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Essay on the Public Discourse on Surrogacy

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On 23 July 2026, the Institute for Communication & Dignity (ICD) published a LinkedIn article calling for fairness and thoughtful reflection, particularly in emotionally charged public debates.

Today, relatively small but highly vocal groups are often able to appear far more influential in public perception than they actually are. As a result, they can shape public discourse in ways that are disproportionate to their actual size. Those who are more reserved, uncertain, or simply less outspoken are gradually pushed to the margins and, in many cases, discouraged from participating altogether. This creates a barrier that many people find difficult—or sometimes impossible—to overcome, limiting or even preventing their participation in public discourse.

What concerns me most, however, is that many public debates have been reduced to a simple choice between *for* and *against*. Discussions are increasingly framed as a conflict between two opposing camps. This leaves little room for those who are still forming their own views. Many people wish to inform themselves thoroughly before reaching a conclusion, yet they often fear being rejected by one side or the other simply because they choose to follow their own conscience and independent judgement.

A discourse structured in this way is unlikely to produce genuine consensus. Arguments are no longer evaluated on the basis of their reasoning or evidence, but according to the side with which they are associated. The willingness to listen to opposing perspectives gradually disappears. The objective is no longer mutual understanding but the desire to



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prevail. In such debates, little attention is paid to the people who simply wish to understand the issue before forming an opinion.

As an individual, I find this development deeply saddening. As a citizen, I find it deeply concerning, because democratic culture itself can be harmed in this way.

If we take Article 21 of the German Basic Law literally, political parties participate in shaping the political will of the people—they do not define it. This is precisely why I so often miss balanced, fact-based public education. What are the actual questions under discussion? Which answers are being considered? And what facts underpin those answers? Far too often, public debate is reduced to a simple message: either you are in favour, or you are against.

I have access to information and facts, yet I also have many unanswered questions that I would like to place at the centre of this discussion. Even the terminology we use deserves closer examination.

The commonly used English term *surrogacy* is well established. In German, however, the public debate often refers to *Leihmutterschaft* ("loan motherhood"), a term that, in my view, may already direct our thinking away from the real issue. Under Section 598 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), the legal concept of a *loan* refers to the gratuitous transfer of an object for another person's use. Are we seriously prepared to describe either the woman or the child as an object? If we were, we would immediately enter into conflict with the principle of human dignity.

For this reason, German legislation instead uses the term *Ersatzmutterschaft* ("surrogate motherhood"). In my view, this linguistic distinction is far from trivial. It changes the perspective of the entire discussion by placing it within an established legal framework rather than allowing language itself to predetermine the ethical debate.



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Methodological Note

The following reflections deliberately employ the established terminology used in medicine, biology and law. Terms such as *embryo*, *fetus*, *newborn*, *child* and *adolescent* describe distinct stages of human development. In a scientific discussion, these concepts should not be used interchangeably. Their purpose is solely to ensure conceptual precision; they make no statement whatsoever about the value or dignity of any human being. Scientific discourse depends upon using well-defined technical terms consistently and according to their accepted meanings.

Questions That Deserve Careful Consideration

At this point, a number of questions arise that, in my view, remain unanswered. On what assumptions are the firmly held opinions in this debate actually based? What are the consequences of legalising this form of surrogacy?

The answer is, in one respect, surprisingly simple: society gains one or more children. Conversely, what happens if surrogacy continues to be prohibited? Children who might otherwise have been born into a society facing significant demographic challenges will simply never exist. At the same time, individual freedom is restricted, while I struggle to identify a corresponding benefit for society as a whole. In a society committed to liberty, I believe such restrictions require a clear and convincing justification.

There is another aspect that deserves equal attention. No one is compelled to become a surrogate, to donate sperm or eggs, or to carry a child for another family. Every person involved voluntarily offers a specific human capability. A surrogate offers her capacity to carry a pregnancy, but not her social role as a mother. Foster parents assume social responsibility for a child without being its biological parents. Sperm and egg donors contribute their reproductive capacity, while blood donors contribute their body's ability to regenerate blood in order to help others. This raises an important question: according to which principles are these different forms of voluntary assistance evaluated?



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Another issue that I find particularly troubling concerns the way human dignity is invoked in this debate. Human dignity is the inherent, inalienable and inviolable worth of every individual. To me, that dignity is expressed not least through a person's ability to make autonomous decisions and to shape their own life responsibly within the framework of the law.

If, on the one hand, the family is regarded as the foundation of society and children are recognised as essential to our collective future, while, on the other hand, individuals are morally condemned for making the very decision to create a family, I find this difficult to reconcile. In everyday language, many people might describe such an inconsistency as hypocrisy or even absurdity. From the perspective of scientific reasoning, however, it appears above all to be a profound inconsistency.

Human Dignity and Equal Standards

The German Basic Law places marriage and the family under the special protection of the state. To me, however, protection means safeguarding their freedom and their rights—not making decisions on their behalf.

As long as individuals act within the framework of the law, I believe that the decision to establish a family belongs fundamentally to those who are prepared to accept both the responsibility and the consequences of that decision, rather than to third parties who seek to determine the future of an unborn child.

This leads me to another aspect that I consider particularly relevant to the principle of human dignity. Adoption, assisted reproductive medicine and other modern reproductive technologies are, in practice, accessible primarily to more affluent members of society. When one considers the stringent adoption criteria relating to income, age and personal circumstances, the impression may arise that families with fewer financial resources face



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greater obstacles, regardless of their ability to provide a loving and stable home. For many of them, foster care remains the only realistic opportunity to raise children.

At this point, however, I notice a striking inconsistency. Hardly anyone seriously questions whether foster parents might also be motivated, at least in part, by the financial support associated with foster care. Yet when a woman expresses her willingness to become a surrogate, one of the first questions often concerns her financial independence. The implicit assumption is frequently that economic motives must play a decisive role in her decision, whereas a comparable presumption is far less common in the case of foster parents.

This raises an important question: are we truly applying the same standards to comparable situations?

Social inequalities cannot always be avoided. They should not, however, be reinforced by legislation or by the standards through which society evaluates individual choices. From the perspective of human dignity, maintaining equal standards of assessment is, in my view, of fundamental importance.

Respect for Different Legal Systems

Another argument frequently advanced is that the contracts are inherently exploitative, that the conditions are unacceptable, and that the women involved are being oppressed. These concerns deserve to be taken seriously. At the same time, however, we should recognise that sovereign states have developed different legal systems and different approaches to regulating complex ethical issues.

In a pluralistic world, I find it problematic to dismiss another country's legal framework solely because it differs from our own values or statutory provisions. Those who expect their own legal standards to be respected internationally should, as a matter of principle, also be prepared to respect the legal systems of other democratic states, even when they arrive at different conclusions.



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The principle of freedom of contract also deserves consideration. No one can be compelled to enter into an agreement that they do not freely accept. For that reason, I also see a potential conflict with human dignity when women are categorically denied the capacity to decide, freely and autonomously, whether to enter into such an agreement.

Perhaps we should also reflect more critically on some of the employment contracts within our own societies and ask ourselves how much genuine freedom of choice many employees actually possess.

Germany does not exist in isolation from the international community. In an interconnected world, national prohibitions cannot necessarily prevent either social or technological developments. More often, they simply encourage citizens to seek those opportunities in jurisdictions where they are legally available.

This leads to a broader constitutional question: to what extent may—or should—a democratic state restrict the personal decisions of its citizens?

History repeatedly demonstrates that far-reaching prohibitions rarely eliminate a particular form of behaviour. More often, they shift it into another legal jurisdiction or into informal structures. For that reason, every democratic society should ask whether a prohibition is genuinely capable of achieving its intended objective—or whether it merely changes the location in which the activity takes place.

Beyond the Question of Surrogacy

Surrogacy is merely the issue that has prompted these reflections. Tomorrow, the public debate may focus on child protection, healthcare, artificial intelligence, or an entirely different societal challenge. The subject changes; the constitutional principles do not.

Human dignity, personal autonomy, equal treatment, proportionality, participation, and the rule of law are not values that apply only to particular topics. They are fundamental



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principles that should guide every democratic decision, regardless of the issue under consideration.

Whenever these principles are applied inconsistently—or set against one another without a transparent and convincing justification—the consequences extend far beyond the individual case. Over time, such inconsistencies shape the way citizens perceive democracy itself.

Democracy is sustained not only by elections and legislation. It also depends upon the consistent application of its fundamental values in everyday public life and upon the ability of public institutions to explain their decisions in a manner that is transparent, comprehensible and worthy of public trust.

Allow me to conclude with one final observation.

In my view, the controversy surrounding the German politician Jens Spahn did not arise because he made a deeply personal decision concerning his family. Rather, it arose because many people perceived an inconsistency between his public positions and his private choices. That perceived inconsistency—and the broader inconsistency that I continue to observe throughout this debate—deserves careful reflection.

Surely, it must remain possible to engage in a free and genuinely open-ended public discourse without immediately resorting to personal attacks or attempts to discredit those who hold a different view.

I find it deeply troubling that a highly respected and experienced constitutional lawyer such as Frauke Brosius-Gersdorf can be described as having *"lost her way as a jurist"* simply because she advocates an open legal and societal debate.

The less willing we become to listen to one another, the more fragmented our society will become—and the more vulnerable it will be to extremism and the simplistic certainties of populism.



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The greater the freedoms enjoyed by a society, the greater will also be the number of voices seeking to restrict them. Freedom, therefore, must not only be won; it must also be defended.

Communication is Dignity

Dignity begins where nobody owns the conversation.