinska (2012) suggest to transport/translate the term “queer” as “kvir”, implying its critical potential for theorizing Russian feminist activism. See also Wiedlack and Neufeld (2014).
4 For example, a genealogical analysis of disciplinary practices in the Russian Empire by Alexandr Etkind (2002) and a genealogical analysis of madness (incarceration) by Liya Yangulova (2002), and analysis of biopolitics in the Soviet Union by Sergei Prozorov (2014);
5 For the criticism see Edward Said (1988);
6 And in some interviews and articles – see Plamper (2002) and Colas (2002);
Funk (2004) cogently argues, western (neo)liberal project can not be simply transferred onto the social “reality” of the Eastern Europe.

At last, it is exactly these “differences” I want to pay closer attention to. Being analytically sensitive to othering\(^1\) I do not want my analysis to be amount on or realized in the categories of “differences”. However, this is unavoidable when maintaining the West – East divide with its temporal\(^2\), spatial\(^3\) and discursive caveats.

Inevitably any analytical move within the frameworks of the teleological narrative of the progress places a non-western state in the discursive position of the “other” which has to follow the historical track of the West in order to catch up and develop. This belief in progress, truth and freedom – the main features of the unfinishable project\(^4\) of the modern (Schaanning 2000) – are often articulated in promoting secularism and the racio. As also Edward Said (1988) points out, traditionalism (read adherence to a religion and/or beliefs) is antagonistic to the notion of progress (read secularism). Hence talking about the growing influence of the Orthodox Church in the nowadays Russia would imply regress within the western epistêm.

In this research I take a problematic position of being both the insider to the Russian social “reality” and the outsider to it as an adept of the European academia, armed with the “Western” feminist critical theory, offering nothing, but a “paranoid” reading, as Eve Kosofsky Sedgwick (2004) puts it.

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1 A discursive practice of devaluation, of creating discursive boundaries in order to constitute an object, which can only be subjectified through its difference (and therefore negation) from the dominating object, the object that claims authenticity and intelligibility;
2 As Joanna Mizielińska and Robert Kulpa wittingly put it, it is the straight time of the West vs queer time of the East (looped, knotted, and disrupted marking the never ending transition “post-soviet”, “postsocialist”, etc.), “forcing the “Western present” as the “Central and Eastern European future” to be achieved” (Mizielińska and Kulpa 2011, 17);
3 For the first, it is problematic to draw geographical boundaries between “Western” (and which ones should be considered Western?) countries and the CEE (see Mizielińska and Kulpa 2011). For the second, it is even harder to locate Russia within CEE. For the third, Russia is rather vast in terms of territory, “cultures”, languages and religions that compose it;
4 In Bauman’s terms – see Tester 2004, 136;
III. Biopolitics of the Russian state

This chapter aims at situating ART in a wider legislative, historical and cultural context of the Russian state from the soviet period until today\(^1\). Thus parts 1 (general biopolitical context) and 2 (overview of ART legislation) of this chapter serve as operationalization of the question 3 of the WPR analysis (how the problem has come about). Part 3 (the round-table) is an answer to the question 6 – how the “problem” representation was produced, defended and disseminated.

Furthermore, since WPR questions intersect I do not claim to make a clear cut between this chapter (as a context for situating ART) and the analysis chapter (which brings up issues of context anyway).

It is also important to mention that reproduction legislation can be interpreted rather widely. I contemplate regulation of reproduction and family as implicit regulation of sexuality in form of sexual choices (regarding time and status of the relations between the individuals), preferences (of whom to have sex with) and outcomes of the sexual intercourse. I will sketch a range of politics dealing with questions of abortion, “homosexualism”, age of consent, possibility of sex change, sexual education, contraception and some of the governmental incentives to improve the birth rate.

1. General biopolitical context

In order to limit a historical context of this study I’ve chosen a period from the Revolutions\(^2\) to nowadays\(^3\). It is not my task here to engage in a discussion whether to consider the Revolutions to have the decisive effect on the development of governnmentality and biopolitics in the Russian state. And I think it is Sisyphean toil to fasten the cultural context by tying it up to the historiographic narrative. It is also clear that a “revolution” stands to demarcate some changes. However, the “change” is a slippery concept to operate with.

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\(^1\) I want to highlight that the whole paper is theoretically bounded to the concept of biopolitics; and it is fairly disputable to limit the scope of politics concerning life and death to reproduction legislation;  
\(^2\) I mean the February and the October Revolutions of 1917 which, however, could be considered to be one Revolution;  
\(^3\) The thematic arena of this research has appeared to be a very popular domain for legislative initiatives of the today’s government. It is constantly expanding. This results in an always growing corps of data material, which has to be limited. Therefore the “nowadays” of this study refers to spring 2015;
Yet the years after the Revolutions are commonly associated with the, so called, social experiments of the soviet authorities. These social experiments involved legislative innovations that aimed at breaking up with the monarchic past and its system of governing the life. This is the period when the “the sexual question” was openly put on the agenda. Of course, there were various opinions circulating regarding the meaning of sexual life for the dialectic relations between the individual and the collective (Pushkarev and Pushkareva 2007).

Church was separated from the state and church marriage registration was banned. In 1920 the Soviet State was the first country in the world to legalize abortions which was meant to have a sanitary effect on the female population as for the widespread illegal abortions were dangerous. That was also incorporated in a rhetoric of “involving women in the public life” (Lebina 2007) and “emancipation of women” (Rivkin-Fish 2010, Zdravomyslova and Temkina 2003). Pregnancy termination was free of charge. However, the soviet system of motherhood protection considered abortion to be a social evil and therefore pregnancy termination was practiced without anesthesia (Lebina 2007, Rivkin-Fish 2013). This “liberating” rhetoric resulted in the, so called, double- (Zdravomyslova and Temkina 2003) or even triple-burden (Turbine 2015) for women who were meant to engage in professional activity and maintain their household and civic responsibilities.

Interestingly, but contraception was not seen as an option, it was even perceived as an element of bourgeois decay (Lebina 2007, Rivkin-Fish 2013). It was almost impossible to get contraceptives in the Soviet Russia. Besides, there was no educational activity in the sphere of unplanned pregnancy or sexual education.

In 1936, in the framework of general “de-erotization” of the Soviet state, abortions were forbidden. Break of this ban entailed criminal penalty and repression both for women and for those who conducted the procedure (ibid.). Nevertheless, this strict control over sexual life of the population has not improved the demographic situation. In 1955 the ban was called off.

Generally, after the World War II biopolitics of the Soviet state were concerned with huge population loses in the war. There were different legislative measures employed to stimulate birthrate in conditions of a big gender imbalance: financial stimuli to single mothers and mothers with many children, state medal “For Motherhood”, exemption of men
from paying alimony on exnuptial children (women got state support), taxation of bachelors and singles between the age of 20 – 49, prohibition on marriages with foreigners (Nakachi 2006, Samoilova 2012).

In 1993 the document “Fundamentals of Legislation on Healthcare”\(^1\) was passed. The article 36 of this document provided the right for abortion on woman’s request up to 12 weeks of gestation or up to 22 weeks of pregnancy on the ground of some social reasons, and at any stage of pregnancy – for medical indications.

It is also important to mention that “homosexual relations” were decriminalized in 1993\(^2\), however without rehabilitation for those who were earlier convicted. Yet again, alongside the “sexual assault”, the Penal Code of 1996 penalized also homo-sexual assault (both for women and for men: “мужеложество” и “лесбиянство”)\(^3\). This norm is still active and exists in the same wording. It also limits the age of consent to 16. However, if the marriage is registered (it is possible to lower the marital age to 14 in some cases), sexual intercourse (between a man and a woman) is legal\(^4\).

In the 90s (after the USSR has collapsed) mortality rate prevailed over the birthrate, average longevity declined\(^5\). Nowadays concern over demographic situation is expressed in The Concept of Demographic Policy until 2025. The document highlights importance of providing wide access to healthcare, especially in the sphere of reproductive medicine and assisted reproductive technologies. Even though increasing birthrate is seen as one of many strategies to overcome underpopulation, alongside with improving the average life expectancy and living standard, fertility, or more precisely, women’s reproductive capacity, has become the main target of the social policy (Chernova and Shpakovskaya 2010, Erofeeva 2013, Gurko 2008, Yarskaya-Smirnova 2010, Leykin 2011, Rivkin-Fish 2010, Rozenholm and Savkina 2011, Sperling 2015).

\(^{1}\) Fundamentals of Legislation on the Healthcare of the citizens of the Russian Federation from 22.07.1993;

\(^{2}\) It is difficult to talk about decriminalization of “homosexualism” after the Revolution of 1917 when the whole penal legislation of the Russian Empire was abolished. Penal Code of 1922 did not contain an article about “homosexualism”. Nevertheless, an article, penalizing male “homosexualism” was introduced in 1934. The penalty for male “homosexualism” (3 to 8 years of sentence) existed until 1993. See Baer 2009 and Stella 2014;

\(^{3}\) Article 132 (chapter 18) of the Penal Code of 1996;

\(^{4}\) Amendments from 2009 to the Penal Code of the Russian Federation (article 134);

\(^{5}\) The Concept of the Demographic Policy until 2025, part 2;
Achieving replacement level and growth of the population is still a priority of the nowadays social policy.¹ Both D. Medvedev and V. Putin (either in a position of the Prime Minister or being the President of Russia between 2000 and today) publicly ascribed demographic crisis to low birthrate disregarding other conditions (Restriction of Reproductive Rights in Russia 2012, Erofeeva 2013). The rulers shape public rhetoric of “women’s obligations to solve the demographic issue” which is threatening the nation (ibid., Chernova and Shpakovskaya 2010, Leykin 2011, Rozenholm and Savkina 2009). The causal link between survival of the nation and women’s reproductive capacity serves to legitimize the pronatalist, neotraditionalist (Zhurzhenko 2004, Rivkin-Fish 2010) and neofamilial (Teplova 2007) character of the social policy.

Gradual restriction of abortion legislation is exemplary of the case. After Putin’s ascent to power the list of social indications for second-trimester pregnancy termination (within the medical insurance scheme) was reduced to: deprivation of parental rights, woman’s imprisonment, husband’s disability or death, and rape.² Since 2012 the list includes only rape.³ In May 2015 Mizulina submitted two legal incentives to the Russian Parliament. One of them bans retail sail of abortion medicines. The other aims at withdrawing abortions from the medical insurance scheme and the domain of private clinics. The future destiny of these incentives is still undetermined.

As Erofeeva (2013), Denisov, Sakevich and Jasilioniene (2012) and Rivkin-Fish (2013) critically point out, policy regarding reproduction since 2000 has mainly been aimed at preventing abortions by, for example, introducing psychologists and social workers in the clinics to persuade women to keep the baby.⁴ As also the Written Statement of The Henrich Boell Foundation mentions, the Ministry’s officials refer to their collaboration with the orthodox conservative organizations, namely the Socio-Cultural Initiatives Foundation (in charge of Medvedev’s wife Svetlana Medvedeva) and the National Glory Centre that launched “Give me Life!” and “Sanctity of Motherhood” programs (and the eponymous forum) aimed at “saving lives of unborn children” (Restriction 2012) and “to propagate an

¹ See, for example, An Order of President from 09.10.2007 №1351 “On approval of the Concept of Demographic Policy until 2025”;  
² Decree of the Government of the Russian Federation № 485 from 11.08.2003;  
³ Decree of the Government of the Russian Federation № 98 from 06.02.2012;  
⁴ As a result of restriction in 2012, a pre-abortion waiting period was established and meetings with psychologist (a social worker) were imposed before allowing an abortion to occur (Sperling 2015, Rivkin-Fish 2013);  
⁵ The official webpage of the forum “Sanctity of Motherhood” - http://sm.cnsr.ru/.
image of the full family with three and more children as a social norm, and to contribute to the sustainable demographic growth in the country”.

There are no programs on sexual education is schools. Free contraceptives actions happen sporadically. Family planning centers created in the 90s are being closed due to the lack of funding (Denisov, Sakevich and Jasilioniene 2012, Rivkin-Fish 2013).

The following is a quotation from the address by the Minister of Health and Social Development to participants of the second All-Russian Congress of Russian Orthodox doctors:

“One of the important moments, where the role of the Church is especially significant, is the protection of family traditions and values and the prevention of and the reduction of abortions. We need to further pursue the campaign notifying about the harm caused to health by abortion, to inform people, particularly the youth, about potential complications, to talk about the psychological impact of abortion on women, and to create a proper mental attitude to motherhood” (Denisov, Sakevich and Jasilioniene 2012).

As Erofeeva (2013) and Denisov, Sakevich and Jasilioniene (2012) illustrate, the Orthodox Church has successfully penetrated the public health decision-making process.

As a result of governmental cooperation with the Russian Orthodox Church, the upper house of the Parliament, the Federation Council, approved the initiative to establish a national holiday of “Family, love and loyalty” (named also after orthodox saints of Piotr and Fevronia) in 2008. The holiday was meant to be a Russian substitution for the St. Valentine’s Day which had been rather popular. The holiday celebrates traditional (orthodox) values and exemplary families (with many children or longest marriage).

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1 The webpage of the Program - http://istoki-foundation.org/ru/programmers/holiness;
2 However, the orders of Ministry of Education and Science from 17.12.2010 N 1897 and from 18.12.2010 N 1060 have introduced an obligatory educational module “Basics of religious cultures and secular ethics” with several courses to choose between (and the all-Russia Olympiad in Orthodox Culture): Orthodox religion, Islam, Buddhism, Judaism and Secular Ethics. The objective or the course is to propagate traditional values and the moral image of the pupils (with a particular programming of a decent sexual behavior). The course materials have been widely criticized (see Smirnov 2010).
3 There are constant attempts to “traditionalize” (sexual) education. So, on the 26th of May the Public Chamber Commission of RF on Science and Education has proposed to introduce an obligatory school course “Moral basics of the family life” together with initiatives on separate education for boys and girls, propagation of virginity and traditional family values – see the website of the Commission - https://www.oprf.ru/ru/press/news/2015/newsitem/29488 and the journalist article (Chernyh 2015);
4 See “Basics of the Social Strategy of the Russian Orthodox Church” that also proclaims “necessity to consult and coordinate the government” - http://www.patriarchia.ru/db/text/141422.html;
One more issue concerning the general family policy I want to mention here is that neither the Constitution of the RF nor the Family Code directly prohibit same-sex marriages. Nevertheless, it’s implied in the law (in the, so called, common sense reading) that such a union must be registered (only) between a man and a woman. Other forms of state recognition are not practiced. However, there were made a few attempts to litigate refusal of The Civil Registry Office\(^1\) to register same-sex couples. All these attempts have failed so far\(^2\). According to the Supreme Constitutional Court Order the marriage is a “biological union” between a man and a woman and

“It does not follow from the national and international obligations of the Russian Federation that the state should create conditions for propaganda, support and recognition of same-sex unions. Besides, absence of this kind of registration does not influence the level of rights and freedoms guarantees of the applicant as a citizen of the Russian Federation.”\(^3\)

Moreover, actual cohabitation of heterosexual couples has no legal status as well\(^4\).

Discussion of biopolitical incentives in the sphere of reproduction and sexuality allows me to incorporate an issue of sex change. The first transition (FtM) in the Soviet Union was performed in 1970 in Riga. However, there is a “legislative vacuum” in this sphere (Palkina 2010). The legal code mentions such a possibility only in regard to changing a record in the Acts of Civil Status\(^5\). Practically, in order to change the legal sex one has to undergo surgery. This also means the necessity to obtain a diagnosis of a gender identity disorder\(^6\). It also takes about 4 years of psychiatric monitoring, hormone therapy and “adaptation” before the transition.

Such a marginalized sexual practice as prostitution has been banned since the Revolution. Nowadays prostitution is subjected to administrative liability and a fine of 1000

\(^1\) ZAGS (rus. ЗАГС)
\(^2\) However, there was a rather scandalous (fake?) marriage registered in St.Petersburg ZAGS on the 7th of November in 2014 between a woman and a “legal” man (ostensibly MtF transgender). The ZAGS was shut down and parliamentarians promised to litigate the marriage – see http://lifenews.ru/news/144573;
\(^3\) A Supreme Constitutional Court order from 16.11.2006 № 496;
\(^4\) Though it is possible to litigate common property rights and parental custody;
\(^5\) Federal Law on the Acts of Civil Status from 15.11.1997 №143, art. 70;
\(^6\) Criteria of the diagnosis and procedure to obtain it are regulated by the Order of the Ministry of Health from 20.12.2012 N 1221 “About Standards of the medical help in cases of the gender identity disorder”. See also Kirichenko (2012);
to 2000 rubles\(^1\). However, the law does not specify what prostitution is. On the contrary, organization of prostitution, involving individuals (especially minors) in it is subjected to the criminal law and is heavily penalized\(^2\). The offence is framed as “against health and public morality”. There have been several legislative incentives to legalize prostitution, one attempt to litigate the law and one attempt to organize a professional unit\(^3\). All failed.

This overview of the regulatory incentives in the sphere of reproduction and sexuality shows in what vein the Russian governmentality manages its interest over life. Of course, there were two different states (the USSR and the RF) and the narrative on rights and duties of reproduction was not univocal even within one of the states during different periods. However, I want to suggest that this area has always been under the strong regulatory grip with traditional (even patriarchal\(^4\)) inclinations, though with sinusoidal intensity.

The “traditional values” were once declaratively demolished by Bolsheviks who aspired to break with the monarchism and the church which embodied these values. Yet, as it turned out, the values were covertly restored by restricting abortion, criminalization of homosexualism and overall “de-erotization”. This also exemplifies how the legal code is used as tactics of managing life, of carving the national species body and bringing up docile and resourceful citizens, as well as engaging in the practice of internal racism (in foucauldian sense) against groups of people who do not comply to the biopolitical project.

2. Contemporary ART legislation in Russia, an overview

Here I want to focus on regulation of ART. In the process of writing it turned out that it is not that straightforward as it seemed to be. Therefore this part is pretty dense; it abounds with details, footnotes and references to the law (to be exact and authentic). I think it is indispensable in order to study how a problem representation could be anchored, not only within the cultural, but also within the legal (not to claim these two are separate, though).

\(^1\) Code of administrative offence, art. 6.11, which is under the chapter of administrative offence against health, sanitary-epidemiological wellbeing of population and public morality;
\(^2\) See the Criminal Code, art. 240 – 242 (including pornography production);
\(^3\) See a journalist article by Iskreno and Zeya (2014);
\(^4\) Yuval-Davis (2008) suggests that “patriarchy” is a state of male domination over younger men and women and “fraternity” – the one of male domination over females. However, “patriarchy” is a rather widespread term both within the Russian and international feminist research. I am also unsure about validity of this categorization;
The first IVF baby in the Soviet Union was born in 1986. However, it is hard to find legislative traces of ART before 1993 when the document “Fundamentals of Legislation on Healthcare” was adopted. This law was substituted by a new Federal Law\(^1\), which was passed in 2011, and has been valid per today. The law defines ART as “methods of infertility treatment when some or all stages of conception and early embryo development take place outside the maternal organism (including use of donor or cryopreserved germ cells, tissues of reproductive organs, embryo and surrogacy).”\(^2\) This law is the main one among a set of legal documents, regulating application of ART in Russia\(^3\).

The Federal Law, which is in force now, uses the following categories when specifying who are eligible for ART treatments: married/unmarried couples and single women. The category of single men is not mentioned in the law. However, according to several adjudications, single men have managed to contest their parental custody in respect to children born as a result of surrogacy arrangement (Konnov and Gracheva 2013, Svitnev 2012). The courts ruled that single men be granted the parental rights on analogy (with the cases of single motherhood) (Svitnev 2012). In principle, this indicates a rather wide access. However, accessibility is in reality rather low due to the high costs of ART treatments compared to the average level of salaries (Brednikova, Nartova and Tkach 2009).

Legally wide access to ART is coupled with the quotas for those who undergo infertility treatment. According to the law\(^4\) IVF became a part of “the highly technological medical care offer” covered by the medical insurance scheme. These medical insurance quotas are allocated regionally and cover an average amount of expenses (which is 119,964 rubles in 2015). Quotas are available only for medical indications, which excludes, so called

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\(^{1}\) Federal Law from 21.11.2011 № 323 “On the basics of health protection of the Russian Federation citizens” (article 55);  
\(^{2}\) Ibid.;  
\(^{3}\) This sphere is regulated by:  
- The Family Code of the Russian Federation from 29.12.1995 №223 (3, art. 51-52; 4, art. 51-52);  
- The Federal Law on the Acts of Civil Status from 15.11.1997 №143 (5, art.16);  
- The Federal Law from 21.11.2011 №323 “On the basics of health protection of the Russian Federation citizens” (art.55);  
- The Executive Order of the Ministry of Health from 30.08.2012 №107n “The order of use of ART, contradictions and limitations” with Annex;  
- The Executive Order of the Ministry of Health from 30.10.2012 №556n “On the approval of the standard of health treatment in cases of infertility by the use of ART” with Annex;  
social infertility and therefore single women (and men) who, nevertheless, constitute an eligible category for ART according to the Federal Law.

Besides, in order to get the quota one has to undergo multiple medical check ups\(^1\), submit a set of documents, get an approval of the special Commission of the Ministry of Health and the Russian Academy of Medical Sciences and to be placed in a quota waiting list. Formally the number of trials is not limited, however to make a second trial one has to start collecting the documents from the outset and to wait for one’s turn (in the waiting list) for a long time, which might exceed a year\(^2\).

ART might be available both in the public and private sector. As Vladislav Korsak, a president of the Russian Association of Human Reproduction, states in an interview, there were about 360 000 of the treatment cycles made between 1995 and 2011. This resulted in about 80 000 children born in Russia.\(^3\) He also mentioned that in 2011 there were about 120 private centers which made 65% of the overall ART supply in the country.

The Federal Law N 323 is the main law that regulates ART in Russia. It does not limit age for ART application. However, donors of the germ cells have to be between 18 and 35. The law prohibits manipulations with a sex of a future child unless this would prevent genetically transmitted conditions. The law prescribes the right of the donor material recipients to information about: medical and genetic condition of the donor, his/ her race, nationality and appearance.\(^4\)

The Law gives all citizens the right to cryopreservation of their germ cells.

According to the Law, surrogacy is bearing and giving birth to a child on the basis of the contract between a surrogate mother (a woman who is bearing the fetus after the donor embryo has been transmitted) and potential parents or a single woman whose germ cells were used for fertilization and who can not conceive the child for medical reasons. Surrogate mother (who has to be between 20 and 35, having at least one healthy child) can not be a

\(^1\) Formally, healthcare is free of charge. However undergoing all the medical check ups within the state insurance scheme might take very long time, therefore it can be more feasible to do it on a paid basis, which, of course, is not reimbursed;

\(^2\) Though the quantity of quotas are growing nowadays and are distributed around the regions, this amount is still not enough to cover the demand on ART in Russia – see Brednikova, Nartova, Tkach 2009;

\(^3\) An interview of Vladislav Korsak to the Russian Informational Agency - http://ria.ru/society/20130725/951958026.html;

\(^4\) The Federal Law from 21.11.2011 №323 “On the basics of health protection of the Russian Federation citizens” (art.55);
A married woman can be a surrogate mother only if a written permission of her spouse is provided.

Needless to say, the Russian Orthodox Church’s official position in respect to surrogacy, wide access to ART, abortions and “reproductive rights of single men and individuals with the, so called, non-standard sexual orientation” is extremely negative as it “bereaves the child of having a mother and a father.. and is a form for theomachism\(^1\) under the guise of individual’s autonomy protection and the misunderstood concept of human rights.”\(^2\)

A number of independent researchers within the field of medical legislation point to the imperfection of nowadays regulation of ART in Russia such as: inconsistency in using medical terms\(^3\), uncertainty of the embryo’s legal status, uncertainty in rights and duties of the parties involved in the process of ART application, absence of limitations on the germ cells cryopreservation, their usage and storage (Chikin 2008, Pavlova 2007, Samoilova 2012, Sergeev and Pavlova 2006, Sokolova and Mulenko 2013). There are legal researchers who argue for restriction of ART regulation in line with the “traditionalist” inclinations of the nowadays family policy (Romanovsky 2010) while some describe nowadays Russian legislation in this sphere as progressive, in terms of guarding individual’s “reproductive rights” (Pavlova 2007) in opposition to many western countries (Svitnev 2010, Konnov and Gracheva 2013).

Hence, the legal regulation of ART in Russia can be referred to as imperfect due to the multiple inconsistencies and “blind spots” of rights and responsibilities that emerge with ART application. At the same time, wide access and quotas for citizens create an image of a rather permissive policy in this sphere.\(^4\) Though it might be disputable to claim so, since, in practice, access to the quotas is limited, waiting lists are long and costs are unavoidable. It is especially so, if you take into consideration that the average level of salaries in Russia does not afford a costly IVF or even AI treatment (Brednikova, Nartova, Tkach 2009).

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\(^1\) Rus. “богооборчество”, fighting against God;


\(^3\) For example, Samoilova (2012) mentions that the content of ART definitions differs between the legal acts. She points out that artificial insemination is equated with artificial fertilization, she also questions the term “artificial”;

\(^4\) The term “permissive policy” is borrowed from Bleiklie 2004 where the analysis was based on criteria of autonomy and access and concerned only Western democracies;
However, legislatively, assisted reproduction, irrespectively of whether it is for medical or social indications, has been open to everyone since its appearance in the Russian legal code in 1993.

3. Here comes the round-table

This state of affairs was referred to as “lack of regulation” at the round-table “Legal regulation of surrogacy: a family-legal aspect” which took place on the 24th of April in 2014. The round-table was organized by the Committee on Family, Women and Children chaired by Elena Mizulina¹, a deputy of the Parliament, a proponent of the “Propaganda Law” and the Concept of Family Policy until 2025. The latter document sums up the general ideology within the family policy shaped by the Committee. Among other, the Concept suggests to decrease the number of divorces (by, for example, higher divorce taxation), decrease exnuptial births, and abortions; increase birthrate per family, financially stimulate large families, regulate ART and surrogacy application by limiting access. It suggests shaping a positive image of a full-family with many children by stimulating art-works promoting traditional values. The document exhorts to disparagement of abortions “as manifestation of hate towards children”. The Concept also induces to strengthen the role of the Orthodox Church in processes of decision-making regarding questions of social and family policy.

The initiative to change ART legislation was brought up as an outcome of the round-table discussion. However, visibility of a democratic procedure (I mean, a discussion facilitating a fair competition of different “problem” representations) is illusionary. Even though there were some pro-ART voices at the round-table, the majority of the experts invited were either representatives of the Orthodox Church or its assignees. The meeting resulted in Recommendations to amend the article 55 of the Federal Law № 323 (on ART). The round-table debate was declaratively devoted to surrogacy, and it is surrogacy that the preamble of the Recommendations addresses directly. Nevertheless, it is recommended to limit access to ART in general and cease any information about surrogacy and germ cells donation.

The “problem” representation emerged within the Committee on Family, Women and Children of the Russian Parliament, which has a very indirect connection to the healthcare

¹ Committee’s official webpage - http://www.komitet2-6.km.duma.gov.ru/;
² Parliamentary speakers, experts in the sphere of children’s and family rights, medical experts;
legislation as such. In contrast, as was discussed earlier (Bacchi and the policy areas), responsibility area of this committee includes family issues with a very clear connotation to gender. As it follows from the list of the documents and laws this Committee has been in charge of, it also seems that the committee and Elena Mizulina personally take some ideological stand towards the family policy.

The round-table had no legislative power as such, but since the Recommendations to the Parliament were generated at the Parliamentary committee (on Family, Women and Children), it has a status of a legal incentive and has a potential to trigger the parliamentary legislative work. As soon as such a law would be passed, the “problem” representation lobbied by the Committee would become incorporated in the legal code of RF with all the discursive, subjectifying and lived effects.
IV. WPR analysis of the Recommendations

1. Access

The preamble of the Recommendations points to poor regulation of surrogacy in Russia. It does not follow from the preamble that access to ART has to be limited. I want to cite the only piece from the preamble that indirectly points to access: “The Federal Law [on ART] introduces a concept of “intended parents” and the right of “married/unmarried couples and single women” to resort to ART. Thus the traditional notions of family law about parents as a married couple are confronted with the medical concept of “intended parents” which includes couples and single women. Furthermore, there were judicial decisions granting access to ART to single men.” (Recommendations)

It is not straightforward what the “problem” is and why. Using the guidelines of WPR approach I will untangle problematization of wide access to ART during the round-table.

The traditional family

Answer to Q1 logically derives from the way the incentive is formulated. The “problem” is what is meant to be changed. In the case with my prescriptive text, the Recommendations, there are two points that are devoted to the issue of access:

1. Consider surrogacy an exceptional measure of solving infertility problem of a married couple;
2. Limit application of artificial fertilization methods and embryo transfer to married couples as an infertility treatment.

The Concept of Family Policy also suggests limiting access to ART to married couples “as a measure of infertility treatment”. It is the legally wide access to ART that is meant to change. This indicates that wide access to ART is a “problem” within representation of the issue in the two documents (Q1).

In the first edition of the document there were three points: 1. consider surrogacy an exceptional measure and a last resort of solving infertility problem of a married couple; 2. limit methods of artificial fertilization to married couples as a measure of infertility treatment; 3. prohibit application of artificial fertilization methods, including surrogacy, to single men and women (see Lebedev 2014). Thus the “problem” of wide access was more obvious in the first edition;
I also want to pay attention to a strange choice of the terms: instead of a generally acknowledged term “assisted reproductive technologies” the document operates with “artificial fertilization methods”.

What meanings must be in place for this particular “problem” representation to cohere? (Q2) As it follows from the Recommendations, it is the institution of marriage that makes some individuals eligible for access to ART, it is the civil registration of the two, which is the state’s recognition of their union, that forms the family, because the family is “the fundamental institution of the Russian society, and the family policy is aimed at strengthening the traditional values” (Concept of Family Policy until 2025). Wide access to ART could be a problem only if it somehow threatens “the traditional family” which lays the ground for the family policy (Q2).

*It is through the family that the kindred develops its spiritual qualities inherent to its nature. It is through the memory of the kindred, in its faith, that the family gains its immortality. The kindred and the Motherland are not only morphologically connected, they also reflect the specificity of the worldview and the idea of the societal development in the national consciousness of an ancient Russian individual. The Russian Orthodoxy strengthens spiritual content of the kindred and the family. The family acts not only as a social community of spouses… but also a spiritual “cell”, the “minor church”. (Concept of Family Policy until 2025: 1.1).*

This piece establishes a link between the family, the Russian Orthodox Church and the state. As Butler (2014) points out in regard to Russian orthodoxy, it is the church that embodies spirit of the nation proclaiming nationalism a sacred passion. That is how the separation of the church and the state fails (Butler 2014). It is by entering the family the Orthodox Church makes the state vigilant and ubiquitous.

The icon of “the family” in the case of the Recommendations stems from the general ideological context, provided by the Concept of Family Policy until 2025, and is presented as the key point for the legislative power application. As a part of Q2 Bacchi (2009) suggests looking at the key-concepts. The concepts “traditional” and “the family” are at the core of

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1 The term “ART” is, actually, used in the nowadays Russian legislation. It is also recognized internationally.
2 Russian “rod” (rus. род) and “Rodina” (rus. Родина).
3 “В народном сознании древнерусского человека род (семьи, родственники, племя), народ, Родина связаны не просто одним морфологическим корнем, а отражали специфику миропонимания, идею развития общества.”
meaning-making in the frameworks of the two documents. In the Russian context
“traditional” connotes to values proclaimed by orthodoxy (even though Russia is a multi-
national and multi-religious secular state according to the Constitution¹). However, it remains
obscure to what extent traditionalism is desired by the policy-makers and what relation to
spirituality and the Orthodox Church as an institution it has.

The growing influence of the Orthodox Church on the political decisions must be
understood in the context of the Church restoration after the Soviet period, when it was
persecuted and almost destroyed (Q3). During that period the Russian Orthodox Church was
more likely to be the antagonist of the national idea within the official rhetoric of the
government (Q4).

In this respect the Concept of Family Policy until 2025 refers negatively to the Soviet
period when “the Bolsheviks were consciously destroying the family… through breaking the
link between the marriage, religion and the church…” (Concept of Family Policy of until
2025: 2.12).

Thus through negation of the Soviet period, Russian monarchism, inseparable from
the Church, is being idealized and romanticized. Building on the idealized “traditional” pre-
Soviet past contributes also to the national idea as opposed to the West because: “[as a result
of the Soviet period] Russia has been actively involved in the system of relationship inherent
to the West with its fetish for the rights and freedoms of an individual, including rights of the
sexual minorities” (Concept of Family Policy to 2025: 2.12). Hence the West, civil rights,
“sexual minorities” are opposed to the monarchic Russia, national authenticity, the Orthodox
Church and “the family”.

This “family”, heralded to be the “happy object” of the state (Ahmed 2010), being a
self-evident concept for the policy-makers, refers in this context to the conjugal couple which
is valorized as the ideal for parenting and the only possible place where (only procreative)
sex should take place (Q2).

This union has to be composed of two able-bodied dimorphic sui juris not kin related
adults who are romantically and sexually involved with each other and who have genetically
related children that they conceived naturally (Cutas and Chan 2012). ART are capable of

¹ See Preamble and art. 14 of the Constitution of the Russian Federation;
producing such possibility horizons that might change the imaginary content of the given “family” ideal and provoke some uncertainties for the biopolitics of the state (Q2).

Application of ART causes parenthood to split and challenges the two-parent principle of the family law (Cutas and Chan 2012, Spilker 2008), it probes the “equality” rhetoric of the state (Spilker and Lie 2007) when ethical concerns (about surrogacy or egg donation, for example) are balanced against equal “reproductive rights” of citizens. National restrictive ART regulations result in export of ethical dilemmas (Melhuus 2012) and fertility exile (Inhorn and Patrizio 2009) as people are forced to travel abroad to get access to some ART.

Such a “family” ideal has a (hetero)normalizing effect, deeming other family constellations to fall outside the norm and the happiness: (not married) couples living with dependent parents or/adult children, one-sex couples, singles, unions with step-parents/step-children, single parents, non-sexual intimate connections, childless unions, orphans (Q5).

Furthermore, cutting off single women and unmarried couples from the access to ART on the grounds of celebrating “the family” renders these categories incapable for parenting and thus has deleterious consequences (rewarding some at the expense of the other) (Q2 and 5).

Following the logic of the Recommendations, the child ought to come only within a marriage which has a stigmatizing effect on the exnuptial births (both for women and for children) (Q5). So, in Russian Empire before 1902 (the monarchic and traditional past that the Concept of Family policy refers to) illegitimate children – children born outside of wedlock and the Church – had no heirship. The process of legal normalization of exnuptial births and the position of a single woman with a child was a gradual process typical for the European states (in Britain - see Carabine 2001; in Norway – see Annfelt 2007).

Bacchi points attention to the binary categories implying hierarchy (Bacchi 2009, Q2). ART as “a measure of infertility treatment” raises a question whether ART are seen as a medical issue: medical conditions are, as a rule, not cured by ART. These technologies are used as an alternative way of conception/childbearing. It is rather an issue of social

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1 Rus. “незаконнорожденные”;
2 Here I mean the process specific to the judicial power as Foucault represents it (gradual decriminalization, erasure of the norm - that prohibits - from the legal code). However, I don’t mean to underestimate the effect of the discipline on the social;
character, used in the context of the Recommendations instrumentally to determine who is eligible for parenting and therefore “the family”. It is directly pointed out in the Concept of Family Policy:

“Traditional values are understood as values of a union between a man and a woman exclusively.. with the intention.. to give birth and to bring up three and more children”

(Concept of Family Policy until 2025: 1.4)

Hence, the dichotomy fertility – infertility leans towards hierarchical relationships, where infertility is seen as deviation from the norm (Brednikova and Nartova 2007), powered by “the family” icon due to the imposed expectations of procreation. Since ART placed under the healthcare regulation (within a social paradigm), all who recourse to these methods are discursively put into a position of being sick and abnormal through making wrong lifestyle choices. This results in a subjectifying effect for the infertile (Q5), since ART are not only a way of “making” children, but also a way of “making” parents (Thompson 2005, Spilker 2008).

At the same time it was said at the round-table by one of its participants that “To not become infertile one has to live chastely1” (Verbatim report). Judging by the language used and the message of the utterance, the saying belongs to a Church assignee. It implies that one has to make morally correct life and reproduction choices so that they would not result in infertility. So, the utterance was meant to program a decent sexual behavior. It was an attempt to subjugate sex in two ways: by reproaching it and by not calling it by its name and “extinguishing words that render it too visibly present” (Foucault 1978, 17). However, as Foucault argues, one witnesses the institutional incitement to talk about sex and to govern it (Q3 and Q6).

This incitement is also traced in the first edition of the Recommendations which proposed to settle a special board consisting of “pro-life experts” and the Orthodox Church representatives to discuss and decide whether a married couple was eligible for the surrogacy program.

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1 Rus. “целомудренно”;
Abjecting homosexuals

Wide access to ART is represented as a problem because it threatens the traditional family icon. What makes wide access to ART a threat to this icon (Q2 and Q3)?

Access to ART is understood as an opportunity for “homosexuals to get children because they want to be a full value family”\(^1\). This point of view is also supported by the “problem” implications at the round-table: “Christian morality condemns child trading and homosexualism” and “When ART is for the same-sex couples it is a threat to the nation” (Verbatim report)

This is a typical biopolitical representation that is associated with what Foucault calls state racism. “Homosexuals” are constructed as a danger that exists within the borders of the state (Q3). They embody the deviancy that has to be eliminated. The given “problem” representation hints that “homosexuals” are discouraged from procreation as well as those who do not comply to the “norm” (Q5). Why is this pervasion dangerous? Via parenting same-sex couples might reach “the family” which is outside the iconic orthodox path and therefore threatens the vigilantism and ubiquity of the state. Then the language of morality is employed as an instrument of repressive power that outlaws some bodies from the citizenship (Butler 2014). However, there is no a word about same-sex couples in the Recommendations. This aspect of the “problem” is silenced (Q4). “Homosexuals” are rendered invisible and thus ignored. “Homosexualism” is not called into existence by naming it – as an abject it is placed outside the intelligible, deemed to have no agency, to be non-existent (Q5).

This ignorance allows the policy-makers to deny any kind of gay discrimination in Russia. At the parliamentary readings of the “Propaganda Law” Mizulina implies that the “Propaganda Law” is aimed exclusively at minors' protection, where “Propaganda” is defined as:

“... distribution of information, directed to shape untraditional sexual guidelines for children, opinions on attractiveness of untraditional sexual relations, distorted perceptions about social equivalence between traditional and untraditional sexual relations... imposing information about untraditional sexual relation which provokes interest...”

(From the verbatim report of the Parliamentary readings).

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\(^1\) Elena Mizulina, interview by Vladimir Pozner in “Pozner”, February 24, 2013. Channel One Russia, at 31:50;
This piece proclaims that “traditional” and “un traditional” sexual relations are not socially equivalent (meaning, the “untraditional” are deviant); and that thinking otherwise is distorted. In this context it is interesting how policy-makers define discrimination. Mizulina and her Committee are constantly transforming homophobia into a tolerant and just rhetoric of protecting minors from the negative influence. This official representation of heterosexual “normalcy” as vulnerable to homosexual perversion suggests that homosexualism is a transmittable (disease) issue (Sperling 2015) (Q3).

There were several legislative precautions taken in order to “protect minors”. First, the Propaganda Law which prohibited distribution of any gay-related information which is being upheld and integrated in the “National Strategy of Action for Children for 2012 – 2017” approved by the order of the President¹.

Second, the Federal Law N167 which introduced changes in the Family Code² and forbade adoptions by married gay couples (and singles) from the countries where such marriages are legalized³. This means that same-sex (married) couples can not adopt children from Russia. Furthermore, individuals coming from the countries where same-sex marriages are possible are suspected in homosexualism and thus get no right to adopt from Russia as well.

Mizulina also acknowledged that the policy-makers were discussing possibilities for creating “legal grounds for exempting children from the family, based on the factual marriage of a same-sex couple” (Zemskova 2013) through amending the Family Code of the Russian Federation⁴.

The reasoning for limiting access to ART at the round-table is explicitly homophobic that is in concordance with the general ideological context of the Committee on Family, Women and Children. But the Recommendations do not allocate this topic as a part of the “problem” (Q4).

¹ Order of the President №761 from 01.06.2012;
² In the chapter 19, article 127;
³ Federal Law N167 from 02.07.13: art.127:1;
⁴ Fighting against “homosexualism” could be regarded as a “political elevator”, a means of making ones name widely known. There were, at least, two more legislative incentives on this issue: a project of a Law N790069-6 introduced to the Parliament on the 15th of May 2015 “On amending the Family Code” that directly prohibits same-sex marriages (including cases of sex change); and a project of a Law N916716-6 introduced on 29 of October 2015 “On amending the Administrative Offence Code” that suggests inflicting a fine for “any public expression of untraditional sexual relations”. The future of these proposals is unknown.
**Tossing the national card**

During the round-table and in a more general context\(^1\) the nation appears to be a part of the reasoning for the legislative intervention against wide access to ART in several ways: 1. as the link between the Orthodox Church, the state and the individual (discussed earlier); 2. as opposition to the West; and, at the same time, 3. as the follower of an alleged “general Western trend” on limiting access to surrogacy and ART.

The round-table was devoted to surrogacy, and it is the surrogacy regulation that was mainly discussed. However, participants referred also to IVF procedure which they seemingly interpreted as “artificial conception” in general\(^2\), and it was this “artificiality” that was heavily criticized by the surrogacy opponents. The “general trend” on limiting access to surrogacy and “artificial fertilization” was constructed by references to several countries, where, actually, policy designs regarding ART range within permissive – restrictive continuum (Rothmayr 2004, Engeli 2009). Thus the Recommendations are illogical in two ways: for the first, the round-table discussed surrogacy, but limited access to all ART treatments; for the second, the anti-Western rhetoric at the round-table which informed the decision to restrict regulation of ART in Russia was, surprisingly, substituted by the argument to follow the “general trend” of the Western countries (Q4, Q6).

There are some problem implications at the round-table that toss the national card: “What do you think about surrogacy agencies in Italy arranging surrogacy tourism to Russia?” and “Only 15 countries out of 200 have permitted surrogacy, and the half of them - because of morality collapse!” The first one suggests that the Russian state is being exploited by western capitalism via access to surrogacy. The other – that surrogacy is immoral, and as a nation Russia has a mission of preserving traditional family values (Q2).

The latter corresponds with the idea of the “Moscow is the Third Rome” (after Rome and Byzantium) originated from the end of XVth century and still promoted by the Orthodox Church, meaning that the Russian state has a mission of being the last bastion of faith and morality (Q3). Opposing Russia to the western values (read, for example, gay marriages or feminism) becomes a ground for limiting access to ART. Similarly, in Poland in the 90s ART

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1 Elena Mizulina, interview by Vladimir Pozner in “Pozner”, February 24, 2013. Channel One Russia;  
2 Such technology as artificial insemination has not been mentioned at all. It also seems that the opponents of surrogacy perceived it (surrogacy) as a separate type of ART (not as an arrangement between the intended parents and the surrogate, coupled with IVF treatment);
was proclaimed a soviet trend as a part of the strategy for ART discreditation; 10 years later, with the Catholic Church restoration, - as a western technology and, therefore, a symbol of decay (Radkowska-Walkowicz 2014).

At the same time it is stated in the motivational part of the Preamble of the Recommendations: *It is not accidental that legislation of those countries where surrogacy is permitted has considerable limitations on the use of this method.* Then follows a list of countries (European, some states of USA, Israel) where application of surrogacy (not ART) is limited. However, the logic of the Recommendations is disrupted. The document suggests to limit access to ART on the grounds of legal restrictions on surrogacy in other countries. These countries, in the context of the round-table debates, turned out to be both the role-models and the “immoral states”. This shows how arguments for limiting access to ART are adjusted to the aims and used inconsistently (Q4, Q6).

**Strategic use of statistics**

Following Bacchi’s suggestion to look at the manner statistics are employed (Q3), I address here an abstract from the Verbatim Report where Mizulina makes use of statistics at the round-table in regard to comparing anti-abortion policy to ART application in terms of demographic priorities:

*Up to 50% of women who recourse to abortion become infertile. Shall we invest in this sphere then? There was a psychologist installed in office in Kurgan for pre-abortion consultations. [As a result] 320 children were born. At the same time it would have taken 16.5 mil. rubles for ART, which is in 88 times more. The majority [of population] is in favor of traditional conception. There are 69% of orthodox and 89% of religious [people] in Russia. …We’re writing [laws] for the whole society.*

(the Verbatim Report from the round-table)

She implies that anti-abortion policy addresses demographic priorities in a more effective way than ART, and that women employ ART (only) because they got medical complications as a result of abortion. Men are completely absent from the picture of procreation and infertility (Q2).

This abstract demonstrates how infertility is presented as a social and psychological problem having negative connotations, rooted in the socially unacceptable behavior
(Brednikova and Nartova 2007), with the blame being placed on the individuals. The women, making a wrong moral choice (abortion), become a problem (Q1). The solution proposed is to employ a psychologist (as a result of the all-Russia “Sanctity of Motherhood” program implementation¹), which is a preventive measure: the ones who are already infertile (or would become infertile) get no attention. Then the economical argument is used: ART are more expensive than providing a position of a psychologist. The incursion on ART is concluded by referring to traditional majority and legitimated by responsibility of making laws for society (majority) as a homogenous group.

Let alone the problematic character of the statistics given (what was the survey like; and what does it mean for an individual to be orthodox or religious?) and the causal connections between the phenomena (the number of children born and the position of a psychologist), it is more important, within the WPR approach, to pay attention to how this counting supports a specific policy and the “problem” representation. The economical argument is related to the preventive measures and not the curative alternative to ART. However, it puts ART in an unfavorable position of being too expensive. Moreover, ART are presented as immoral and anti-traditional. The statistics and Mizulina’s claim about the whole society puts her agenda on the level of population, highlighting the importance of her expert position. Population as a species-body is rendered visible through statistics. The individual becomes less important than the proportions and rations of some phenomena: the birthrate, infertility rates and percentage of religiosity. So, the abstract from the round-table subjects population as a singular species body to the disciplinary power in regard to life and reproduction choices (Q3).

Through its alleged embodiment of expert knowledge the Committee on Family, Women and Children, represented by legal experts, social scientists, and the Orthodox Church devotees, has been entitled by the state to create norms of self-regulation for the population (Q6). The statistical data is meant to serve as evidence for the concrete problem representation grounded in the concept of “population” which renders individual concerns meaningless, if not immoral.

¹ The program was developed in 2006 by the National Glory Center, a “non-political NGO” aiming at “revival of the greatness of our country” - http://kfcnsr.ru/; one of the aspects of the “Sanctity of Motherhood” program is providing psychologists for the pre-abortion consultations;
Conclusion

WPR analysis of the Recommendations has revealed that in order to justify legislative intervention, policy-makers allocated the problem as following: wide access to ART threatens “traditional family” and therefore the state (Q1, Q2). It is the internal danger of “homosexualism” that worries the policy-makers. The further examination has shown that this representation is intelligible in the context of the Orthodox Church restoration after the Soviet period and its coalescence with the state (Q3). Thus by policing access to parenting the state protects “the family” icon and its presence in it through the Church. Nation appears as a part of the argument for limiting access to ART as both, the follower of the alleged “European/ Western trend” and as the opponent of the “Western values”, which suggests that the use of the arguments is clearly adjusted to the ends (Q4, Q6). The whole rhetoric builds on a heteronormative brand of patriotism (Turbine 2015).

The WPR approach pays also special attention to the effects of the problematization (Q5). In case of the Recommendations, limiting access to ART to married couples (of a man and a woman) contributes to the simplistic paradigm of nuclear/sexual family. It generates social pressures and expectations of procreation and happiness that are sometimes unattainable. It abjectifies gays in Russia and stigmatizes those who fall outside “the family” ideal by rendering some practices normative: engaging in a dimorphic conjugal sexual union (preferably orthodox) as an only way of parenting (Q5).

The analysis of the way in which statistics are incorporated in the problem representation shows how the focus is turned towards the preventive measures. The statistical data were meant to support the problem representation according to which female individuals who ostensibly made a morally unjustifiable choice (abortion) have to face fair consequences (infertility) and become an illustrative example for other individuals and thus induce them to compliance with the biopolitical normativities of the state. Rhetoric at the round-table is pro rata the general course of the biopolitics of today’s Russia channeled by the Committee and the Ministry of Health directed towards dealing with demographic risks. These risks are allocated to the low birthrate and therefore are associated with reproductive and sexual behavior.
2. Surrogacy

In this part I am going to pose WPR questions to the points of the Recommendations that address surrogacy. I want to remind that the round-table and the document it resulted in were formally devoted to surrogacy. There are 15 points that target this issue in the second edition of the document. Due to the big number of paragraphs, many of which have descriptive or procedural character, this part would be organized differently. I will try to briefly subject every point to the set of WPR questions.

**Legal entanglements of surrogacy**

The *first paragraph* of the Recommendations limits access to surrogacy to married couples. The issue of access has been extensively discussed in the part 1 of the analysis.

*Paragraph 3* suggests to define surrogacy in accordance with the family legislation thus implying that nowadays surrogacy could be practiced outside of it. What is the problem represented to be then? It looks like the problem is the dissociation of the new reproductive technology (surrogacy) with the family legislation and thus the state (Q1). It means that the technological (scientific) advances in the sphere of reproductive technologies open up for possibilities which are not yet enhanced by the legal code (Q2).

According to foucauldian notions on the judicial power, what is not inscribed in the law is permitted, and the Order is what remains after the work of law is done. Per today, some of the possible outcomes of surrogacy application are not regulated by the law. The Recommendations are trying to differentiate, locate and create the causational links between the “reality” and the existing legal code, thus inscribing these outcomes in the law. This could have suggested that the work of the law is never to be finished. However, utilizing Butler’s perspective, these outcomes are, actually, brought into being by naming and codifying. The law, thus, is performative in a sense that it provides a teleological narrative for the judicial power to expand, the manipulative vocation of an illusion of control, rightness and authority of the law (Q3).

Contrary to the judicial power, Discipline prohibits everything that is not named. It operates through citation as a reiterative practice by naming what is allowed. Being a product of normation, ART is, at least, a weird (read, not normal) way of getting a child in the
nowadays Russia (Brednikova and Nartova 2007). However, media coverage of the issue is growing (Tkach 2002, Brednikova 2002). This means that through citation ART have a potential of being integrated in the “normal” if not negated by the law.

**Paragraph 4** proclaims commercial surrogacy to be a problem (Q1). Apparently, by “commercial surrogacy” legislators mean\(^1\) a surrogacy procedure which is being paid for. The commercial aspect could include a medical clinic (or other organization) benefiting either from intermediary activity or from conducting the procedure itself\(^2\); a surrogate mother who gets honorarium for her “services”; and the intended parents who pay. However, it is hard to see which aspect of the “commercialization” the problem is being anchored in. Here it is helpful to address the Verbatim Report from the round-table:

- The child could become a commodity;
- We might get a divided society where some could afford surrogacy while the others would become their slaves. Why would one need a natural conception if one could hire somebody?
- Human trafficking is an attribute of a slave-holding society;
- What do you think of surrogacy agencies in Italy arranging surrogacy tourism to Russia?
- A woman becomes a biological prostitute for 9 months.

These are the imaginary effects of surrogacy application. These effects are invoked as the grounding for the legal intervention, since the judicial power, according to Foucault, imagines the negative. The Discipline, as Foucault suggests, is complementary to reality; it operates as long as there is multiplicity and an objective. Clearly, the mentioned examples of surrogacy application are imagined in their multiplicity and it is only through this multiplicity that they gain the effect. Using the moralistic judgmental language the policymakers condemn the “abnormal”, thus forcing all those who are present at the round-table to align with their arguments. To object this kind of rhetoric would have meant to be placed out of the “normal” and out of the intelligible (Q6).

What aspect of commercialization is the problem anchored in? I will try to look into each of the three. 1. I assume that the mentioned imaginary effects of surrogacy application

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\(^1\) Though there were some participants at the meeting who were confused by the term “commercial surrogacy”;  
\(^2\) In the previous edition of the Recommendations it was suggested to prohibit any intermediary activity in regard to surrogacy;
locate the problem in the fact that intended parents pay to get a child\(^1\) (Q2). It’s via this payment that the child potentially becomes a commodity: one can “order a child” or “hire somebody”\(^2\). And if the access is limited to married couples, then it is a (infertile?) married couple that is reproached for engaging into contractual relations instead of “the natural conception”, thus becoming the reason of trafficking and society differentiation. Accordingly, the solution suggested is to ban these payments. So, if the intended parents do not have to pay, they would better conceive the child “naturally”; and if the procedure is free of charge then child trading is excluded and the future of slave-holding society would never come.

2. The “problem” seems also to be connected to the fact that (medical) organizations benefit from providing intermediary services (Italian agencies for surrogacy tourism to Russia). Formally, surrogacy is not a separate type of ART, but rather a contractual arrangement between a surrogate mother and intended parents. According to the law, a surrogate mother can not be an egg donor at the same time. So, practically it is an IVF procedure combined with egg donation. Then “the commercial surrogacy” refers only to the intermediary activity of bridging up intended parents and a surrogate mother. According to the logics of the policy-makers then, paying for IVF, AI, ICSI and other forms of assisted reproduction, including intermediary activity, does not create a danger of child trafficking. However, bringing together those who have some interest in surrogacy arrangement is seen as unacceptable (Q4).

3. As it also has been mentioned (see Tossing the national card), surrogacy tourism to Russia might also connate to the western capitalism exploiting Russian women, making them “biological prostitutes for 9 months”. Comparison with prostitution bases on the monetary reward for the “services”. As soon as a surrogate mother gets no reward, the arrangement is not considered prostitution\(^3\). Interestingly, surrogacy aims at childbirth in the absence of coitus and therefore there is not that much “sexual” about it (Q2). Within this “problem” representation women are portrayed as both victimized and menacing. Criminalizing

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\(^1\) As Brednikova, Nartova and Tkach (2009) estimate, the average honorarium to a surrogate mother was equal to the price for a one-room apartment in 2009. According to my web research, the honorarium might vary depending on the conditions (whether it is an agency or “independent” surrogate). As a rule, there also are additional costs covered by the intended parents;

\(^2\) Similar articulations of surrogacy (including analogy to prostitution) circulate within the Norwegian legislative debate (Stuvøy, forthcoming);

\(^3\) In the previous edition of the Recommendations it was suggested that a surrogate mother could be only a relative of a married couple;
commercial surrogacy might lead to stigma and critique of the ones who make this kind of life choices (Campbell 2013). It also raises a question of reasonable expenses that have to be covered during the pregnancy, because it is undoubtedly financially demanding too (see Ragone 1996). This aspect is not elaborated on in the document (Q4).

To sum up, WPR interrogation provides some arguments that show how “the problem” stems from the monetary nature of the reward to a surrogate mother and intermediary organizations from intended parents (Q1). However, there are some inconsistencies in the problem representations.

**Paragraph 5** of the Recommendations prescribes an intended surrogate mother to provide a written permission of her spouse if she is married. It is strange that this point has been included in the document since such a norm is already present in the nowadays law¹. It might indicate that the law was not enough studied by the round-table organizers. Anyway, I can only guess whether the policy-makers consider this to be the wife’s moral obligation to get her husband’s permission or, possibly, they preclude some uncertainties of emerging rights and responsibilities associated with the childbirth within the family of the surrogate (Q1).

There is, of course, a legal possibility that a surrogate mother changes her mind and registers the child she has given birth to as her own. This potentiality entails legal parenthood for the spouse of the surrogate² with all the rights and responsibilities attached. Clearly, that might be not a desired outcome for the spouse, which creates grounds for a legal conflict.

**Paragraphs 6 – 14** elaborate on possible outcomes of surrogacy application. These outcomes are conceptualized through emerging rights and responsibilities inscribed in the law.

**Paragraph 9** suggests that the right of intended parents to register the child as their own has to prevail over the right of a surrogate mother. Then a possibility that the surrogate mother might change her mind and decide to keep the baby is seen as a problem (Q1).

¹ Federal Law N323, art. 55, 10;
² On the grounds of presumption of fatherhood – part 2, art 48 of the Family Code of Russian Federation;
Why that might be a problem (Q2)? According to the nowadays legislation\(^1\) there are several documents that result in granting parental status\(^2\) over a child born by surrogacy application: the contract\(^3\) between the commissioning parents and the surrogate, an informed consent of the surrogate for “medical intervention” and the consent of the surrogate that the married couple be registered as parents of the child she has given birth to.

Hypothetically\(^4\), if a surrogate refuses to give her written consent to register a couple as the child’s parents, she, then, becomes a legal mother herself. Consequently she is legally eligible for contesting legal fatherhood status\(^5\) of the man whose germ cells were used with all the responsibilities attached. This creates a situation when instead of reaching the imaginary goal of a “family” the married couple gets no child (nor money), the husband becomes a legal parent of a child which is genetically related to his spouse but the child’s legal mother is a person he could have never even met before and with whom he is legally forced to negotiate issues of care, contact and alimony (Q2).

Then the paragraph 9 of the Recommendations suggests limiting the surrogate’s rights which thus makes gestation less socially valuable than genetic connection between donors and the child (Q5). But the case might be more complicated if an egg/sperm donor and a legal mother/father are different persons. Then the intention to become parents coupled with the compliance to the family ideal (if the couple is married), in perception of the state, becomes more important that both genetics (donors’ connection to the child) and gestation (surrogate’s connection). Unfortunately, this intention principle does not work equally for everybody, since it is limited by the issues of access to ART and surrogacy (Q4).

**Paragraphs 10, 11** elaborate on the possible outcomes of surrogacy arrangement and prescribe responsibilities to the parties involved which makes a surrogacy arrangement even more risky to engage in. It might though be disputable to assign alimony to a surrogate (in case both the intended parents and the surrogate refuse the child at birth). Ideally, a surrogacy arrangement is a time limited endeavor. Possibility of assigning alimony to the surrogate

\(^1\) Art.55 of the 323 Federal Law and the part 4 of the article 51 of the Family Code of the Russian Federation;
\(^2\) Here I mean legal parents, i.e. registered by the Civil Registry attorney in the birth certificate of a child.
\(^3\) A legally recognized contract might be issued with the intent to pass on or to take over some civil rights and responsibilities. Passing a child from a surrogate mother to commissioning parents can not be a subject of a contract. Part 9 of the article 55 of the 323 Federal Law and part 1 of the article 161 of the Civil Code prescribe the surrogacy contract to be an agreement in a written form. The conditions of this agreement are determined by the sides;
\(^4\) There, however, were precedents (see Svitnev 2012);
\(^5\) Via appointing a genetic expertise in the court;
mother for 18 years subjects her for even more pressure and makes it almost a life-long responsibility. One can, of course, argue that a child is a life-long responsibility. But then we see that the legislation ascribes parenthood through rights only to one party (either a commissioning couple or a surrogate), however when it comes to legal responsibilities the legal parenthood might be ascribed to several parties (both an intended couple and a surrogate). This makes legal parenthood fragmented and unequally distributed through responsibilities the parties acquire (Q5).

Paragraph 12 suggests introducing “an institute of surrogacy confidentiality”. Then, apparently, the disclosure of identities of those involved in the surrogacy arrangement is a problem, as well as information about the arrangement itself. If the institute is analogous to the adoption confidentiality then those identities include both the parties involved in the surrogacy arrangement, official representatives, medical workers and, possibly, everybody who had access to the information about the arrangement (friends, relatives, etc.)

According to the law, adoption confidentiality is practiced in the interests of the child. If analogous to the institute of adoption confidentiality, the institute of surrogacy confidentiality is meant to protect the child’s interests in order to “provide a proper physical, psychical, spiritual and moral development of the child”.

Thus making a parallel with the surrogacy arrangement, it is in the interests of the child not to know her origins because that might affect the symbolical parenthood status of her legal parents. Therefore we see that even though the legal meaning (and the symbolical) of gestation is diminished by the legislators through the recommendations they lobby, it is implied that the fact of gestation has to be confidential as it might, nevertheless, be symbolically important and influential (Q2, Q4).

Adoption is quite an often referent when it comes to positioning ART among possible opportunities to reach “the family” ideal. Melhuus (2012) provides us with results of her research which show that the reasoning for and against adoption/ART revolves around the child as “own”: both in terms of genetic connection and “natural” kin extension, and in terms of belonging equally to the both parents (in contrast to having a genetic connection to only one parent as a result of ART application).

1 The confidentiality of adoption is regulated by the article 139 of the Family Code of the Russian Federation; 2 Chapter 19 of the Family Code of the Russian Federation; 3 Part 2, art. 124 of the Family Code of the Russian Federation;
 Though associating surrogacy (why not ART in general?) to adoption within the legal framework brings in an important topic - the consideration that the child’s nurturance by the adoptive parents trumps adoptee’s rights to maintain connection to their genetic parents (donors) and also the birth parents’ rights (a surrogate) to know about well-being of their children (Q4, Q5).

As Harold D. Grotevat (Grotevant 2007) puts it, adoption represents a “reproductive disruption” alongside with ART: when the “normal” or “default” course of reproduction is not followed (Grotevant 2007: 123). In his article he argues for an “additive model”, i.e. a legal model of adoption that allows for maintaining child’s connection to both the birth parents and the adoptive ones. His study in the USA also shows that the “additive model” manages to incorporate the parenthood fragmentation in case of adoptions. As the analysis shows, parenthood fragmentation takes place with surrogacy (and other types of ARTs when a donor material is used) too.

Furthermore, introduction of the confidentiality institute of surrogacy arrangement is incorporated in “the child’s interests” rhetoric. This means that it is not in the child’s interest to be located within the family story, or to have a story of her own. Contrary to this, Parks (2010) argues that the child deserves the truth not only for the authentic medical anamnesis, but also for the sake of equality with all the people involved in the process, her possible siblings and peers.

Paragraphs 12 – 16 propose developing legal forms and procedures. So, that a surrogate would become eligible for getting a “medical certificate of birth with her personal data” which is presumably for her to be able to get the maternity leave. This means that legally she would be recognized as a mother (though with no legal consequences in respect to the child she has given birth to). It’s also suggested that the commissioning couple, becoming legal parents, gets the right for the “maternal capital” and the care leave (Q5).

Thus, again, the legal parenting is fragmented through distribution of rights and responsibilities, even though it is only one party that legally gets the parental status (Q5).

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1 The term of “reproductive disruption” is introduced by Inhorn (2007);
2 “Декретный отпуск” – has no linguistic connotations to maternity, it derives from “decree”, the Decree on pregnancy allowance which was passed in 1917 and prescribed allowance and maternity leave;
3 Maternal capital is a comprehensive measure introduced in 2007 and supposed to stimulate birthrate in a form of one-time monetary incentive granted to a mother of a second child with limitations on its use: either on mortgage payments, education of the child or pension fund for the mother – see Rivkin-Fish (2010);
Paragraph 17 prescribes legal liability to the medical personal for break of the surrogacy legislation. The Recommendations have to ensure that the legislation is followed because the policy-makers suspect there would be attempts of disregarding the law (Q1).

A gift or a contract?

As I have already mentioned, formally, surrogacy is an arrangement between a surrogate mother and the intended parents. Factually, it is a procedure of IVF with the donor egg (and, possibly, donor sperm) coupled with gestation. These are the legal and the medical visions of the issue which, according to Shanley and Jesudason (2012), conceptualize surrogacy as either a gift or a contract (Q2, Q3).

The legal inscription of the parental status furthered by the Recommendations suggests the contractual character of this endeavor. This contract is elaborated in the text of the document. It articulates expectations of passing the motherhood on to the intended mother and seeks to preclude possible disagreements among the parties. Hence, as also Shanley and Jesudanson agree, gestation turns into labor, and the surrogacy contract – into employment contract (Q3, Q5). Clearly, after the birth, the contract is executed and the relationships between the “parties” terminate (as Charis Thompson (2005) demonstrates it in her ethnographic study).

Even though the child can not become an object of a contract (it is the parental status that is being transferred), the contractual relationships and the very idea of transferring statuses (and therefore the child, in fact) creates an impression, as Narayan (1999) argues for, that the child is an entity to be possessed, deprived of the right to know her origin (Q5).

Thus, this logic, even with “non-commercial” surrogacy, runs a risk of underestimating the relationships between the fetus and the gestational mother.

By prohibiting commercial surrogacy the Recommendations foster the conceptualization of surrogacy as a gift (Q2). If the child is a gift then the surrogate mother is not a prostitute, the child is not a commodity and the intended parents do not resurrect the slave-holding society (Q5). Yet, it is not clear what the gift is: the child or gestation. Apparently, it is difficult to decide as the one comes from the other. Thus, I find it fair to claim, the gestational mother is not quite separate from the child. This makes the medical representation, as well as the legal, impartial (Q3).
Anyway, the Recommendations envelop surrogacy as a gift within the contractual relations. Even though the intention was to serve the best interest of the child, the surrogate protection and creation of the “traditional family”, this distancing legal narrative failed to capture the complexity of the emerging relationships (Q5). Possibly, it is exactly because of lobbying the “traditional family” ideal (as also Shanley and Jesudason 2012 argue) the document sacrificed these interests for the sake of the interests of the nowadays biopolitical project.

**Conclusion**

The WPR analysis of the Recommendations concerning surrogacy has revealed several distinct problem representations. There were many paragraphs to consider and they were mostly devoted to the procedure and distribution of rights and responsibilities. I have managed to identify the following:

- There is a “blind spot” in the legislation which allows the surrogacy arrangement to be practiced outside of the family legislation (Q1). Taking into consideration foucauldian understanding of the judicial power coupled with Butler’s performative theory, this gap allows for the constant expansion of the legal code to maintain its authority and solidity (Q2);
- Monetary reward to a surrogate and intermediary organizations from the intended parents is a problem with its links to class differentiation, child-trading, women suppression and colonialism (Q1, Q2);
- There is a predisposition for legal conflicts on the ground of the parental status (Q1). In this regard the state has to take a clear stance about who to ascribe parenthood to. This affair turns to be problematic as the legal parenthood becomes fragmented over more then one party through ascribed responsibilities (Q5).
- Recommendations promote a view on gestation as less symbolically and legally important than the genetic connection and the intention of the prospective parents (Q5). At the same time it is acknowledged (Q1) that gestation is a powerful symbolic element which has a potential of destabilizing the well-being in the family and therefore has to be silenced (Q2).

The Recommendations incorporate the gift rhetoric into contractual relationship between the involved parties (Q2, Q3). However such a conceptualization has its drawbacks
(Q5). It risks underestimating the connection between the gestational mother and the child. It also disregards the complexity of the emerging relationships in favor of maintaining “traditional family” ideal.

I would like also to point out that, according to the Constitution of the Russian Federation (article 38), motherhood and childhood are under protection of the state. However, keeping in mind surrogacy entanglements, it is not specified what “motherhood” means. Is it the gametes-related connection, gestation or parenting (or intentional motherhood)? It looks like some hierarchical relations between those three emerge; and gestation takes the lowest position (Q2). This is paradoxical since the policy-makers were trying to protect surrogate mothers.

3. The informational strategy

This part seeks to explore the issue of reasoning against spreading information about surrogacy and germ cells donation. Using the WPR scheme I will try to locate the problem and to uncover its underpinnings. In so doing I will address the Recommendations and existing legislation within the field of family policy.

I will also ponder upon one of the most often justification of the legislative interventions within the field – that is the argument “in the best interest of the child”. This argument is common in reasoning about both, the access, surrogacy and the informational strategy. It is the latter that this sub-chapter focuses on. And it is the informational strategy that is one of the key elements in the nowadays family policy of the Russian Federation. Therefore the issue of “the child's interest” is fairly taken under the roof of this strategy, as it is the core element for the minors-related legislation.

Propaganda

There is only one paragraph of the Recommendations devoted to this matter. Paragraph 8 suggests prohibiting any advertisement of surrogacy and germ cells donation. The preamble to the document points to presence of “aggressive and one-sided propaganda of surrogacy in the media”. I suppose this is where the problem appears (Q1).

The Great Russian Encyclopedic Dictionary and the Great Political Dictionary define propaganda as distribution of philosophic, political, scientific and other views (opinions and
beliefs) with the aim of their integration into the public consciousness. It is both the information spread and the process of spreading.

Etymologically the word “propaganda” (from Latin *propagare*) was introduced by the Catholic Church in 1622. It, of course, not necessarily had a negative meaning, but it definitely does so in the context of the Recommendations.

Propaganda (both as a process of spreading and as the information to be spread) was actively taken on board by the Soviet authorities in times of totalitarianism and therefore it bears strong connotations to the soviet past and ideology. In my mind it stays for (deceptive) manipulation of public opinion (Q3).

I propose that propaganda is a mechanism of the disciplinary power. It posits a model in order to get docile and more effective subjects. It gains its effects through multiplicity, the constant reiteration of its message (Q3).

According to my personal experience, the word “propaganda” has become somewhat a buzzword in the recent years. It is especially so within the frameworks of the family policy and the Mizulina’s committee: propaganda of untraditional sexual relations, propaganda of traditional values, propaganda of surrogacy or propaganda of blood donation. Such popularity of “propaganda” might suggest the growing demand for channeling public opinions and behavior.

In this respect I can define two scenarios (Q2).

First, the increasing need to “guide” the population is associated with the invasion of the “alien” beliefs (which also might be called propaganda): human rights (rights of sexual minorities especially), feminism, liberalism, etc. As it has already been discussed, these issues are commonly referred to as the “Western values”. Picturing propaganda as a process of trespassing the national border by a foreign state, threatening sovereignty, allows for employment of the counter-measures to “protect” the state. And in this situation the state takes on a role of a censor. It appoints what knowledge-complexes are more productive of the subjects needed in terms of the governmental biopolitical project.

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1 Both dictionaries accessed online - [http://www.onlinedics.ru/slovar/pol/p/propaganda.html](http://www.onlinedics.ru/slovar/pol/p/propaganda.html) (accessed 04.09.205);
So, accusation in propaganda is nothing else but a problem representation that gives a *carte blanche* for the counter-censorship (Q2).

However, it is not the state (in its essentialist understanding) that cuts off the unwanted opinions. It is the concrete policy-makers that take these decisions (Q6). It is also necessary to mention, that the task of cutting off some opinions is barely feasible, since there are multiple sites which allow these opinions to circulate anyway. Therefore the only possible thing to do is to inscribe the censorship in the law and to discursively push all the competing propaganda out of the intelligible (Q6).

This paranoid vision might be supported by the recent legal initiatives:

- the “Propaganda Law” from 2013, which subjects “propaganda of untraditional sexual relations” to administrative liability;
- The Concept of Family Policy to 2025, which propagates “traditional values”;
- The National Strategy of Action for Children for 2012 – 2017, contains both propaganda of “traditional values” and anti-propaganda of “untraditional sexual relations”;
- The Concept of Demographic Policy to 2025, that mentions propaganda of “traditional values” again;
- The Federal Law from 2012 “On amending laws of the Russian Federation when it comes to non-governmental organizations functioning as foreign agents”, which forbids any non-governmental organization to get funding from outside of the Russian Federation; and the Federal Law from 23rd of May 2015 which forbids any “NGO undesired on the territory of the Russian Federation”.

The list is not exhaustive.

The second scenario bases on a more totalitarian thinking. If one imagines an unfortunate state where the decisions made by the government coupled with economical difficulties evoke massive discontent, than one can see propaganda as an instrument to suppress any opposition and to hold the reaction back.

Utilizing Butler’s perspective on foucauldian governmentality (2004), this kind of censorship is a moment of law withdrawal. It is a performative practice, not grounded in the law itself, that brings sovereignty into being within the frameworks of governmentality. This
censorship withdrawal is justified by the interest of the state. It also utilizes the notion of harmful (dangerous) knowledge (akin to the foucauldian “dangerous individual).

Anyway, propaganda is a discursive disciplinary practice, implying that:

- there is a certain opinion, ideology, knowledge-complex, believe, representation
- there is a source consciously generating this opinion
- there is a certain objective of this activity
- it is possible to preclude some opinions from appearing (by constant repetition of the competing representation or by censorship)
- there is a passive uncritical recipient (since it is a disciplinary practice, it targets both the body and the mass).

Both propaganda itself and accusation in propaganda are paranoid practices. Admitting the manipulative (and even deceptive) character of “propaganda” the policy-makers doom these informational strategies to be ineffective (Q5). It is especially so when one propaganda (of traditional values) is publicly declared to outplay another propaganda (of untraditional sexual relations).

It is not surprising, that it is difficult to define what exactly propaganda is. In the case of the Recommendations it is suggested to prohibit advertisement of surrogacy and germ cells donation. Strictly saying, advertisement could be defined as promotion of a commercial offer. Nevertheless, the broad definition of “advertisement” might pose difficulties both for the lay people mentioning surrogacy and the legal executives trying to prove this mentioning is an illegal action (Q4).

Yet the preamble mentions “aggressive one-sided propaganda” without any further specification. As a consequence, advertisement is prohibited. This results in an equation mark between propaganda and advertisement within the frameworks of this document.

I believe this paragraph would not result in any discursive effects (Q5), since it allows for reference to surrogacy and germ cell donation in general, it also allows for mentioning

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1 It seems that the “propaganda of untraditional relationships and homosexualism” might, actually, be defined as “informing about sexual minorities” – see a note by Havansky (2013);

2 The English “advertisement” (from Latin ad vertere, turn toward) is not exactly what the Russian “реklama” (from Latin reclamare, argue, shout out, protest) is;
and advertisement of ART and medical clinics that provide such treatments. What this paragraph manages to do, in my opinion, is to disavow the paranoid nature of the document.

**In the best interest of the child**

The Recommendations are among the long list of the legal documents that are incorporated in the rhetoric of the interest of the child\(^1\). The figure of the child was employed in depicting possible negative outcomes of surrogacy application (like child trafficking) during the round-table discussion.

This discursive framework is legally justified by the UN Convention on The Right of the Child (1989) which USSR joined to in 1990. However, “the best interest of the child” poses fair questions of:

- What does “the best” stand for? Does it imply maximization of the child’s satisfaction no matter the cost? It is hardly so (Kopelman 1997, Archard 2011). How “the best” should be estimated and what are the alternative options? Who is going to decide?
- Should the child’s interest be prioritized over the other’s (including other children)?
- What is the “interest”, indeed?

Munthe and Hartvigsson (2012) exemplify how the “best interest of the child” fails to be justified by the ethical claims based on the “social contract” between the autonomous, self-conscious, rational beings, who are capable, first of all, of realizing their will. Admitting that the irrational, dependent, disabled being has interests that can be morally defended means utilizing an “ideal observer” stance. This stance, Munthe and Hartvigsson continue, allows projecting interests of a child from the ones she would have had if she would have been an adult (rational, self-conscious, etc). Obviously, it is barely possible to project such interests (as one can not predict what person the child wants to/will become). Plus, it is not possible to justify such predictions.

Kopelman (1997) and Archard (2011) suggest that “the best interest of the child” has an objective of enhancing the child’s “quality of life” which might concern experiential interests (more enjoyable experiences), developmental interests (most effective development into adult), and basic interests (material and social resources that allow for experiential and

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\(^1\) As, for example, the Concept of Family Policy to 2025, The National Strategy of Action for Children for 2012 – 2017, the Propaganda Law;
developmental interests to be realized). However, theoretical grounding and practical implementation of such a conceptualization of child’s interests is obviously problematic.

For the first, experiential interests base on experience which is a highly subjective matter. Therefore there is a potential difficulty of creating a universal pattern for measuring experiences, because it is an issue of emotional feedback of the child. Furthermore, it is hard to claim that there should be only experiences that result in a positive emotional reaction of a child. It is especially so if we consider that the differentiation between the two is only possible when both are present. In other words, negative and positive experiences are co-constitutive of each other.

Second, developmental interests appear to be more instrumental. They fit well into the governmentality analytics, since the aim of the government is managing life (through biopolitics) to reassure the renewal of docile and resourceful subjects for its functioning and expansion. Yet, development is a comparative value as well. It also requires the “ideal observer” to predict the most effective way to realize child’s potential (in terms of profession, for example). This discussion also risks falling within the frameworks of the “successfulness” idea which is hardly defendable.

Clearly, if experiential and developmental interests are not easy to define, the basic interest (being the grounds for the two aforementioned) can barely be universal.

This discussion is relevant for the study in two ways. For the first, it has to be considered in the discussion of the most suitable context for the child to come in and develop within. This contributes to the arguments against promoting the (traditional) nuclear family ideal which might be well harmful for the child’s interests. This kind of promotion (now I want to say “propaganda”) precludes some individuals from parenting through limiting access to ART on the grounds of the “child’s interest”.

Being distributed by the state as the default setting, the nuclear family, as it has been shown earlier, does not manage to incorporate all the potentially important for the child connections in case of ART and surrogacy application. This kind of simplistic conservatism strives to make a clear cut between the (two dimorphic) parents and the rest, disregarding importance of genetic ties and/ or gestation.
For the second, it is illogical to utilize an argument for “the best interest of the child” in respect to limiting access to ART and surrogacy: like, one is not eligible for an ART treatment since it is against the interest of the child to come into being such a way, in such a context, with such a parent.

This argument is untenable because it is not possible to apply the “ideal observer” stance in this case. One can not project the interests of that child as if she would have been an adult, since she would have not existed, in the first place. I guess, the existence of the child outweighs all the hypothetical (even if there were some) threats to her interests.

Conclusion

The informational strategy suggested by the Recommendations seeks to preclude any advertisement of surrogacy and germ cells donation. It should have been rooted in the aversion towards commercial surrogacy. But the reason for such a suggestion is the “one-sided propaganda” (Q1). Why is it a problem?

It is a problem because of the very definition of “propaganda”. Accusation in propaganda (as well as proclaiming propaganda) is a paranoid problem representation that allows for the governmental intervention in the form of censorship (Q2).

I find it symptomatic that “propaganda” has become quite an often referent. It signals for the growing need to channel the public opinion (Q3). It is often invoked together with “for the best interest of the child” principle (Q3). Regardless of the fact that it is hardly possible to define this “best interest”, it is used both in the context of the round-table discussion, in the context of the Committee on Family, Children and Women and in the more general context of the family policy.

However, this principle fails to be justified in respect to ART application. As well as prohibition of surrogacy and germ cells donation advertising fails to reach any effects (Q5).
4. Cross-national comparison: Russia – Norway

Some considerations

WPR analysis requires cross-national comparison in order to prove that the given problem representation is not the only one possible. Here the analysis enters turbulent waters. Clearly, there are different models of regulating ART in the world (see Rothmayr 2004, Engeli 2009, Inhorn and Balen 2002, Blyth and Landau 2004). Yet, things are changing very fast. However, it is rather problematic to compare policies of the states since there, possibly, are no common grounds for this comparison.

Aiming at pointing to the differences between Norway and Russia in the sphere of regulating assisted reproductive technology I still keep in mind that biopolitical projects of these states might be different, as also the political system and the culturally-political tradition. Therefore it is problematic to compare legislative logics and problem representations.

Another consideration for this chapter is my own position. Obviously, I am less familiar with the legislative practices in Norway. Therefore I will base my claims on the existing works in the sphere. It will mainly be a detailed legislation study by Marit Melhuus (2012). Finally, this kind of comparison might discursively result in situating Russia behind Norway on the linear vector of progress.

Norway: a sketch of another vision

Norway was one of the first countries to regulate assisted reproduction with enactment of the Artificial Procreation Act from 1987. However, there were even earlier attempts to regulate artificial insemination by donor in the 50s. It is interesting to look at the ways debates about the issue were framed. This framing opens up for possible “problem” representations at that time.

As Melhuus points out, debates around AID in the 50s concentrated mainly on the essence of the marriage, the home and love, and women’s natural desire to have children. Those who were against AID represented the problem to be connected to increasing divorce rates and to a fact that a child born that way would destabilize the family. Furthermore, the very idea of introducing the third party into the marriage was considered destructive.
I find it necessary to partly reproduce a quote Melhuus gives in her book:

Bishop Smidt: “Our Christian culture rests on home. Monogamous marriage is the very foundation of our culture. With insemination a third party is introduced into a relationship between those two, that should be one, and between parents and children. Here one has driven a wedge into the very life principle of the home... This may be that this is one of these deathblows that our culture cannot tolerate” (Melhuus 2012: 53).

This passage appeals to some “foundation”, the origins of the culture; it invokes the “danger” with the language that is very typical for clergy. This performative disciplinary speech act brings some unity into being – this “we”, the Christians, and the rest who deviates from the norm of a monogamous home. And, again, the “traditional family” is in focus. Sounds very familiar…

Pro-AID voices were, surprisingly, framed within the same conceptual model. The main argument was a “natural desire” of women to become “real mothers” and fulfill the main mission of the marriage (that is to get children). Even though adoption was a referent point, it looked unfavorable in comparison with the “real motherhood”.

As Melhuus (2012) makes clear, the number of children put for adoption was decreasing. And, as also Melby (2007, 2009) and Annfelt (2007) agree, the governmental regulation of marriage was undergoing a process of secularization. Single mothers and exnuptial births were gradually decriminalized. Yet, according to Leira (1992) the “traditional family” kept on flourishing in the post-war time in Norway.

Obviously, the context of the debates around ART in Norway in the late 80s has changed towards considerable liberalization of the family life and reproduction. However, not to go into detail, the 1987 Act was very restrictive.
As Melhuus argues, there were two overarching concerns stipulating the restrictive character of the 1987 Act. These were: the concern over the best interest of the child and the concern for the practices that violate human dignity (conceptualized through selective human breeding and commercialization of reproduction) (Melhuus 2012: 57).

The political debates against permissive ART legislation perpetuated some tension between the lay and the expert knowledge. The lay knowledge (embodied by legislators and common people) was informed by the “common sense” and the personal convictions in deciding over the matters of universal right and wrong. Apparently, the expert pro-ART knowledge (medical staff, scientists) were imbued with the counter-values. Consequently, lay people (and legislators) appeared to have a more profound understanding of the issue that the experts did locating ART within the domain of the moral (Melhuus 2012). It turned to be more ethically correct to adhere to the restrictive intentions regarding ART.

The first revision of the 1987 Act was undertaken in 1994. The law became little bit less restrictive. Cohabiting (heterosexual) couples got access to treatment\(^1\), donor anonymity was upheld, egg donation, embryo research and IVF with donor sperm were still prohibited.

According to Sirnes (Sirnes 1997: 223 in Melhuus 2012) the arguments for and against has not changed considerably.

In 2003 the Norwegian government introduced a new revision of the Law. This version has rescinded the donor anonymity clause. This was justified by the “truth” argument and the child’s right to know her biological origin. Melhuus (2012:65) argues that this cemented the link between kinship, identity and biological origin. I tend to believe that the link between ones origin (read kinship) and identity has always been there. What happened then is, possibly, the conceptual modification of this link through the lens of biogenetic perceptions.

The Law allowed IVF with the donor sperm, “artificial conception” was substituted by “assisted conception”. The rest, basically, remained intact.

The 2007 revision permitted embryo research (under certain conditions). However, there were strong arguments against, based on the fear that the incipient life might become a commodity. PGD was also allowed despite of the claims against “sorting society” (when

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\(^1\) Since 2009 actual cohabitation of two people (regardless of their sexes) is recognized by the state;
eggs with certain “abnormality” are consciously and systematically eliminated, which suggests that the human beings are to be utilized in the governmental biopolitical project and therefore have no value in themselves).

Together with the revision of the Marriage Act in 2009 women cohabiting with each other or registered as married got access to the ART treatment. Apart from that, the ART legislation in Norway could be still referred to as restrictive.

Some comparison

Here I want to present a comparative table, which would give a better overview of legislations in Russia and Norway per today.

<table>
<thead>
<tr>
<th></th>
<th>First</th>
<th>Last</th>
<th>Access</th>
<th>Coverage</th>
<th>Surrogacy</th>
<th>Donors</th>
<th>Cryo-preservation</th>
<th>Embryo research</th>
<th>Reduction of embryos</th>
<th>Egg donation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Norway</strong></td>
<td>1987</td>
<td>2007</td>
<td>Couples</td>
<td>For medical conditions</td>
<td>No</td>
<td>Open</td>
<td>For medical conditions</td>
<td>With many restrictions</td>
<td>Yes (max, 2 embryos transferred)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Russia</strong></td>
<td>1993</td>
<td>2011</td>
<td>All</td>
<td>For medical conditions to married couples</td>
<td>Yes</td>
<td>Any</td>
<td>Available for all</td>
<td>Yes</td>
<td>Yes (max, 3 embryos transferred)</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Russia today</strong></td>
<td>Now*</td>
<td>Married (hetero) couples</td>
<td>For medical conditions to married couples</td>
<td>Yes for married couples for medical conditions, altruistic/gratuitous</td>
<td>Any</td>
<td>Available for all</td>
<td>Yes</td>
<td>Yes (same)</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

* In case the Recommendations would gain support in the Parliament, and the Law would be revised.

In comparison to Norway Russia has been a late legislator. It seems that the process of inscribing ART in the legal code of Russia has not been as meticulous and thorough as it has been in Norway. There have been more revisions of the law in Norway. The context is, of course, different: discourse on equality, human rights and dignity is absent from the Russian legislative practices. Instead, there is a focus on “traditional family” and “traditional values” as a means of dealing with underpopulation. Besides, the legislative process in Norway could be characterized as more democratic as both Melhuus (2012) and Bleiklie (2004) point to effects of majority constellations and political compromises in the process of revising ART legislation.
The last revision of ART legislation in Norway took place in 2007; in Russia - in 2011. However, 2016 could also become a revision year for the RF. Basically, even with amending Russian ART legislation in the vein discussed in this study, it would be little bit less restrictive than the one in Norway.

In terms of access Norwegian legislation excludes single women and men (both single, cohabiting with each other or married). Medical insurance of the Norwegian state covers costs of ART treatment only for medical conditions. Surrogacy is prohibited in Norway, as well as egg donation. Donors can only be non-anonymous.

Despite of Norwegian ART legislation being so restrictive, I believe, it does not have such an effect on the population as if this kind of legislation would have had in Russia. First, the openness of borders within the European Union allows for travelling in search for better legislative conditions. Second, I am sure that the average salary level in Norway makes ART more accessible both in the country and abroad.

**Conclusion**

Here I want to sum up problem representations which appeared during lobbying the ART legislation in Norway.

Discursive framing of the debates around AI by donor in the 50s revolved around the “traditional family” and the Christian values. The attempt to inscribe AI in the legal code has failed. However the arguments employed reverberated in the later years.

Despite considerable liberalization of the family and reproductive legislation, the first law regulating ART in Norway was very restrictive. The debates concentrated on the issue of the best interest of the child and the human dignity which was threatened by selective breeding and commercialization of reproduction.

As also Bleiklie suggests (2004), technology became a focal point of the arguments which were either technology-pessimistic or optimistic. This was also visible in the tension between the expert and the lay knowledge. As a result, the “common sense” gained majority and ART were discursively placed in the domain of moral values.
The overturn of the donor anonymity clause in 2003 was justified by the child’s right to know her origin. Thus the kin and identity were seen through the biogenetic connection. The slight liberalization of legislation concerning embryo research and PGD in 2007 was confronted by the “sorting society” perspective, which turns life into a commodity.

Some of the named arguments sound familiar to the debates in Russia. This sketch of Norwegian legislative practices in the sphere of ART might suggest alternative visions of the “problem”.

5. Alternative “problem” representation

There has been done much analysis so far. However the WPR scheme requires to present an alternative problem representation (Q4). I regard this as a reparative practice (Sedgwick 2004).

To suggest an alternative problem representation means to undertake an analytical task of anchoring a different political position in the given context in such a manner that it would:

- account for those who were negatively effected by the previous problem representation
- and therefore become a platform for a wider number of supporters;
- remain coherent, tenacious and defendable.

However I do not cherish any hopes for breaking free from the governmental biopolitical project. And therefore I’m very careful to call on any political activism regarding my representation of the “problem”.

One of the reasons for that is my analytical position concerning power, juridical formation of language and politics that allow only the subjects that are produced by them.

Butler writes: “Foucault points out that juridical systems of power produce the subjects they consequently come to represent. Juridical notions of power appear to regulate political life in purely negative terms – that is, through the limitation, prohibition, regulation, control, and even “protection” of individuals related to that political structure through the contingent and retractable operation of choice. But the subjects regulated by such structures are by
virtue of being subjected to them, formed, defined, and reproduced in accordance with the requirements of those structures” (Butler 1990: 2).

Therefore any attempt to depose the existing discursive order is not likely to succeed. This means that my problem representation should be to some extend grounded in this order. At the same time it is meant to minimize the negative effects of the previous representation.

As the WPR analysis has shown, the biggest number of negative effects stems from imposing the “traditional family” ideal. I would have suggested a more inclusive family model or, even better, to go away from insisting on any model at all. This is what, for example, Mianna Lotz (2012) suggests in support for Young (1998). She argues that the two-parent model of the family law is outdated in respect to ART realities. “Removing the two-parent limitation so as to allow a broader range of consenting contributors to a child’s conception and parenting to potentially gain legal parentage recognition has the potential to substantially promote the welfare of children, parents, families and society more broadly”, she writes (Lotz 2012: 46). The redefinition of the legal notion of the parent would allow for diversification of family types and wider inclusivity. This also reminds me of the additive model, suggested by Grotenant (2007) and the critique of the two-parent model in the United Kingdom by Julie McCandless (2012).

Unfortunately, it is hardly possible to reconfigure the whole concept of the family policy of the Russian Federation in the nearest future. Subversion of the “traditional family” could be made into a long-term goal for the activism1. Strategies are multiple. One of them

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1 It is impossible to deny women’s discrimination in Russia (Turbine 2015, Sperling 2015, Turbine and Riach 2012, Kozina and Zhidkova 2006). However, the feminist movement in Russia is not institutionalized, nor consolidated (Sperling 2015). “Feminism” has somewhat troublesome relations to the state since the Soviet Period (see Turbine 2015 and Sperling 2015). Gender studies are marginalized (Temkina and Zdravomyslova 2014). In fact, not a single (state?) university offers a degree in gender studies. Nowadays, there is only one political party, the “Yabloko” (takes no places in the Parliament), which has a gender equality point in its platform and has an intra-party gender caucus (since 2006). Problems of gender inequality have never been addressed on the parliamentary level with an exception of an attempt to lobby a project of a Federal Law on equality in 2003 (N 284965-3, “On state guarantees on equal rights, freedoms and opportunities of men and women in the Russian Federation). Interestingly, the project was approved in the first parliamentary readings, however remained in archive until 2008 when Elena Mizulina has initiated a work-group to amend the project. In 2011 Mizulina’s committee came up with a new edition of the law. It was rather progressive. However, as a result of mobilization of conservative and traditionalist circles second parliamentary readings (in 2012) were postponed and Mizulina received a “Note of protest” for anti-familial and provocative actions (sic.) from the Church assignees.
Feminist activism (as any other civil rights activism) is a rather dangerous endeavor and runs a risk of being perceived as a contentious political action (Turbine 2015, Wiedlack and Neufeld 2014, Sperling 2015). Furthermore, with cutting off all funding from abroad, NGO, educational institutions, and activism aimed at
could be normalization (in a sense of making it statistically usual, incorporating it in the multiple normalities which would lead to the recognition of it as normal and therefore right) of variety of family constellations through making people aware of such cases. Ops! Do I call on propaganda?!

Opting for the most realistic representations I have to “move” within the discursively available perspectives. Representing ART as a measure of dealing with the demographic decline could be such a discursive perspective. Following this thought, limiting access to ART is contrary to the priorities of the demographic policy of the Russian Federation. Since resurrection of the “traditional family” is an instrument of solving the demographic issue, then the upturn of the birthrate is primal to maintaining the sustainability of the family ideal. This aspect is silenced at the round-table and in the Recommendations proposed.

Another possible “unmaking” of the problem appears if one actualizes a narrative of reproductive rights. Reproductive rights have no definition in the Russian legislation but can be seen as a part of human rights provided by the Constitution of Russia. Thus limiting access to ART violates rights of some citizens. In this framework a wide access to ART characterizes nowadays Russian legislation in this sphere as progressive (Svitnev 2010, Konnov and Gracheva 2013) in opposition to many western countries (playing on the discursive tension with the “West”).

As also C.Bacchi suggests, drawing on Foucault, appealing to rights as a part of western epistème provides a discursive space for altering power relations and is therefore an effective strategy to bring about change (Bacchi 2009: 45). Thus reproductive rights might be a strategic platform for opposing the Recommendations. Such an appeal results in a victim subjectifying effect, where those unmarried adopt the position of discriminated and constrained by the restrictive legislation and therefore the state. This kind of victim rhetoric is more likely to find resonance in the governmental circles since they would easier incorporate a subordinate position rather than a position that challenges the dominant institutions (Mühleisen and Røthing in Conradi Andersen 2013: 52).

civil rights (including gender-related topics) suffocate. Clearly, this kind of agenda does not receive “internal” state grants.

1 The term victim position “offerposisjon” is borrowed from Conradi Andersen 2013 who analyses different representational strategies that emerged in Norwegian context in order to (il)legitimate repatriation of a woman who resorted to surrogacy in India;
However, an appeal for the rights (which is under the western epistème) might result in an opposite reaction, since the nowadays representation has created a discursive tension between the national identity and the evil western influence. Thus a claim for the (women’s) rights in the Russian context is more likely to be self-defeating. As also Turbine (2015) argues, rejecting “western values” became a justificatory strategy for curtailment of human rights in Russia (Turbine 2015, 326). This view is also supported by Rivkin-Fish (2013): “Feminist arguments that women have the right to make autonomous decisions about their reproductive lives need to be carefully constructed to avoid being taken as evidence that feminism is hostile to children and inimical to the nation’s demographic vitality”. Liberal paradigm of autonomous individual, who has a right to perform a choice, and the effectiveness of legal mechanism to protect this choice seem to be at odds with the Russian social reality (ibid., Funk 2004). Moreover, demanding ones rights is based on the assumption of a democratic state, which is hardly the case in the nowadays Russia.

Instead, it could be more feasible to evoke “women’s natural desire to have children”, to experience a “real motherhood”. This position is inspired by the debates around AID which took place in Norway in the 50s. The counter-arguments were very much alike and therefore this kind of rhetoric would be, at least, intelligible for those opposing the wide access to ART. However, such a position results in discursive effects that essentialize the “role of a woman” and support patriarchy and discrimination.

Hence, along with the long-term goal of reconceptualizing the family policy based on the prime of the “traditional family” ideal, I consider it most feasible to connect the needs of the nowadays demographic policy in Russian Federation with the aims of ART to “unmake” the problem.
V. Outlines of the WPR analysis

The analytical scheme developed by Carol Bacchi (2009) seeks to interrogate “problem” representations within the settings of policy-making. The set of guidelines in a form of 6 questions is meant to uncover implicit intentions and/or perceptions of those who give shape to particular political issues. It requires restoring the historical context of an issue in order to detect disruptions and silences of a given “problem” representation. The scheme alerts attention to the ways this representation was produced and distributed, how and what concepts, conceptual logics, hierarchical categories and statistical data were incorporated in a process of shaping a “problem”. It also traces effects of a particular representation, establishes cross-cultural/national comparison and suggests to form an alternative problem representation or the way a “problem” could be “undone”.

Analysis of the Russian biopolitical project shows that the state tends to be very regulatory when it comes to reproduction and sexuality. This is an area of constant legislative intervention. Nowadays biopolitics of Russia has a pronatalist character. Alarmist precautions about demographic crisis and dying out the nation are mainly associated with low birthrate, disregarding other circumstances. In this discursive universe female bodies become an instrument of solving the geo-political problem of the Russian state, which entails curtailment of reproductive rights. In fact, encroachment on the human rights is justified by fighting against the western ruse to undermine the state through insidious propaganda of feminism, equality, rights of sexual minorities and so forth. The main strategy of the government to deal with these challenges is propagation of heteronormative nationalism.

Legislatively ART are treated as one of the means of dealing with the demographic decline. At the same time, there is an obvious discursive conflict between ART (and wide access to these treatments) and “traditional family”. As a result, policy-makers have initiated discussion of amending existing law on ART with intention to restrict it. This initiative (not?) surprisingly came from the Committee on Women, Children and Family, chaired by Elena Mizulina, a prominent figure in the Russian political life. The Committee’s jurisdiction covers questions of minors’ rights and family legislation, but not the healthcare issues. This fact itself already suggests that ART are contemplated from a certain ideological perspective.
The WPR analysis has shown that the proposed changes are *pro rata* the general course of the nowadays Russian biopolitical project channeled by the Committee and the Ministry of Health through a set of legal documents. Using orthodox rhetoric, ART, and surrogacy especially, are represented as moral issues. This is often justified by serving the best interest of the child. However, as the analysis has shown, limiting access to ART is a way of policing the “traditional family” ideal, since ART is a way for “homosexuals” to become parents.

In order to protect this vision the Committee on Family, Children and Women renders any beliefs that challenge “the traditional” to be foreign invaders that are meant to harm the authentic and true national idea. This paranoid practice is realized in multiple documents outlawing and proclaiming propaganda. Furthermore, by romanticizing the monarchic past and the exclusiveness of the Orthodox Church the concept of “traditional family” creates a national identity that is opposed to the West with its “fetish for the human rights”.

The proposals concerning surrogacy regulation aim at making a clear cut between the parents (and “the family”) and the rest. In its attempt to maintain the “traditional family”, the Recommendations fail to account for all complex relationships that emerge in such situations. Insisting on surrogacy as a gift, but inscribing it in the contractual form the policy-makers are speaking with a forked tongue, allowing for abuse of the surrogate and devaluation of gestation. According to the proposed changes, legal parenthood becomes split between the participants of surrogacy arrangement through unequal distributions of rights and responsibilities.

In order to justify the problem representation Mizulina strategically employs statistics and the negative problem implications.

To remind, in regard to the access the given problem representation:

- negatively affects everybody who does not form a “traditional family ideal”,
- creates unrealistic expectations;
- renders “homosexuals” invisible and non-existent,
- by shaping a national authentic identity it creates a discursive tension between Russia and the West (proclaiming human rights, for example, to be a foreign invasion),
- it builds hierarchical relation between fertility and infertility, placing the blame onto individual.

In respect to surrogacy:

- it disregards complexity of the emerging relationships by promoting “the traditional family”,
- it declaratively serves the best interest of the child, but hampers child’s potential connection to the surrogate,
- gestation is made less symbolically valued, and the surrogate is put in the less favorable position;
- parenthood is fragmented and unequally distributed.

There were no obvious effects of the informational strategy, suggested by the Recommendations, though it disavows the paranoid character of the document.

Presenting debates around ART in Norway gave a chance to see alternative problem representations. Clearly, there are some considerations for such a comparison. However, this attempt has shown that despite considerable liberalism in the sphere of family policy, ART legislation in Norway is far more restrictive, than it is in Russia. Some of the “problem” representations regarding regulation of ART that emerged within Norwegian historical context remind the ones audible today in Russia. This suggests possible strategies to reframe the “problem”. Stressing demographic importance of ART seems to be the most feasible variant to “unmake” the problem as it would be recognized as intelligible within the nowadays Russian biopolitical project.
Instead of conclusion

It has been demanding for me to explain to a Russian-speaking person what exactly I study. The default answer is – assisted reproductive technologies (said with caution). Unfortunately the next question – So, what about them?! – puzzled me anyway. Then usually follows an embarrassing silence when I think of where I should start – ART complexities – legislation – WPR scheme – Russian biopolitics – foucauldian governmentality… I’m torturing my Russian with the conceptual apparatus I use in the study but still do not make much sense for the interlocutor. This apparently, is not only a linguistic incompetence of mine, but also the academic (read epistemological) distance that causes the trouble. Clearly, a Russian-speaking person having academic interests in the same area would find my sufferings amusing. As well as a Russian feminist would probably share my aspirations. The rest, however, seem to conclude that I’m totally under the influence of the “western” academia where “they don’t have much to worry about but this weird stuff that has little practical value and, even worse, nothing in common with reality”. This is perfectly understandable given the discursive climate this study outlines. During five long years at my first alma mater (Department of History) there was little about Foucault, nothing about post-structuralism and nothing, god save!, about gender. I do want to believe that in almost 10 years things have changed. Still I hesitate to announce I have spent two more years studying gender to my Russian acquaintances. Diploma in “Gender Studies” is not something to be proud of at home. This indicates total marginalization not only of gender-related research, but also the gender-related topics and “gender” as such. As Sperling (2015) confirms, patriarchy maintains gender-blindness.

What do I study indeed? I study the process of transmitting somebody’s interpretations of a “problem” into the legal code on the example of Recommendations from the round-table at the Committee on Women, Children and Family of the Russian Parliament. I scrutinize how it is possible to give different rhetorical shapes to politically important issues and thus give potentially different shapes to the national law and therefore the nation. My perception of the nation, and therefore the law, is informed by the works of Foucault: I contemplate Russia as a “historical” reality and as a state-to-be, an image that is constantly referred to by the policy-makers. In my study the state, the government, is a power exorted over population, ruling over life, reproduction and sexuality to reach its goals.
It’s too early to rejoice. The question “what?” is just a half of the issue. Why would one undertake a study like that? What for? Apart from exercising my analytical ability, I think I have managed to draw the reader’s attention to some inequalities and inconsistencies of the nowadays Russian family politics. I have been critical to many legislative incentives (as well as other researchers are) because they discriminate and violate people’s right to have their lives more viable and livable. I cherish some hopes that this criticism will contribute to the overall discontent and will bring about change. I have also tried my best to expose gender-blindness, nationalism and patriarchy that lodge within the family policy in Russia. Furthermore, my methodological toolkit, the WPR scheme, has been very helpful in providing the “reparative readings” (Sedgwick 2004) of the situation – that is coming up with an alternative problem representation, that could be used to oppose the legal incentive of the Committee. That’s why!

I hope this study has conveyed and generated new knowledge about policy-making in general, and Russian biopolitics in particular, as well as ART regulatory design in Russia. I have definitely learned a lot in the process.
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1 All these documents can be easily found on the net (in Russian only). However, I attach the web link since
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**Media resources**

RECOMMENDATIONS of the round-table:
«Legal regulation of surrogacy: a family-legal aspect»

Adopted as the basis by the Committee of the State Parliament on Family, Women and Children
22nd of May 2014 (verbatim report № 3.6-5/83)

Confirmed by the participants of the round-table
24th of April 2014

Moscow 24th of April 2014

1. Participants of the round-table – deputies of the State Parliament, members of the Federal Assembly of the Russian Federation, representatives of the Health Ministry of the Russian Federation, of the Commissioner for the Children’s Rights under the President of the Russian Federation, authorities’ representatives of the subjects of the Russian Federation, as well as the Russian Orthodox Church and non-governmental organizations, scientists and experts in the sphere of children’s rights and the legal interests, has discussed the state of the Russian legislation in the sphere of surrogacy regulation. They have pointed that surrogacy is a type of assisted reproductive technologies used as a means of infertility treatment. However it is poorly regulated by the existing legislation. Furthermore, there is a competition of the norms of the Family Code of the Russian Federation (article 51) and the Federal Law on “On the basics of health protection of the Russian Federation citizens” (article 55).

2. Surrogacy is regulated by the following legislation in Russia:

1) The Family Code from 29.12.1995 № 223-FZ (articles 51 - 52);
3) The Federal Law on the Acts of Civil Status from 15.11.1997 № 143-FZ (article 16);
4) The Executive Order of the Ministry of Health from 30.08.2012 №107n “The order of use of ART, contradictions and limitations”

3. Application of surrogacy creates debates in the society as it is not a usual medical procedure. Its application has ethical, morally-religious and family-legal aspects. It is not a coincidence that the legislation of the countries where surrogacy is permitted has serious limitation on this method.

In some foreign states, for example in France, Germany, Austria, Norway, Sweden and some states of the USA (Arizona, Michigan, New Jersey) surrogacy is completely prohibited. It is only non-commercial surrogacy that is permitted in the Great Britain, Denmark, Canada, Israel, Australian state Victoria, in the states of the USA (New Hampshire, Virginia). Besides, even advertisement of surrogacy is prohibited in Netherlands.

4. Having heard the reports, the round table participants point to:

1) absence of legal regulation of surrogacy and embryo transfer.

According to the article 51 of the Family Code of the Russian Federation (the Family Code) it is “the married couple that gives the written permission for the embryo transfer to another woman” that is registered as parents. The Federal Law “On the basics of health protection of the Russian Federation citizens” introduces the notion of the “potential parents” and the right of “both married and single men and women for application of the assisted reproduction technologies”. Thus the traditional perceptions of the family law about parents as “a married couple” is confronted with the medical notion of the “potential parents” which includes married and single men and women. Furthermore there were cases of surrogacy application for a single man in the judicial practice.

2) absence of legal regulation of conditions and the order of surrogacy application;

3) uncertainty of the goal and the content of the surrogacy contract;

4) presence of aggressive and one-sided propaganda of surrogacy in the media;

5) contradictions between the Family Code and the Federal Law “On the basics of health protection of the Russian Federation citizens” about the surrogate mother’s right for the motherhood;

6) uncertainty of the legal consequences for the child in cases of child’s rejection by the genetic parents and (or) the surrogate mother;

7) absence of surrogacy confidentiality;

8) imperfection of regulation of issuing the birth certificate to the parents who resorted to surrogacy with the consent of the surrogate mother;
9) absence of guarantees for the surrogate mother’s health protection. Absence of regulation of the paid birth leave for the surrogate mother;

10) Absence of regulation of the care leave provision to the parents who resorted to surrogacy.

5. In order to solve the problems in the sphere of assisted reproductive technologies application, including surrogacy, participants of the round table recommended:

**To the Committee of the Russian Parliament:**

1. Develop a project of the Federal Law “About amending the Family Code of the Russian Federation and some legislative acts of the Russian Federation in order to protect traditional family values when surrogacy is applied”, including the following points:

   1. Consider surrogacy an exceptional measure of solving infertility problem of a married couple;
   2. Limit application of artificial fertilization methods and embryo transfer to married couples as an infertility treatment;
   3. Give a definition to surrogacy in accordance with the aims of the family legislation as a new way of getting a child and as the grounds for emergence of rights and responsibilities of the child and the parents;
   4. Prohibit commercial surrogacy;
   5. Determine that a married woman can be a surrogate mother only with a written consent of her spouse;
   6. Determine that a surrogacy contract is a type of a family-legal contract between a surrogate mother (who bears the fetus after the embryo was transmitted) and a married couple who gave a permission for the surrogacy application;
   7. Fixate the rights and responsibilities of the surrogate mother and the married couple;
   8. Prohibit any advertisement of surrogacy and germ cells donation;
   9. Protect the right of the married couple to be registered as parents of the child even if the surrogate mother does not agree. Elaborate on cases when consent of a surrogate mother is needed: for example, if the genetic parents demand termination of the pregnancy or refuse the child;
10. Elaborate on the consequences of the genetic parent’s refusal of the child (the child is passed on to the surrogate mother on her consent. In this case the genetic parents pay alimony to the surrogate mother);

11. Elaborate on the consequences of both the genetic parents’ and the surrogate mother’s refusal of the child (the child then is passed on to the state maintenance). In this case the genetic parents and (or) the surrogate mother pay alimony to the state;

12. Introduce the institute of “the surrogacy confidentiality” analogous to the “adoption confidentiality” with the criminal liability for its break. Introduce the procedure of the institute: request to maintain surrogacy confidentiality is provided by the genetic parents; those who were involved in the process of surrogacy application (medical workers, civil registry employees) provide a receipt of non-disclosure;

13. Define a procedure of providing the surrogate mother with a medical certificate on birth of a child with her personal data;

14. Provide a child registration form in a civil registry for the child born with surrogacy application (on the grounds of the medical birth certificate, written consent of the surrogate mother if it is necessary, written request of the genetic parents, copy of the surrogacy contract);

15. Provide a surrogate mother with the paid maternity leave in accordance with the law;

16. Provide the registered genetic parents of the child with social guarantees (maternal capital, child care leave);


Chairman of the Committee on
Family, Women and Children

E. Mizulina