Abstract

This paper discusses the realities and ethics of transnational commercial surrogacy arrangements. The focus is on gestational surrogacy whereby a woman is hired (or in some cases agrees without payment) to gestate a foetus grown via embryo transfer and to which she has no genetic tie. Thus, any involuntarily childless couple (or individual) with sufficient funds can obtain a child to whom they are genetically related.

A growing demand from intended parents, low incomes fuelling the availability of women willing to be paid to carry and give birth to another person’s baby, and weak regulatory structures in many developing countries have transformed surrogacy into a global industry. After providing some historical context, this paper uses examples from India, Mexico and Greece to show how such arrangements operate, including who among the three main parties – intended parents, surrogates and offspring – could be most at risk. It ends by touching on the feasibility of introducing a legally binding instrument along the lines of the Hague Convention on Intercountry Adoption (1993) to protect the interests of the three main parties.

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2016) and is based on the author’s introduction to her forthcoming edited collection, *Bodies, Babies and Borders* (Zed Books, 2017).

**Keywords**
Commercial surrogacy, children, exploitation, ethics, parenthood, rights, regulation, transnational

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**Introduction**

*Luke and Tony are professionals in their late 30s. After several years together they affirmed their relationship in two civil partnership ceremonies, first in the UK where Tony was born, and later in Luke’s home town of Sydney, Australia, where the couple have lived and worked for the past decade.*

*Not long after celebrating their commitment to one another, the pair began to look into possibilities for starting a family. Like most people researching a new venture, especially tech-savvy professionals, their starting point was the Internet. With money unlikely to be an obstacle (both are high-earning lawyers) they purchased an online ‘egg catalogue’ listing the origins, age and mental and physical characteristics of potential ‘donors’. Sifting through the range of entries, they decided they would like a baby with what they considered to be ‘Swedish’ characteristics: ‘blonde, blue-eyed, strong and sporty’.*

*The couple signed up with a surrogacy agency that recommended they opt for an Indian surrogate to carry the baby. Three months down the line and having spent around Aus $3000, for personal reasons, they shelved the idea and bought a puppy.*
Then came Tony’s 40th birthday and the desire for a family resurfaced. Not wishing to delay any further, the couple got in touch with a new agency and had soon committed themselves to using the services of an egg donor in New Zealand and a surrogate in Thailand. The eggs arrived, were fertilised by both men and the resulting embryos swiftly frozen and flown to a small town south of Bangkok. Here, at a designated clinic, the embryos were thawed and implanted into the uterus of the surrogate.

Luke and Tony had chatted several times to the donor on Skype and were also in regular contact with the surrogate before and after the pregnancy was confirmed. Two weeks before she was due to give birth, they flew to Thailand and in March 2013 Grace was born. At the time of writing, she has just gained a brother, using the same egg donor but born from an Indian gestational surrogate in Nepal.

This story was told to me by a friend of the couple whose path to parenthood, with their permission, I have been following for the past three years. To all intents and purposes it is a happy story, an illustration of how far some societies have come in terms of sexual equality. But there were many aspects that I found disturbing. I was astounded that a woman’s eggs and idealised profile could be listed for sale. How did the Caucasian stereotype described in the ‘catalogue’ relate to the very different profile of the other, brown woman, thousands of miles away, into whom those eggs, once fertilised, would be implanted? How would she, the so-called surrogate, feel about growing someone else’s baby inside her, only for it to be handed over to a third party, the commissioning or intended parents, and never seen again?

I soon learned that professionals from the fields of law, medicine, anthropology, philosophy, sociology and others had been
questioning, researching and analysing scientific and commercial developments in human reproduction for more than three decades (e.g. Beaumont and Trimmings, 2012; Corea, 1985; Macklin, 1994; Pande, 2009, 2010, 2014; Ragoné, 1994; Spar, 2006; van den Akker, 2007). In fact, the prospect that global expansion would lead to a new ‘baby market’ involving the exploitation of impoverished women had been seized upon by radical feminists as early as 1985. In the much cited words of Gena Corea:

Once embryo transfer technology is developed, the surrogate industry could look for breeders – not only in poverty-stricken parts of the United States, but in the Third World as well. There, perhaps one tenth of the current fee could be paid women.

From reading the academic literature, I began to understand aspects of the web of economic, gender, class and racial inequalities that have enabled the explosion of the global infertility trade of which transnational commercial surrogacy has become a key component. I also read blogs from egg donors and intended parents, newspaper and magazine articles\(^1\) and, most prolific of all, the soft-focus advertising copy of commercial surrogacy agencies promising to ‘make your dreams of parenthood come true’.

I decided to produce a book that would draw together some of these strands, not only through personal stories and academic analysis but also through the views and experiences of women’s organisations in countries such as Israel, India, Greece, Australia, Sweden, Mexico, Romania and the US, who are researching and campaigning in this area – some focusing on greater regulation

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\(^1\) Media stories are more often than not triggered by scandals such as Baby Gammy, the baby boy with Down’s Syndrome who was abandoned in Thailand by his Australian intended parents (Pearlman, 2014).
and/or the abolition of commercial (but not ‘altruistic’) surrogacy, others like the Swedish Women’s Lobby shouting an emphatic ‘No’ to surrogacy practices in any form.

With this in mind, in August 2014 I attended the International Forum on Intercountry Adoption and Global Surrogacy in The Hague. This event was the brainchild of Kristen Cheney, Senior Lecturer of Child and Youth Studies at the International Institute of Social Studies (ISS) and was triggered by the work of the Hague Conference on International Private Law (HCCH) in response to the rise of global surrogacy practices. Following two reports analysing issues of parentage in the context of international surrogacy arrangements (HCCH, 2014a, 2014b), Cheney (2014) saw an opportunity to gather activists, practitioners and scholars together with the aim of establishing ‘an evidence base for international adoption and surrogacy problems and/or best practices’ (Cheney, 2014: 2). In addition, as Cheney (2016: 8) notes in a later summary of her Forum report, she and other surrogacy experts felt that the HCCH documents had:

. . . insufficiently emphasised women’s rights – their vulnerability to exploitation, lack of independent legal representation and medical, psychological and social implications – while other participants were concerned about the perceived marginalisation of the child in most surrogacy arrangements.

It was a groundbreaking meeting, subsequently summarised in six reports, most notably Cheney (2014) and Darnovsky and Beeson (2014).²

² In addition to Cheney’s Executive Summary, other reports focus on findings from the Forum’s five thematic areas: HCIA
The main aim of juxtaposing intercountry adoption and global surrogacy was to develop existing policy processes concerning challenges and good practices related to the Hague Convention on Intercountry Adoption, and to consider whether a new Convention might be needed to tackle the exploitation of women and the status of children born via transnational surrogacy arrangements. But the depth and breadth of discussion went far beyond issues of regulation. *Bodies, Babies and Borders* seeks to capture and develop some of that Forum debate, the kernel of which I will try to summarise here.

**Some history**

Surrogacy itself is not a new phenomenon. The practice of using a substitute ‘mother’ to conceive, carry and give birth before handing over the child to its ‘intended’ parents can be traced back to Chapter 16 of the Book of Genesis where Sarai, finding herself infertile, suggests that her husband Abram ‘visit’ her Egyptian slave, Hagar, who duly provides the couple with a son and heir before her mistress’s jealousy sees her cast into the wilderness. A similar scenario is described in Chapter 30, where Rachel declares to her husband Jacob: ‘Here is Bilhah, my maidservant. Sleep with her so that she can bear children for me and that through her I too can build a family.’ Again, the arrival of a ‘special son’ triggers jealousy and recriminations, this time from the many brothers whom Jacob has already fathered.

Louise Brown, ‘Baby Cotton’ and ‘Baby M’

The precedent of the more powerful controlling the reproductive choices of poor, often enslaved women may have been set long ago but the ways in which surrogacy arrangements are executed have of course moved on. The current practice of hiring the womb of another woman to create a baby for a childless couple or individual, usually from a more privileged class, stems from the development of in vitro fertilisation (IVF). According to the American sociologist, Renee Almeling, whose book Sex Cells examines just how egg agencies and sperm banks do business, early attempts at artificial insemination date back as far as the 1700s. But none of these experiments resulted in a live birth until the delivery of Louise Brown in Oldham in 1978. She was conceived using her parents’ eggs and sperm, mixed together in a glass tube or petri dish and inserted into the mother’s womb. The unprecedented success of this procedure opened the way for the development and commercialisation of assisted reproductive technologies, commonly known as ARTs, that soon led to the first known cases of a woman being paid to carry and give birth to a child for another couple. These separate landmark incidents concerned the birth of two children, ‘Baby Cotton’ and ‘Baby M’, and like the stories of Hagar and Bilhah, both ended in drama and recriminations.

‘Baby Cotton’ involved a transnational arrangement spanning Sweden, the UK and the US. After registering with a commercial surrogacy agency in England, in 1985, British citizen Kim Cotton gave birth to a baby for a Swedish couple based in the US, using her own eggs and the sperm of the intended father. At this stage, commercial surrogacy had not even been acknowledged in law so no ban was in place in the UK. However, on hearing about the financial nature of the arrangement the authorities immediately made ‘Baby Cotton’ a ward of court. The press got hold of the story,
villifying Ms Cotton. This prompted widespread condemnation from the public and a legal battle that culminated in a new law, the Surrogacy Arrangements Act 1985. Eventually the (anonymous) commissioning parents were able to take the baby back to the US on the basis that she would never have any contact with her birth mother. To this day, Kim Cotton has no knowledge of the whereabouts of her daughter or the identity of her legal parents.

A year later, the ‘Baby M’ case featured another commercial surrogacy arrangement, this time in the US state of New Jersey. After giving birth, the surrogate, Mary Beth Whitehead, could not bear to relinquish ‘Baby M’ to her intended parents, William and Elizabeth Stern; she wanted to forsake the fee and keep the child to whom she was genetically related, again having used her own eggs inseminated with the sperm of the intended father. The Sterns sued. Eventually a Supreme Court invalidated the surrogacy and called the designated payment ‘illegal, perhaps, criminal, and potentially degrading to women’. After a two-year battle the court granted custody to the Sterns on the basis that this was in the best interests of the child, but with visitation and parental rights awarded to Ms Whitehead. Again, this story gripped a nation, even spawning a four-hour docudrama on primetime TV.

**A new era in human reproduction**

Both of the above cases involved *traditional* surrogacy whereby the woman who gives birth uses her own eggs or gametes and therefore has a genetic link to the child she carries. This differs from the *gestational* surrogacy practices that are my main concern. Here a woman is hired, or in some cases agrees without payment, to gestate a foetus grown via embryo transfer and to which she has no genetic tie. Like the original experiment that led to the birth of Louise Brown, this IVF procedure entails removing a woman’s ova
and fertilising them with sperm in a laboratory before implanting them into the uterus. Depending on the nature of the intended parents’ infertility, or indeed their sexuality, gestational surrogacy may involve the use of eggs purchased from a ‘donor’ or extracted from the intended mother, in both cases using the would-be father’s sperm. As a result of these developments, as van den Akker (2007: 54) points out in her review of the psychosocial aspects of surrogate motherhood, theoretically at least, there are nine possible combinations of offspring resulting from surrogate arrangements, where the gestation each time is with the surrogate mother (see Figure 1).

![Figure 1](image.png)

**Figure 1.** The nine (theoretically) possible combinations of offspring resulting from surrogate arrangements, where the gestation in all instances is with the surrogate mother (adapted from van den Akker, 2007: 54).
The growing use of gestational surrogacy has been greatly helped by the improvement of egg freezing techniques, together with progress in the modern use of ultrasound imaging to harvest the eggs under conscious sedation rather than the type of keyhole surgery employed before. Prior to retrieval the so-called donor (a bit of a misnomer since eggs are by and large bought and sold in these transactions) is subjected to ovarian hyperstimulation, meaning she has to take various hormonal drugs that stimulate the ovaries to produce multiple mature eggs during one menstrual cycle. Once the eggs have been extracted, freezing allows for them to be stored for future use as well as for more than one embryo to be implanted in the uterus at any one time. The potential short- and long-term risks to the woman from these procedures constitute one of the many health concerns related to surrogacy.

What is driving the rising demand for transnational surrogacy services?
Alongside the technological developments I have described, there have been significant changes in what Laurel Swerdlow and Wendy Chavkin refer to as ‘the ways people live their most intimate lives’, especially in wealthier societies. New family structures, advances in ARTs and globalisation have led to unprecedented changes in the ways in which relationships are formed and babies made. Growing public acceptance of gay partnerships and single parenthood, cohabitation and divorce mean that, at least in western societies, the traditional heterosexual unit of a married couple with biological children is no longer necessarily the norm. Other features of this demographic shift include: far greater opportunities for women to take control of their own reproduction through access to contraception and abortion, women’s increased entry into the workforce, delayed childbearing and growing longevity in the populations of more developed regions. Add the development of IVF
and egg-freezing techniques, against a backdrop of rising infertility – often the result of delayed childbearing – and it becomes less surprising that surrogacy has become something of an industry. Yet another factor has been the steady decline in intercountry adoptions, and to some extent domestic adoptions in the UK and USA (Selman, 2012; 2015).

All these changes have unfolded alongside the global expansion of capitalism and with it the accelerating circulation of goods, people, money, information and ideas across national borders and cultural boundaries that characterises transnationalism (Vertovec, 2009). Facilitated by the Internet, this freeing up of markets and unparalleled linking of people across borders has led to the growth of many new services, among them a flourishing reproductive tourism industry of which commercial surrogacy has become an increasingly lucrative part – particularly in parts of Europe, the US and India. While the US stands out as the only country that is ‘both a common source and destination country for global surrogacy arrangements’ (Bromfield and Rotabi, 2014: 125), low-cost services, a lack of regulatory infrastructure and a pool of impoverished female labour, together with a thriving privatised medical sector, has enabled India to lead the way. The dearth of any monitoring mechanisms since the legalisation of surrogacy in 2002 makes it impossible to ascertain exact figures. However, comparisons over the years suggest that, until the government of Narendra Modi unexpectedly introduced a ban on non-Indian nationals seeking surrogacy at the end of 2015, the services some doctors refer to as ‘maid business’ constituted a significant proportion of India’s billion-dollar medical tourism industry.

Not only did India’s liberalising governments provide the necessary technical and socio-economic infrastructure, but also the common
usage of English by doctors, lawyers, clinic staff and others (not usually surrogates) means a welcome lack of a language barrier for many intended parents coming from abroad. More importantly, the country also has a history of ‘enforced fertility regulation embedded in colonial and post-colonial histories’, which has helped to pave the way for the reproductive exploitation of poor and working-class women. As Amrita Pande (2014) explains in her book *Wombs in Labor*, this is despite the paradox of promoting ‘pro-natal technologies in an anti-natal state’ – in other words, encouraging the development of the latest IVF techniques, only available to a relatively wealthy elite, while enforcing contraception, including sterilisation, on the poor who make up the majority of India’s population.

**Who gains most from this global market in reproduction and who, if anyone, loses?**

Leaving aside the online services, clinics and other intermediaries who reap the highest financial rewards from surrogacy arrangements, the three main parties involved are the intended parents, the surrogate and the child. In an interesting analysis of the parallels and differences between global commercial surrogacy and intercountry adoption, Rhoda Scherman and colleagues (2016) point out that the relationships involved share much in common with members of the adoption triangle: (1) commissioning and adoptive parents; (2) the surrogate and the birth mother; and (3) the children born of surrogacy and adopted. But while adoption necessitates the protective services of social care, legal and sometimes medical professionals, surrogacy tends to entail a far greater but less legitimate cast of characters, from the providers of the genetic material, to doctors, recruiters, agents, insurance brokers, travel agencies, taxi drivers, guides and other
intermediaries employed in the surrogate’s country to ensure that the whole process runs as smoothly as possible.

1. Intended parents
To begin with, driving the market are the intended parents. Although there have been cases of criminal intent, for example the Baby Gammy scandal (see Footnote 1), the motives of this group are by and large straightforward: a desire for parenthood otherwise denied to them through infertility or some other medical condition, and – for gay men – the constraints of human biology. Above all, they wish to take home a child with whom they are genetically related.

The stories of intended parents can be found in so many blogs, memoirs and other media that it did not seem necessary to give them much prominence in my book. However, I felt that gay men merited some attention, not only because they are specifically targeted by surrogacy clinics online but also because of the ways in which this publicity deliberately sets out to shape the nature of their desires. Further, they represent one of the major ways in which our ideas of parenthood have shifted and are being reconstructed (Dempsey, 2013; Marsiglio, Lohan and Culley, 2013; Murphy, 2015).

After examining 12 websites aimed at gay men seeking parenthood, Damien Riggs and Clemence Due found that not only do they ‘potentially respond to the existing desires of some gay men to become parents, but they also shape the forms that such desires take by emphasising particular factors that are deemed salient to gay men’s reproductive decisions’. Websites such as Circle Surrogacy, Baby Joy, Surrogacy Cancun and others speak to one of
the driving forces of surrogacy – men’s desire for genetic relatedness to their children.

2. Surrogates
At the heart of every surrogacy arrangement is the surrogate ‘mother’ – she who gives birth. As Darnovsky and Beeson (2014: 24) write, a variety of terms are used to describe her:

... many if not all of [which] reflect a bias either in favour or opposed to such arrangements. Some terms such as ‘birth mother’ and ‘gestational mother’ explicitly acknowledge the maternal aspect of the woman’s role. Others, such as ‘gestational carrier’, make her maternity and even her personhood less visible ...

In other words, as Laurel Swerdlow and Wendy Chavkin discuss in their opening chapter on the disaggregation of biology and care, the availability of ARTs has had far-reaching implications for ‘the meaning of motherhood and the social understanding of biological connection’. If it can take up to five people (two commissioning parents, egg and sperm providers, and surrogate, see Figure 1) to create another human being, where does this leave the ‘mother’?

The majority of arguments for and against surrogacy focus first and foremost on the position of the surrogates – their motivations, agency and how much their usually subordinate socio-economic position is being exploited. To what extent do they have control

3 A more overtly political option might be to call the women who carry and give birth to the baby ‘reproductive labourers’ (Baylis, 2014; Pande, 2014).
over their bodies and what is happening to them? Dr Nitesh, who counsels intended parents in an Indian clinic, provides a disturbing example (Madge, 2014: 64):

We take care of them [surrogates] well in the surrogate hostel. We monitor their nutrition, rest, and medicines in order to get a better result. They are under our control. The pregnancy is delicate and very precious. I think if someone is doing something for you, you should take care of it. In Western countries, the surrogate may not be reliable, nor with a good history or background. She may smoke, drink, and have sex and drugs. She cannot be controlled. She may even want to keep the baby, or even if there is no emotional attachment, appear to want to keep it in order to extort money. In contrast, our surrogates are very simple and religious. It is not a painful procedure.

Given this typical lack of agency and control, how far do surrogates understand the potential consequences of signing the surrogacy contract? To what extent are they putting themselves physically and psychologically at risk? Again, as Darnovsky and Beeson (2014) state in their report of discussion at The Hague Forum, the answers differ greatly according to the social contexts in which the arrangements are made.

Interestingly, in the US where surrogacy is legal in some states there is a tendency for surrogacy agencies to target military wives ‘by dropping leaflets in the mailboxes of military housing complexes ... and placing ads in on-base publications such as Military Times and Military Spouse’ (Howard, 2015; Twine, 2015: 2). Already confined to a life of domesticity and often with their husbands overseas these (usually Christian) women are said to welcome the
opportunity to earn the equivalent of around £20,000 with the added bonus of making people happy. They also have the advantage of being easy to identify and monitor, with taxes, health checks, etc. already in place as well as having access to all the facilities and support services available to military families.

Mexico and Greece offer another two very different examples.

Compared to their counterparts in India, Mexican surrogates do not come from the poorest sectors of society. Nevertheless, they too can be subjected to situations over which they have no control. A significant number of women have migrated from other Latin American countries in search of better opportunities; others have fled from the violence in parts of Mexico. They tend to be single mothers seeking income to help bring up their own children and share a basic common language with the agencies, clinics and lawyers in charge of the surrogacy arrangement. However, as the activists from GIRE⁴ have discovered from their interviews with surrogates in Tabasco, Cancun and Mexico City, this by no means guarantees informed consent or protection. Most women are merely given a brief verbal explanation with no attention given to whether they have understood the terms. Even if they do have questions, no one is available to answer them. One surrogate reported being told by a lawyer: ‘You have to obey the doctors. If you don’t like it, don’t sign.’

Apart from the known risks from medical procedures, the former openness of some Mexican states towards gay men seeking parenthood brought with it another, less predictable hazard: in a television documentary on Mexico’s baby business (Channel 4,

⁴ GIRE (Grupo de Información en Reproducción Elegida) is a non-profit, non-governmental organisation, founded in 1991 with the mission to promote and defend women’s reproductive rights in Mexico within the context of human rights.
2015) recently broadcast in the UK, a Mexican surrogate, Alejandra Mendiola, told a reporter that she had been implanted with the sperm of a man carrying the HIV virus. When challenged, Lily Frost, Director of the California-based agency Surrogacy Beyond Borders, which had brokered the arrangement, claimed the sperm had been ‘scrubbed clean of HIV’ though she admitted this wasn’t ‘ideal’. It also turned out that Alejandra, by then five months’ pregnant, had not even signed a contract.

Greece, which so far only allows fertility treatment for heterosexual couples (married or unmarried) and single women, provides another scenario. While neither the intended mother nor the surrogate has to be a EU citizen, one of them must be ‘a permanent resident of Greece; the other may have a temporary residence’. As Konstantina Davaki points out, this relatively new legislation has attracted criticism:

. . . first, it officially opens the door to reproductive tourism; second, it creates circumstances conducive to the trafficking of women from poorer countries for surrogacy services; third, it can create problematic situations, for instance, when the legal conditions for maternity are different between Greece and the intended mother’s country of origin . . .

Another specific feature of the surrogacy landscape in Greece is the percentage of surrogates who are either family members or ‘best friends’ of the intended parents. In a survey cited from Hatzis (2010) these ‘friends’ were mostly women from Eastern Europe, 17% of whom were already known to the intended mother through their employment as domestic workers. This raises important questions, not only regarding the blurred nature of the financial
arrangement but also whether the data reveal altruistic behaviour or constitute the expression of a new form of ‘bodily labour’.

As in the term ‘reproductive labourers’ referred to earlier, this raises Pande’s (2014) arguments surrounding the intersections between reproduction and production. Based on her five-year ethnographic study into the lives of surrogates in India, she concluded that commercial surrogacy is a form of work and therefore should be subject to labour laws and protections, including strictly regulated contracts and follow-up health care after the birth (also see Darnovsky and Beeson, 2014: 26).

3. Children
By and large, it is the women who give birth who occupy the centre of the big ‘to ban or not to ban’ surrogacy debate. But what about the offspring, the babies they have gestated and who will grow into autonomous adults? Aside from widespread analysis of the many reported cases of ‘stateless babies’ arising from weak or poorly executed legislation, with the exception of several contributors to this book, few scholars writing on the legal aspects of surrogacy have paid much attention to the psychological implications of being born this way. For this reason, I have devoted three chapters to the interests of the children and the grown-ups they will become.

While Marilyn Crawshaw and others focus mainly on social work and legal perspectives pertaining to the ‘best interests’ of the child, Deborah Dempsey and Fiona Kelly explore donor-conceived people’s desire for knowledge about their origins and the role of the internet in their search. Extensive research into identity development in relation to adoption has revealed the importance for adopted people of knowing about their birth family and the circumstances of their birth and the damage that can be done from only finding this out in
later life (Brodzinsky, 2005; Harris, 2006). But apart from the work of Susan Golombok and her team (2004, 2011, 2015) and Imrie and Jadva, 2014), studies of surrogacy disclosure and outcomes are still few and far between. A new US study of gay fathers is under way but otherwise this research has been limited to domestic arrangements in the UK.

As donor-assisted conception and transnational surrogacy become more common so will the demand for genetic and gestational origins, making it all the more crucial that details of the surrogate’s and egg provider’s name, date of birth, nationality, how they were recruited, fees paid and any advice or counselling given be recorded for safekeeping.

As Sonia Allan explains in her concluding chapter, in addition to its potential importance for people born via surrogacy, such information is needed as evidence whenever transfer or recognition of legal parentage has to occur. Amrita Pande, too, argues for the need for transparency – legal, financial, medical and in terms of relationships – if the interests of surrogates as well as the children they give birth to are to be genuinely respected.

**Looking ahead**

The smooth operation of any transnational surrogacy arrangement is clearly dependent on the laws of individual countries. For instance, in Mexico acquiring a passport for the newborn used to be complicated and lengthy. Some clinics apparently offered a ‘blended

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5 Jadva and Imrie (2014) have also looked at the experiences and perceptions of the children of surrogates in the UK. Although this area clearly merits attention, I have not found enough sources to include it in this book. One reference to this during The Hague Forum reported the seven-year-old son of an Indian surrogate asking her not to take the money but instead to ‘keep my brother’ (Rotabi, cited in Darnovsky and Beeson, 2014: 24).
service’ with IVF treatments in Mexico after which the surrogate was transported to California to give birth.

In the UK there is a growing lobby in favour of reforming the law to make it easier for people to engage in so-called ‘altruistic’ domestic surrogacy. At the moment this is permitted, including the provision of up to £15,000 to the surrogate for ‘reasonable expenses’, but the woman who gives birth is still considered the legal mother so, as in the case of Mary Beth Whitehead, could change her mind and decide to keep the baby at birth. The parents have no rights until a parental order is granted – something that can take several months to obtain, leaving them insecure and the child in legal limbo. If the situation is precarious in the UK, imagine what it is like for the parents tangled up in foreign bureaucracy while they wait for the papers needed to take their babies home. Presumably if domestic surrogacy became easier, there would be less of a motive for childless people to seek services abroad.

**Conclusion**

I could say a lot more: for instance, about the plight of pregnant Indian surrogates in Nepal, stranded by last year’s earthquake, hastily given passports and airlifted to Israel until the babies were born and united with their Israeli intended parents; or the Romanians, still adapting to the politics and practices surrounding reproduction since the collapse of socialism, and often travelling to Ukraine, one of the few remaining countries where commercial surrogacy is legal.

Most of the contributors to my book refrain from recommending a full ban and opt for a reformist approach based on an urgent need for coherent policies and much stricter regulation. Some call for a multilateral, legally binding instrument that would establish a
global, coherent and ethical practice of international surrogacy (e.g. Davis and Dalessio, 2000; Trimmings and Beaumont, 2012). However, as Sonia Allan points out, since most states already prohibit commercial surrogacy, the only Convention that would gain signatories would have to take the same stance. In addition:

. . . prohibitions on commercial surrogacy would also be consistent with other international instruments such as the United Nations Convention on the Rights of the Child (UNCHRC) . . . which explicitly prohibit the sale of children and the transfer of children in the somewhat analogous situation of intercountry adoption for financial gain’.

Others, notably Amrita Pande from India, advocate a kind of ‘fairtrade surrogacy’, suggesting that the practice should be treated as legitimate work, subject to the same protections and regulations as other forms of labour.

Above all, they share a commitment to exposing some of the human implications of allowing new reproductive technologies to become part of a billion-dollar industry that often places financial interests above the health and welfare of people. As part of this industry, transnational surrogacy practices have grown too far and too fast and in so doing allowed the spurious concept of the ‘right to a child’ to eclipse the fundamental human rights of the children and women most directly affected.

Acknowledgements
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References


Citations from Allan, Crawshaw, et al., Davaki, Dempsey and Kelly, GIRE, Riggs and Due, Swerdlow and Chavkin, and The Swedish Women’s Lobby all refer to chapters in my forthcoming book.


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