



## International Forum on Intercountry Adoption & Global Surrogacy III\* Global Surrogacy Practices

Commercial surrogacy, while permitted in only a minority of countries, is a growing industry within and across borders. Significant profits drive intermediaries, lawyers and providers to encourage cross-border transactions. The global patchwork of often-conflicting surrogacy-related laws and regulations has created a range of problems that has drawn the attention of scholars, activists and policy makers around the world.

The Global Surrogacy Practices thematic area of the August 2014 International Forum on Intercountry Adoption and Global Surrogacy, held at the international Institute of Social Studies in the Hague, Netherlands, brought together some 25 women's health and human rights advocates, scholars, and policy experts from 14 countries who have engaged with the issues surrounding international surrogacy

\* We continue this month with the series initiated in issue 75 with summaries of the final reports from each of the thematic areas of the [International Forum on Intercountry Adoption & Global Surrogacy](#). The event, which brought together experts from different countries, aimed to analyze the regulations, practices and issues related to these two phenomena in order to inform the decisions of the central authorities that have signed the Hague Convention on International Adoption and the Special Commission of the Hague Conference. The images that accompany the text correspond to the working sessions of the forum.

**Editors:**  
Diana Marre  
& Beatriz San Román

**Authors of this issue:**  
Marcy Darnovsky  
& Diane Beeson

**Cover image:**  
Miguel Gaggiotti

**Coordination:**  
Victòria Badia

**Difussion:**  
Maria Galizia

**Subscription and contact:**  
gr.afin@uab.cat

**ISSN: 2013-2956**



Supported by:



from numerous angles and using a range of approaches. The Forum provided a venue for them to share their findings and thinking with each other; to engage with experts on inter-country adoption who had gathered for the Forum's other four thematic areas; and to inform the deliberations on the Hague Conference on Private International Law, whose Permanent Bureau is considering whether, and if so how, to move ahead toward a possible convention regulating issues pertaining to cross-border surrogacy.

The Forum took place in the wake of media headlines about two disturbing surrogacy incidents in Thailand. In one case, an Australian couple abandoned a baby boy, conceived using the husband's sperm, who has Down syndrome. The boy was left with his Thai surrogate mother while the commissioned parents returned home with his twin sister. The husband was then revealed to have been convicted of multiple child sex offenses that took place between the early 1980s and early 1990s against girls as young as five years old. In the other case, a

24-year-old son of a Japanese billionaire fathered 16 children since June 2013 with Thai surrogate mothers, claiming that he wanted a large family. These cases underlined concerns among those in attendance.

Participants in the Global Surrogacy Practices "track" explored a wide range of concerns about intercountry surrogacy, to assess the existing and needed evidence about its various aspects, and to discuss the strengths and weaknesses of different approaches, including policy options. This article, an abridged version of a report published by IISS in December 2014, first summarizes remarks by speaker/participants, and then presents a summary of the concerns raised in presentations and discussions within the track and in plenary session.

*Sonia Allan*, Macquarie University, highlighted the growing importance of international law and its relevance to cross-border surrogacy. She explained that *private international law* developed to resolve private, non-state disputes involving more than one jurisdiction or a foreign law element (and



focuses on such things as marriage, birth rights, divorce, property settlements or commercial disputes). *Public international law*, by contrast, governs the activities (and rights and duties) of governments in relation to other governments, as well as increasingly individuals, corporations, and international organizations.

Countries differ on how marital status, gestation, genetics, and intention relate to parental rights and children's legal parentage. Considerable variation also exists regarding the establishment of legal paternity for children born as a result of new technologies



or within newer family forms. These are issues of growing concern, as legal parentage is a gateway through which many obligations owed by adults to children flow.

International work is clearly needed on building bridges between (differing) legal systems with regard to legal parentage and broader issues including child welfare, reproductive freedom,

exploitation of the vulnerable (particularly in the context of global economic disparities), health policy and regulation, and equality. Human rights considerations are also relevant.

The feasibility of a multilateral convention on legal parentage and the status of children in international surrogacy arrangements is unclear, and may depend on the scope and nature of what is sought. Member states have expressed differing opinions. According to a report published by the Hague Conference Permanent Bureau, ten states saw working toward some form of international convention as being high priority, six as medium priority, and four as low priority. Israel, Monaco and the USA indicated their position is that no further work towards an international convention on intercountry surrogacy should be undertaken.

Public international law, created by state and international organizations composed of states, such as the United Nations, is designed to promote and protect human rights at the international, regional, and domestic levels. No international human rights instru-

ment specifically addresses surrogacy, but Allan explained that a number may be relevant to the issues it raises. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) address protections for families and children. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires "the proper understanding of maternity as a social function" and calls for special protection for women during pregnancy in work proved to be harmful to them. CEDAW's definition of maternity as a social function may preclude commercial contract pregnancy.

The preamble of the Convention on the Rights of the Child (CRC) asserts that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 7 (1) asserts the child's right to 'be registered immediately after birth', to 'acquire a nationality' and 'as far as possible...to know and be cared for by his or her parents'. Article 9(1) states that 'a child shall not be separated from his

or her parents against their will, except when such separation is necessary for the best interests of the child'.

Among the issues raised by CRC that are relevant to surrogacy are children's rights to information about their conception, the providers of gametes (i.e. their genetic parents), and the woman who carried and gave birth to them (whether or not she is genetically related); and to preserve their identity, including nationality, name, and family relations.

Article 35 of the CRC requires states parties to take 'all appropriate national, bilateral and multilateral measures to prevent the...sale of or traffic in children for any purpose or in any form'. Article 2 of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'. In some jurisdictions, for example the Australian state of New South Wales, commercial surrogacy has been viewed as falling

within the CRC's and the Optional Protocol's definition of sale of a child.

*Hannah Baker* of the Hague Conference Permanent Bureau, who attended the Global Surrogacy Practices sessions as an observer, explained the broad scope of the Hague Conference's 'Parentage/Surrogacy Project', noting that different countries may establish legal parenthood differently, resulting in confusion regarding issues such as parental rights and responsibilities, nationality and inheritance.

International surrogacy arrangements are a particular focus of the Hague Conference's Project because the number of international surrogacy arrangements is growing rapidly, and because children born out of these arrangements typically need to move countries immediately after birth. The Permanent Bureau sees legal problems occurring frequently and with serious human rights implications for all parties, including the surrogate mothers and the children born of these arrangements.

It is not the role of the Permanent Bureau of the Hague Conference to



ESPAÑA, ¿ES UN PAÍS  
PARA LA INFANCIA  
Y LA JUVENTUD?:  
CUESTIONANDO  
EL ADULTISMO



Fotografía Miguel Gargiotti

VALLADOLID, 20 Y 21 DE NOVIEMBRE DE 2015

Palacio de Congresos, Universidad de Valladolid, c/ Real Burgos, s/n. 10895, Valladolid



ARFA  
CASTILLA Y LEÓN



AFIN



UAB  
Universitat Autònoma  
de Barcelona

---

Con la colaboración de:



CORAF



Junta de  
Castilla y León



Servicios Sociales  
de Castilla y León



Universidad de Valladolid



FEDER

take a position in support of or opposed to commercial or international surrogacy. The Permanent Bureau recognises that the internal laws of Hague Conference members vary in this area, and it is the aim of the Hague Conference to build bridges between differing legal systems with the goal of upholding persons' rights so that they can enjoy legal security in cross-border contexts. If any Hague Convention is adopted in this area in future, the Permanent Bureau's job will be to promote it, to assist with its implemen-



tation and operation, and to monitor compliance with the convention.

*Lisa Ikemoto*, UC Davis School of Law, discussed the policy situation in the US, focusing primarily on California, which is widely seen as a 'surrogacy friendly' state. For many years, surrogacy arrangements in California followed precedents set by a string of court decisions dating back several decades. Then in 2009, an agency scheme to defraud prospective parents, surrogates, and financial institutions was exposed. This case led the state legislature to enact a 2010 law (AB 2426) requiring surrogacy agencies and brokers to establish bonded escrow accounts for such transactions.

In 2012, the Theresa Erickson scandal, which the FBI called a 'baby-selling ring', became world-wide news. The scandal subsequently led to the passage of California bill AB 1217 affirming the right of individuals, married or unmarried, to become the legal parents of children born through gestational surrogacy. It requires intended parents and surrogates to be represented by separate independent

legal counsel and requires surrogacy agreements to be notarized prior to the administration of medications or any related medical procedure.

Ikemoto noted that the American Society of Reproductive Medicine (ASRM) has been a major force in forestalling public policy on commercial surrogacy and other aspects of assisted reproduction, claiming that their guidelines constitute adequate self-regulation. However, ASRM guidelines are routinely ignored by fertility clinics, including those that are ASRM members.

*Deepa Venkatachalam*, Sama Resource Group for Women and Health, reported on surrogacy policies and practices in India, drawing on work her organization has done in research, policy advocacy, and development of knowledge resources around surrogacy and assisted reproductive technologies.

She reported that according to India's National Commission for Women, about 3000 clinics in the country offer surrogacy services to people from abroad (typically from North America,

Australia, and Europe). It is difficult to determine annual fertility industry revenues in India, but they were estimated at US \$445 million in 2008 and \$1-2 billion in 2012. Some large agencies operating in India are branches or franchises of US-based Planet Hospital and Surrogacy Abroad.

The growth of commercial surrogacy in India is taking place in a context of increasing privatization, shrinking economic security, and reduced social spending. It is aggressively promoted by the Indian state as part of a long list of medical tourism services.

The Indian Council of Medical Research issued voluntary national guidelines for surrogacy in 2005. In 2012 the Ministry of Home Affairs drafted a bill that restricts surrogacy to foreign couples consisting of a man and woman who have been married for two years and have a letter from the embassy of their home country confirming that the child will be accepted as their biological child. Surrogacy-related treatments must take place at registered ART clinics, and intended parents must enter the country

on medical rather than tourist visas. Their names, not the surrogate's, will be recorded on the child's birth certificate. Egg and sperm providers in India are anonymous. Sama describes this bill as protecting the interests of the surrogacy industry and commissioning parents, rather than those of surrogate mothers or children, and as discriminatory against commissioning parents who are single or gay.

To be eligible to work as a surrogate, women must have previously given birth and appear healthy. They are offered between US\$2000 and \$8000, significantly more than they can make doing domestic or factory work. They may get extra payment if they meet certain specifications; lighter-skinned and higher caste women often receive higher pay even in gestational surrogacy, where there is no genetic link to the child. Married women need their husband's consent to work as a surrogate.

Typically, women receive 25 percent of the payment before or during pregnancy and 75 percent at the end. This gives greater control over women



working as surrogates to the clinics; it also suggests that the child is indeed seen as a product. Sama has attempted unsuccessfully to change this practice.

In many cities, surrogates reside in special hostels during their pregnancies. Women often prefer to stay away from their homes because of the widespread social stigma associated with surrogacy. Some don't even tell their own families. This also suits the clinics, which want to closely monitor the women and would rather keep a low profile in the community.

*Amrita Pande*, University of Cape Town, has conducted ethnographic research with surrogates in India over a period of ten years, and recently published *Wombs in Labor: Transnational Commercial Surrogacy in India* (2014). She suggested that surrogacy should be understood in the context of the widespread informal labour market in India, and argued that women choose to work as surrogates, albeit from a limited set of choices. From this perspective, surrogates can be protected by labour laws and standards. Pande pointed to the analogy with sex workers' organizing efforts, while acknowledging that in surrogacy arrangements, the interests of children must also be taken into account.

Pande reported that when asked surrogates what changes they would like to see, many focused on what they are paid. Some pointed out that the payment is very low given inflation rates in India; others said that they would like to be in a position to negotiate their payment rather than having to accept a set price. Many spoke of hoping that the stigma sur-

rounding surrogacy could be eased by public education, both nationally and internationally. This would eliminate the need for secrecy and for staying in hostels during pregnancy.

Some women have used the money they earned to start small businesses, but in many cases the money has been spent on the needs of their families and extended families, with little concrete to show for it. Some women enter into contract pregnancies repeatedly, becoming 'veteran surrogates', either because they hope that the additional money will make more of a difference in their lives, or because they prefer surrogacy to street cleaning, factory work, or domestic work.

Pande's respondents complained about the widespread assumption that surrogacy is simply about the money. They view surrogacy as an important service that should be valued by intended parents beyond the contract period. Some women said that the abrupt cutting of the relationship with the child and the clients was painful and disrespectful of the important service provided by them.



*Daisy Deomampo*, Fordham University, has also conducted ethnographic work with surrogates in India. She noted that insufficient attention has been given to capturing the experiences of women who repeat surrogacy and also undergo egg retrieval. Since 2009 when she began her research, she said, more commissioning parents from India are contracting for pregnancies, though foreigners still dominate.

Deomampo noted that we tend to hear mostly about surrogacy 'success stories', both in media accounts and

the work of scholarly investigators. She stressed the need to consider the experiences of surrogates whom reporters and researchers may not be able to contact, including women who fail to become pregnant or miscarry and then 'fall out' of the system.

She also noted that we see and hear about healthy babies born in intercountry surrogacy arrangements far more often than we hear about babies with low birth weights or who are born sick. Women who work as surrogates may get adequate or even excellent health care during their pregnancies, but many have not had prior access to health care. The impacts of surrogates' pre-pregnancy health status on their own wellbeing postpartum, and on the babies they gestate and deliver, have received little attention.

*Karen Smith Rotabi*, United Arab Emirates University, reported on interviews conducted by her student Lopamudra Goswami with 25 women working as surrogates. Many of these interviewees reported feeling some unhappiness about relinquishing the babies, although the fertility doctor, whom they

called 'Madam', had coached them to be prepared for this outcome. Several surrogate mothers remained with the infants for short periods, ranging from a few days to three months, during which they could breastfeed them. Many held out hope that the children would come to see them some day. Some had obtained approval for becoming a surrogate from their village elder, who assured them that this work was 'OK'.

*Isabel Fulda Graue*, Grupo de Información en Reproducción Elegida, spoke about recent rapid growth of commercial surrogacy in the Mexican state of Tabasco, triggered by the restrictions introduced in India. Though it has attracted significant media attention, little is known about exactly what is going on there.

Only a few Mexican states have policies on surrogacy. Two, Querétaro and Coahuila, explicitly ban surrogacy. The state of Sinaloa established regulations in 2013 imposing strict limits on surrogacy: It must be altruistic, with contracts approved by a judge, and intended parents must be heterosexual married couples residing in that state.

In Tabasco, a provision enacted as part of the civil code in 1993 allows surrogacy contracts that make the commissioning mother the legal mother. While these arrangements are supposed to be altruistic, the code says nothing about payment, and this has permitted commercial surrogacy to occur, without regulation or any protection for surrogates.

The government has no data about surrogacy arrangements. Based on interviews with several agencies and surrogate mothers, GIRE estimates that at least several hundred babies have been born in surrogacy arrangements in Tabasco. But only five were



registered between August 2012 and December 2013.

Tabasco's civil code stipulates that in any contract pregnancy, the baby must be born in the state. But it says nothing about the rest of the process. Some (if not most) surrogacy agencies, both local and foreign, offer their services in Mexico City or in Cancun, 'attractive' cities for foreign couples due to transportation and hotel facilities. Part of the 'package' the agencies sell includes having a holiday in Cancun after in vitro fertilization.



GIRE believes that the inadequacy of existing regulation is facilitating all types of disturbing surrogacy practices. One is the prevalence of unnecessary caesarean sections for the convenience of commissioning persons. Another concern is whether surrogates have access to abortion, an issue that is not being discussed by the clinics and agencies.

Agencies in Tabasco prefer surrogates to be single mothers to avoid potential legal difficulties with a surrogate's husband. But this exacerbates concern about the lack of health protections for surrogates, since complications related to pregnancy or birth could mean that there would be no one to take care of their own children.

Surrogacy intermediaries and fertility clinics in Mexico often frame surrogacy as an altruistic act and surrogate mothers as 'angels giving a gift'. GIRE believes this is used to justify or hide how poorly paid women are when serving as surrogates.

*Enikő Demény*, Central European University Center for Ethics and Law in

Biomedicine, reported that while some Eastern European countries have regulations on medically assisted reproduction, others rely on general laws, or have no regulation at all. Hungary, for example, prohibits surrogacy, while Romania has no regulation. Commercial surrogacy has been permitted in Russia since 1995, in Georgia since 1997, and in Ukraine since 2000.

In Romania, in vitro fertilization was introduced in the early 1990s, and an international market in eggs developed soon after. Several cases of serious abuse of young women came to light in the following years, including one that was brought to the attention of the European Parliament in 2005. In 2006, Romania passed a law covering cell and tissue transplants that regulates the provision of third-party gametes. Surrogacy remains unregulated.

Even after the introduction of strict regulations on gamete provision, and prosecution in some highly publicized cases of illegal egg harvesting, Romania remained a key supplier of eggs. Following the political crisis in Ukraine, it has also become a destination for

surrogacy arrangements, with online ads featuring Romanian women willing to become surrogate mothers. However, the surrogacy market has not flourished in Romania because of the uncertain regulatory context.

Under the current policy, birth certificates for children born in surrogacy arrangements are issued with the name of the surrogate mother and the biological father. When the surrogate mother surrenders the child, the commissioning mother adopts the child and a new birth certificate is issued. This situation is considered risky for commissioning parents. Surrogacy arrangements in Romania often involve illegal commercial transactions for eggs, with prosecutions occurring when these cases are discovered.

Whether to regulate or prohibit surrogacy remains controversial in Romania, where a draft law has been under discussion since 2012.

*Carmel Shalev*, Haifa University Faculty of Law, described marketing strategies for global surrogacy in Israel. These were vividly displayed in February 2013 at an International Sur-

rogacy and Infertility Conference held at Tel Aviv's Gay Center. More than 15 surrogacy services exhibitors participated in this three-day event. Exhibitors offered services within Israel alongside options abroad, including the US, Thailand, India, Nepal, and Mexico.

Israeli regulations limiting surrogacy to heterosexual couples, along with opposition to this policy, led to establishment in 2010 of a commission to recommend legislation. In 2012, the commission issued a report that concluded, 'There is no room...to impose prohibitions or restrictions on the realization of autonomy in this area, unless if there is a decisive reason, on grounds of protection of another person, protection of human dignity or other such considerations'. This report has led to a 2014 government initiative to amend laws regulating surrogacy agreements, including those made by Israelis outside Israel, and to license private companies.

The marketing of surrogacy is becoming complicated. One agency offers to implant embryos in two surro-

gate mothers at one time. Options are given regarding fresh or frozen eggs, how much to know about the egg donor, whether or not to have intra-cytoplasmic sperm injection, where to freeze the sperm, and where fertilization will take place. One agency offers a group discount.

A surrogacy agency head explained that his company was formed in response to discrimination. When India introduced regulations discriminating against gay couples, this agency started sending Indian women working as surrogates to Nepal to give birth. Some of these women were impregnated with eggs from young Ukrain-





ian or South African women that had been fertilized with sperm frozen in Israel. Israeli agencies also work in other countries including Thailand and Mexico. One strategy to recruit young women to provide eggs is to offer them a beach holiday to India or Thailand, in the course of which they undergo egg harvesting. Israeli gays who can afford the higher costs go to the US for surrogacy because there they can meet the surrogate and know the identity of the egg donor.

## SUMMARY OF FINDINGS AND CONCERNS

### **Children**

News reports about cases in which children born via transnational surrogacy have been rejected, abandoned, or abused strengthened the argument for requiring at least minimal screening and counselling of commissioning parents, recognising that this nevertheless would not prevent some people from falling 'under the radar'.

Other concerns about children resulting from intercountry surrogacy arrangements included:

- Medical risks that tend to be exacerbated by third-party reproduction and the commercialization of pregnancy
  - Increased frequency of multiple births associated with in vitro fertilization, with accompanying higher than normal rates of co-morbidities including stillbirth and fetal anomalies
  - Excessive exposure to synthetic hormones at all stages of the IVF process, from egg harvesting through implantation
  - Failure to provide infants with the benefits of breastfeeding
- Psychological consequences
  - Inadequate evidence about psychological (as well as physical) consequences of separating a newborn from its birth mother
  - Lack of information about one's gestation-

al as well as genetic origins may become significantly problematic for individuals created through surrogacy

### **Surrogate mothers**

Participants expressed concern about specific aspects of international commercial surrogacy affecting women who serve as surrogate mothers. Particularly troubling were:

- Restrictions on personal autonomy and unnecessary risks associated with the surrogacy process
- Enforced isolation/separation from children, families and communities
- Non-negotiable fetal reductions and abortions if desired by commissioning parents
- Pressure to continue a pregnancy even if the surrogate mother desires termination
- Mandated and non-medically indicated cesarean sections. Constant monitoring of diet, sleep, and mobility
- Inadequate exercise and restricted movement outside the surrogacy residence
- Inadequate post-pregnancy medical care and health insurance
- Practices and conditions that make meaningfully informed consent challenging or impossible

- Lack of independent legal counsel or advocates for surrogate mothers
- Irregularities related to contractual agreements (e.g., contracts not in surrogate's own language or of an inappropriate literacy level)
- Inadequate information about medical risks, and inadequate communication about how little is known about them
- Inadequate information about long-term psychological effects, and inadequate communication about how little is known about them
- Coercion and undue inducement of women, especially in low-income countries and regions
  - Structural conditions such as poverty, economic inequality, and gender inequality limiting women's agency
  - Recruitment practices sometimes include deception (as in the Theresa Erickson scandal)

### **Gamete providers**

Participants commended the Permanent Bureau for acknowledging the physical and psychological risks to egg and sperm providers, as these are often ignored in discussions of cross-border surrogacy, and emphasized that egg harvesting is associated with particularly serious risks because of the hormonal stimulation, surgery, and anesthesia involved.

- Practices and conditions that make meaningfully informed consent challenging or impossible
  - Inadequate evidence-based information about long-term health risks of hormonal manipulation, the absence of which is inadequately communicated
  - Evidence-based information about short-term risks and best protocols for minimizing risks are inadequate. What is known is inadequately communicated

- Consequences of gamete provider anonymity
  - Deprives gamete provider and offspring of the future option of learning each other's identity
  - Encourages overstimulation of women to produce greater numbers of eggs
  - Facilitates illicit exchange and sale of eggs

### **Commissioning parents**

Participants identified incorrect and incomplete information provided to intending parents as an area of concern. This gap in reliable information begins early, when those considering intercountry surrogacy explore online sources. Claims made by fertility clinics and surrogacy agencies that transnational commercial surrogacy is an unproblematic way to have children often leave prospective parents ignorant of the many legal and other complications that may arise.

- They may be unaware of the conditions under which women agree to serve as surrogate mothers
- They may be unprepared emotionally or financially for the possibility of illness or disability in children acquired through surrogacy
- They are vulnerable to financial and emotional victimization by unscrupulous clinics, brokers, and other intermediaries

In the United States, India, and elsewhere, intermediaries, including those that facilitate transnational arrangements, operate with little regulation or oversight within a patchwork of inconsistent laws from country to country. As in intercountry adoption, agents and brokers motivated primarily by profit may be tempted to engage in unethical or ethically marginal practices. For this reason, as well as to ensure adequate long-term record keeping, participants raised the question of whether the continued existence of for-profit agencies involved in intercountry surrogacy arrangements is appropriate.

## Conclusion

Forum participants were divided about whether intercountry commercial surrogacy should be more effectively regulated, or prohibited altogether. Some held a strong position; some were uncertain.

Some participants questioned whether an international convention might undermine the prohibitions on commercial surrogacy that many jurisdictions have put in place, often on the grounds that the practice violates the human dignity of both the child and the gestational mother. From this point of view, there was concern that an international convention might normalize commercial surrogacy, and/or fail to significantly reduce the human rights violations it entails.

Questions were also raised about whether intercountry surrogacy might, at least in some circumstances, constitute baby selling, or violate the Convention on the Rights of the Child by failing to preserve his or her identity, nationality, and family relations.

Other participants supported regulation of commercial surrogacy rather than prohibition for reasons based in pragmatism, principle, or both. Some argued for regulation as the most effective way to provide urgently needed protections for the women and children involved. Others believed bans on commercial surrogacy would be politically very difficult to enact in many of the jurisdictions in which it is established practice, and that oversight would be difficult in jurisdictions permitting altruistic but not commercial surrogacy arrangements. Some base their support for permitting effectively regulated commercial surrogacy on respect for women's agency, and see many women working as surrogates as grateful for the opportunity to earn a significant amount of money. They simply want better working conditions and protections against health risks, and a reduction in stigma associated with such arrangements.

Despite the tendency to consider 'prohibition' and 'regulation' of commercial surrogacy as opposed and

non-overlapping positions, it is possible to envision a wide range of legal or policy approaches that might effectively minimize or eliminate the problematic aspects of intercountry surrogacy. These could include criminal or civil sanctions against intermediaries; a variety of rules about legal parentage of resulting children and preservation of records; requirements about the content, timing and enforceability of surrogacy contracts; requirements about the status and/or conduct of intermediaries; rules prohibiting discrimination against commissioning parents or surrogates on the grounds of marital status, sexual orientation, and disability; enforceable protections for the health and safety of surrogates; screening requirements for commissioning parents, etc. There might also be laws to restrict commercial arrangements to people domiciled within the countries that accept them, and/or to limit transnational arrangements to situations in which sending countries agree to recognize legal parentage and citizenship of resulting children.

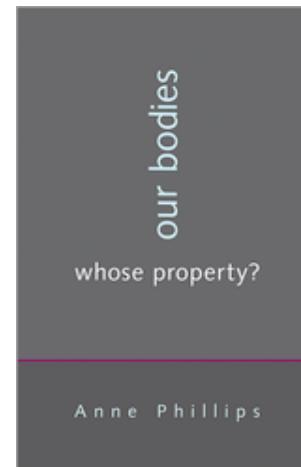
Specific policy recommendations on which there was wide agreement among participants were:

- Elimination of practices that pose unnecessary medical risks to surrogates and children
- Elimination of restrictions on personal autonomy of surrogates
- Establishment and maintenance of records giving participants in surrogacy arrangements the option of future contact should the mutual desire or need for it arise
- Basic screening of commissioning parents to reduce risks of abandonment or abuse of children born via surrogacy
- Provision of evidence-based information about known and potential risks, living conditions, and outcomes for surrogate mothers, gamete providers and commissioning parents
- Heightened regulation and oversight of intermediaries

There was general agreement that our understanding of the health implications and social consequences of intercountry surrogacy remains inad-

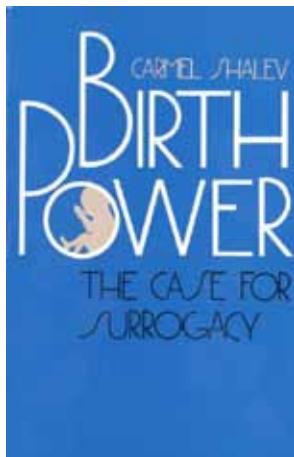
equate, while the practice continues to expand. There is an urgent need for additional investigation by scholars and advocates, and effective intervention by policy makers. The issues raised by commercial and intercountry surrogacy arrangements call for broader public dialogue and greater attention to their implications for our human future.

## FURTHER READING



Phillips, A. (2013)  
[Our Bodies, Whose Property?](#)  
 Princeton University Press

No one wants to be treated like an object, regarded as an item of property, or put up for sale. Yet many people frame personal autonomy in terms of self-ownership, representing themselves as property owners with the right to do as they wish with their bodies. Others do not use the language of property, but are similarly insistent on the rights of free individuals to decide for themselves whether to engage in commercial transactions for sex, reproduction, or organ sales. Drawing on analyses of rape, surrogacy, and markets in human organs, *Our Bodies, Whose Property?* challenges notions of freedom based on ownership of our bodies and argues against the normalization of markets in bodily services and parts. Anne Phillips explores the risks associated with metaphors of property and the reasons why the commodification of the body remains problematic.



Shalev, C. (1990) *Birth power: The Case for Surrogacy*. New Haven: Yale University Press.

Does surrogacy exploit women? Or should the state treat all parties to a surrogate contract as rational individuals, capable of making informed decisions and accepting the consequences of their actions? Shalev, a feminist lawyer, argues in favor of surrogacy, contending that the law must treat women who choose to become surrogates as autonomous parties to a binding contract. To do otherwise reinforces a paternalistic system that governs reproductive law, and denies women legal equality and autonomy. This book, one of the 1990 New York Times Book Review Notable Books of the Year, argues that responsibility for reproductive decisions should be left to the individual, regardless of gender.

The Permanent Bureau of the Hague Conference on Private International Law (2014). *The Desirability and Feasibility of Further Work on the Parentage / Surrogacy Project*. Prel. Doc. No 3 B, March 2014. The Hague, Netherlands: HCCH.

*The Permanent Bureau of the Hague Conference on Private International Law* (2014). *A study of legal parentage and the issues arising from international surrogacy arrangements*. Prel. Doc. No 3 C, March 2014. The Hague, Netherlands: HCCH.

Deomampo, D (2013). Transnational Surrogacy in India: Interrogating Power and Women's Agency. *Frontiers: A Journal of Women Studies*, 34 (3), 167-188.

Ikemoto, L. (2014). *The Role of International Law for Surrogacy Must Be Expanded*. *The New York Times*, 22 de septiembre de 2014.

Shalev, C. (2012). *An Ethic of Care and Responsibility: Reflections on Third-Party Reproduction*. *Medicine Studies*, 3 (3):147-156.

## FURTHER VIEWING

Daniel, Zoe (2014) *India, The Baby Makers*  
Australia/ India: ABC News, 27 min.



Surrogacy has become a lucrative and controversial industry in many parts of India. In this deeply moving documentary, we go inside the industry to see just what confronts surrogates and their clients and we'll go there through the experiences of Australian couples trying to chart the most ethical and sensitive course they can in pursuit of a little life to call their own.

Men Having Babies Conference (2014)  
[\*Children born via surrogacy to gay dads share their stories\*](#)  
USA, 24 min.

During the 2014 Men Having Babies Conference that took place in New York on November 2, 2014, a panel of teenagers (ages 13-18) born via surrogacy to gay dads shared their stories and perspectives.