LA GESTATION POUR AUTRUI: RESITUER LA FRANCE DANS LE MONDE – REPRÉSENTATIONS, ENCADREMENTS ET PRATIQUES

SURROGACY: SITUATING FRANCE WITHIN THE WORLD – REPRESENTATIONS, REGULATIONS, AND EXPERIENCES

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Abstracts

Jennifer MERCHANT

The Legal and Political Panorama of Surrogacy in the United States

This presentation will offer a panorama of the laws and regulations that oversee surrogacy practices in the United States. In this country - functioning within a federalist system – recourse to ART first falls under federal legal jurisprudence which places these activities within the private sphere, the latter protected by the existence of a "right to privacy" reaffirmed in several US Supreme Court decisions in the domain of non-procreation. In addition, the US Supreme Court decided in 1998 that procreation was a "major life activity" and protected as such by a national law prohibiting discrimination against people with disabilities.

Accessing ART is also regulated by several individual states. The absence of any other type of national ART legislation is quite simply explained by the principle of the separation of powers and the functioning of US federalism. Article 1 Section 8 of the US Constitution attributes to Congress a certain number of explicit (reserved) powers and obligations. The remaining implicit (unmentioned) powers are attributed to the States and the people in virtue of the Ninth and Tenth Amendments to the Constitution. From a practical standpoint this simply means that the States and their institutions – their representative assemblies, their courts – have the power to create and implement public policy in a wide range of activities – health care policy, family law policy, education, penal law, etc. In the realm of ART, many states have laws or rely on common law precedents, some more restrictive than others, like Louisiana, some more liberal than others, like California.

Thus, and contrary to commonly held beliefs, ART practices do not evolve in a “no-man’s land” in the United States. Despite broad constitutional support for the right to privacy in matters of making procreative choices, this does not mean that American citizens can do whatever they when they turn to ART practices.
In addition, it will be important for this presentation to underline the fact that surrogacy is not frequent in this country. There are approximately 4 million births per year in the United States, and among them around 1,000 to 1,500 births through surrogacy; in other words about 1% of all ART practices. In addition, half of these births are for foreign couples. These figures have remained constant since the CDC has been publishing its annual reports in 1998.

It is also erroneous to assume that most surrogacy arrangement end up before the courts. According to the American Bar Association, litigation due to conflict in surrogacy agreements/contracts is situated at approximately 0.1% of all surrogacy procedures, in other words, around two cases per year before the courts.
On the other hand, it is possible to criticize the lack of coherence in laws governing surrogacy: who has access, who can be a surrogate, the different and uneven modalities for establishing family ties, the important differences in payment for surrogates, etc. This creates a complex national panorama that de facto installs an inequality among women who become surrogates and a complicated and oftentimes confusing situation for couples seeking a surrogate in all legality.

Many voices are increasingly being heard in the US calling for the need to withdraw surrogacy agreements from the realm of private contract law and place them within the framework of public health and/or public law practices. Two attempts at this on the federal level were initiated in the early 1990s, as well as two other bills simply calling for the abolition of surrogacy altogether, to no avail.

Hence, we still face a decentralized and piecemeal approach to the issue, one that plays out more or less as follows =>

- Four states do not recognize any form whatsoever of a surrogacy agreement or contract.
- Four states recognize the validity of a surrogacy contract but with no monetary exchange whatsoever, i.e. altruistic surrogacy.
- Four states recognize the validity of a surrogacy contract with payment.
- Three states recognize the validity of a surrogacy contract with payment but nit exceeding medical costs, clothing, loss of salary of the surrogate once she goes on maternity leave, and other attending costs. These states also accept by law that a surrogate breach the contract after birth and keep the child.
- Seven states totally prohibit surrogacy, and criminalize it.
- All the other states have no law governing surrogacy, leaving these arrangements up to private law contracts, and in the event of litigation, the courts step in.

This presentation will thus first describe and discuss two national laws that oversee and frame ART practices in general and surrogacy in particular. Secondly, we will provide several examples of individual state regulations, focusing more specifically on examples whose prime objective is the equal protection of all actors involved in a surrogacy arrangement, starting with the woman who chooses to become a surrogate, the intended parents and of course the child to be born.

Some of these examples include the following. Approximately ten states that authorize surrogacy arrangements have very detailed laws governing these practices. Four of these states – Florida, Utah, Washington State, and New Hampshire – provide what corresponds to many analysts as a public health approach to framing surrogacy practices. This presentation will explicit the provisions and regulations in place in these states.

Through these examples, we will also attempt to illustrate that choosing to become a surrogate out of altruism and generosity all the while receiving compensation is not incompatible. This is what comes out of numerous interviews of surrogates and the families that they carry children for, and which will be analyzed more in depth with Delphine Lance and Heather Jacobson’s work on surrogacy in the US.

Paula PINHAL

Surrogacy in the Socio-Legal Context of Latin America: Cases of Brazil, Argentina and Uruguay

This research aims to establish a comparison between three countries in South America (Brazil, Argentina, and Uruguay) with respect to surrogacy. Our primary objective is to examine, in a general sense, the different methods of regulating assisted reproductive techniques, and more specifically, the different methods of regulating surrogacy. Based on the assessment of the legal systems in place, the analysis focuses on the guarantee (or lack thereof) use surrogacy in these three countries, and as well of the question of access: whether it is offered by the public health system of the country in question, if it is open to single men and women, and if it is guaranteed for homosexuals. This study also examines the question of who can become a surrogate mother.

The issue of surrogacy is an important one; it is innovative, and one of the most complex matters in the study of new reproductive technologies, as it dissociates sex from procreation and includes a third participant, the surrogate mother, separating those who found the parental project from the person who carries the child to term. In addition to allowing women who cannot get pregnant to become mothers, surrogacy also allows gay couples to effectively pursue their desires to have biological children.

This analysis takes into consideration the plurality of today's family models, including stepfamilies, that is to say when spouses or partners have children from previous relationships, single parents, and any other kind of combined family, such as those which include grandparents, uncles, godparents, and so on. This study seeks to enlarge the paradigm of the hierarchical and patriarchal family, thus making it possible to consider of happiness and well-being of people who are part of non-traditional families. This notion of happiness and well-being can include, among other aspects, the fulfillment of the desire to have a child by using new reproductive technologies. In addition to these non-traditional family models, we must also consider families that have been created thanks to the advent of new reproductive technologies. A key moment in the history of reproductive technology was the birth of Louise Brown, the first baby born by ectogenesis, that is to say, fertilized in vitro. With these techniques, sex and procreation are thus separated, and, consequently, procreation and parenthood are dissociated as well. This has led to new tensions with regard to reproductive rights, which include not only the right to contraception, but also the right to conception, with the possibility of using these new reproductive technologies.

While society and the law are generally understood to be two separate concepts, legal changes often follow social change. This situation becomes even more complex in the case of biotechnological innovations. In this situation, an ideal climate is created, as is happening in Brazil, where new reproductive technologies are sold by private clinics as products, due to a regulatory loophole which guarantees (though these regulations do not carry the same weight as the law) physicians the power to make decisions in these situations.

There are three legal models for surrogacy: prohibition, regulation and forbearance. In the case of the three countries in South America, none have a total ban on the technique. Argentina appears to be a case of abstention, while Brazil and Uruguay have put regulatory systems in place.

Argentina Law No. 26862 of 2013, for example, regulates assisted reproduction. This law allows both heterosexual and homosexual couples, as well as single men and women, to access reproductive techniques, though the law does not specifically mention surrogacy.

In Uruguay, the Law No. 19.167 of 2013 regulates assisted reproductive techniques. In this regulatory system, surrogacy contracts are considered invalid, with one exception: if a woman can not conceive due to a genetic or acquired disease, gestational surrogacy is allowed up to the second degree of affinity.

In Brazil, the situation is a particular one, as there is no specific law on the regulation of assisted reproduction. Assisted reproduction is regulated, but only by the resolutions of the Federal Council of Medicine. The first resolution dates back to 1992, and the regulation currently in force is Resolution No. 2.121 of 2015. Since 1992, surrogacy has been permitted, provided it is uncompensated and based on family ties. In the first resolution, gestational surrogacy was allowed up to the second degree of affinity. Today, surrogacy is still required to be free (that is to say, non-commercial and uncompensated), but it is now necessary to identify the medical problems that prevent or pregnancy, or other complicating factors such as in the case of couples formed by two persons of the same sex. Today, family ties have been extended to the fourth degree.

Daphna BIRENBAUM-CARMELI

Gestational Surrogacy in Israel: Law, Regulations and Experiences

Israel's pronatalism is evident in both state policies and the exceptional fecundity of local women who have roughly twice as many children as their European counterparts. The high fertility rate is commonly attributed to the Biblical Commandment "be fruitful and multiply", the Holocaust trauma, and perennial wars and the demographic concern of the Jewish state surrounded by hostile Muslim countries. Within this context, barrenness is perceived as a major life devastation. Notably, ecological concerns are completely absent from all reproductive discourses in Israel.

Due to the centrality of parenthood, state policies regarding assisted reproductive technologies (ART) offer a productive vantage point into the state's priorities and preferences. This paper looks at the regulation of gestational surrogacy, showing how state policy construes a hierarchy of kinship and families as it defines main local collectivities. More specifically, it illustrates how Israel's ART policy prioritizes biogenetic relatedness over social kinship and heteronormativity over gay families.

Israel is the only country that provides publically-funded IVF to every female citizen aged 18 to 45, irrespective of the woman's family status or sexual orientation, up to the birth of two live children with her current partner, if applicable. Not surprisingly, Israel has maintained the world's highest rate of IVF cycles per capita for decades, providing roughly twice as many cycles as the world's second heaviest user. Covering treatments with slim chance of success to women in their mid-forties, the state conveys its support of this reproductive technology, which aims at the birth of biogenetically related offspring, primarily in heteronormative families.
Israel's embryo carrying law of 1996 was the world's first to regulate gestational surrogacy by means of primary law. The law granted access to surrogacy only to heterosexual couples and required that both women – the intended mother and the surrogate – be of the same religion. The law thus ensured that the resulting baby would be Jewish, since Jewish identity is defined by being born out of 'a Jewish womb'. The sperm must be that of the intended father and the egg must not belong to the surrogate woman. The intended parents cover the surrogate's compensations but the state does fund the preceding treatment.

Persons in non-traditional family formations, primarily gay men and couples, who seek partly biogenetic kinship, have to turn to cross-border surrogacy. Despite the soaring costs and the logistic complexity, the state provides no support whatsoever to these couples. Moreover, after the baby is born, the state requires a paternity test to establish the baby's genetic link to the biological father, as a precondition to admitting the baby to Israel. If the parents wish to register the baby as Jewish, the baby must undergo conversion, a lengthy procedure obliging the whole family to fulfill major religious dictates. This requirement includes such demands as observing Sabbath restrictions and adhering to Kosher regulations, which, for many couples, means a profound lifestyle change. The requirements for a paternity test and religious conversion are presented only to families established via cross-border surrogacy.

We should note here that whereas for non-Jewish immigrants in Israel, conversion is a process of symbolic admission and integration into the Israeli-Jewish collectivity, the conversion of 'surrogate' babies symbolizes first and foremost their exclusion, in requiring the Jewish Israeli parents to be re-admitted into the very collectivity they were born into and belonged to until the babies' births. As such, the combination of paternity tests and religious conversion embodies symbolic social-religious expulsion brought about by cross-border surrogacy and the particular family formation.

Owing to the multiple difficulties that conversion entails, some gay couples whose children were born via cross-border surrogacy choose to forego their babies' conversion and register them as 'without religion'. One reason that this option is endorsed quite widely is that if such a baby, at the age of 18, becomes a soldier in the Israeli army – a routine life chapter that most Israeli youths must undertake – then he or she can undergo conversion in the army, swiftly and painlessly. Thus, military service grants a person comprehensive membership in the Jewish Israeli collectivity in a way that surrogate biogenetic paternity and social parenthood do not. As such, the military conversion represents the intersection between biologized and political citizenship in contemporary Israel.

A consistent picture thus emerges in which the more biogenetic the kinship, the more it is being supported by the state of Israel, with IVF receiving full funding, donor assisted reproduction, including domestic surrogacy to heteronormative couples receiving partial state support and cross border surrogacy, used primarily by gay

individuals and couples, trailing at the end of the kinship continuum, with no state support whatsoever. Moreover, in order to have the resulting babies included in the country's citizenry, the parents must established genetic paternity; if they want to have them accepted as Jewish, they must abide by further substantial requirements.

Probing this state policy, I suggest that the emerging hierarchy of kinship and families, which places cross-border surrogacy as the furthest from this optimal family, needs to be understood in the context of the country's political agenda: by highlighting the import of biogenetic relatedness, contemporary Jewish Israelis constitute themselves as an ancient, blood-related collectivity. The political claims of this collectivity are then endowed with a 'natural', historical quality that enables their framing as referring to the 'land of our forefathers'. Various policy measures and political moves that have been applied in Israel over the past few years further support this argument regarding the 'naturalization' of the contemporary Israeli Jewish collectivity in Israel.

Hugues FULCHIRON

Surrogacy: a "Global" Juridical Problem

The issues related to the use of surrogacy are necessarily linked to the national context of the countries in which the procedure takes place: it is for each state to decide whether to authorize or prohibit the use of such practices, and to determine how to legally treat pregnancies that were carried out abroad. Respect for the human person, respect for human dignity in general and of the dignity of women in particular, the inalienability of the human body, the refusal to reify man and humanity, and the denial of the exploitation of women have been invoked in French law as well as by French judges, all as justifications for the opposition to the incorporation of surrogacy into domestic law. Until recently, these notions were also used as justifications for the refusal to directly or indirectly recognize the link between the child and the intended parents established by a surrogacy carried out abroad.

Yet national decisions must consider the international scale of this phenomenon. More generally, national rules are only meaningful and effective if they take into account the "global" dimension of the issues involved.

On one hand, in the reality of a globalized world, there is an international market for procreation, with its regulatory methods related to supply and demand, its "windfall effect" born of differences in legislation (such as prohibition, supervision, self-regulation, and market forces), its phenomena of "relocation" or dumping, and so on. The development of this market is facilitated by the ease of ground and air communication, the expansion of the Internet and specialized websites, and the progress of assisted reproductive technologies, which as a result are becoming more and more numerous, and increasingly practiced in medical centers. The financial stakes are, in any case, quite high – in the range of billions of dollars. Faced with the development of the ambiguous and negatively connoted industry of "reproductive tourism", states are powerless in many respects. While they can certainly impose restrictions or write the principles on which the legal system is built (or is supposed to be built) into domestic law, the affirmation of these principles, as necessary as it is, it not a panacea. What kind of authority can we grant these principles, when one must simply cross a border in order to seek in another country what one cannot find at home? "Reproductive tourism" thrives due to the diversity of the word's legal systems, systems that, one way or another, are interdependent, from the strictest to the most liberal, let alone those of the countries that choose to turn a blind eye. Moreover, though some countries claim to raise public policy barriers to protect themselves against the "liberalism" of other states, and claim to be ready to enforce the full range of civil, criminal or administrative measures to prevent or punish these practices, the problem of children born via a banned technique, whether surrogacy or another assisted reproductive technique, remains.

Furthermore, a country's assertion of the principles that govern its domestic law must be reconciled with respect for international commitments, a conflict that is especially relevant to the situation of children born abroad with the help of a surrogate. In France, the Court of Cassation has long demonstrated a strict policy regarding surrogacy. The three decisions made on April 26 2011 (including the Labassee and Mennesson decision), for example, were based on respect for law and order, and notably the principle of the inalienability of civil status to oppose direct or indirect recognition of surrogacy. In two decisions made on September 13 2013 (Bouvet and Foulon), the Court of Cassation further hardened its stance on surrogacy, relegating law and order to a secondary concern, and refusing the registration of kinship ties of a child born abroad with the aid of a surrogate on the grounds that legal fraud had been committed. Moreover, the Court reaffirmed the nullification of the "sponsor" father's paternity, even though he was, in fact, the child's biological father,

and had a social and emotional link to the child. This ruling was condemned by the ECHR in the Labassee and Mennesson decisions, and confirmed by the Bouvet and Foulon decisions of July 21 2016. For the Court, there is a disproportionate attempt to the child's right to respect for his identity, when this child is prohibited from establishing his kinship ties with his biological as well as psychological parents A few months later, the Court of Cassation was ordered to review the case in order to comply with the requirements of the judges of the European Court of Human Rights. Yet the problem of the parental link with the intended parent(s) remains.

In conclusion, the solutions that states intend to apply to issues concerning surrogacy necessitate the consideration of the international reality of the phenomenon, and therefore the potential interest in reaching an agreement on international cooperation in this field.

Andrea WHITTAKER

New Destinations for International Surrogacy in South East Asia

Thailand became a popular destination for commercial surrogacy from 2011 until the notorious 'Baby Gammy' case in 2014 and subsequent banning of surrogacy by Thailand's military government in 2015. Since its closure the industry has moved to other countries in the region such as Cambodia and Laos, which lack any current regulations or legislation. In this paper I trace the consequences for international surrogacy in Asia since 2014. A characteristic of the cross border assisted reproduction industry is its flexibility. Throughout the region, once jurisdictions change legislative conditions, the industry responds through spatial relocation. Clinics may be organized to bring in medical specialists, laboratory staff, surrogates, gametes and import embryos. Operations may be conducted from anywhere, all that is needed is a computer and internet connection.

This paper is based upon the author's long-term ethnographic experience in IVF clinics in Thailand in 2008, and further fieldwork from 2011-2016, interviews with intended parents, doctors, brokers, and regulators in Thailand, Australia, Laos and Cambodia as well as observations in clinics and hospitals, hotels used by intended parents, industry marketing events and conferences, as well as media and internet-based chatrooms. It forms part of a broader project on international surrogacy funded by the Australian government through an Australian Research Council Future Fellowship.

Melinda Cooper and Catherine Waldby (2014) have epitomized the surrogacy industry as 'clinical labor' involving rentier capitalist relations building upon the extraction of biovalue (see also Nahman 2013). In this presentation, I develop understanding of this post-Fordist industry further by arguing that it has several characteristics: it is flexible, rapidly responding to change and opportunities; it is multinational, with many clinics and facilitators working across borders; it places surrogates and ova donors as independent contractors to maximize flexibility with few protections; it utilizes new social media to develop its market; it extracts value from bodies by building upon the economic differences between surrogates and intending parents but also by feeding off the local moral economies which valorize women's roles as gestators and bearers of children. Like many of the new industries of our age, it is disruptive, providing new surrogacy and ova options for the market and creating new demands for what was a restricted resource; it also thrives on a lack of regulation.

I start with a description of how the development of new models of doing surrogacy, from the US and later India, created a 'disruptive industry' that introduced the mass scaling-up of surrogacy services from bespoke negotiated clinical relationships to a high volume, readily available, easily accessible and affordable service involving innovations such as utilizing multiple surrogates in 'parallel' pregnancies, the ready replacement of surrogates in case of cycle failure, the importation of ova, frozen embryos or movement of surrogates to other jurisdictions and fixed price packages for guaranteed 'take home' babies and in some cases fly-in fly-out medical staff. In this model of surrogacy, gestational surrogates act as subcontractors, with little power to negotiate the terms of their labor or conditions. Likewise, intended parents receive little by way of personalized care and are positioned as consumer/ clients. This new form of organization of surrogacy from bespoke intimate relationships into a high volume industry drawing upon impoverished women with little regulation exacerbates the potential for exploitation and harms.

Across Asia this pattern has been repeated. With the closure of commercial surrogacy to gay couples and later restrictions on Australian couples in India, clinics relocated to nearby Nepal, moving Indian surrogates to Nepal for embryo transfer and their pregnancy. Thailand also became an important destination. Some brokers and facilitators moved their operations to states in Mexico where surrogacy was unregulated. In 2015 most of these

destinations had banned international surrogacy. Following the Baby Gammy case in Thailand, international surrogacy was banned there. The State of Tabasco in Mexico banned surrogacy there in 2015 as did Nepal. In response, larger operators have simply reorganized the movement of surrogates to satellite clinics in locations with supportive legislation such as the Ukraine. But such destinations are not gay-friendly.

The closure of Thailand saw the rise of Cambodia and Laos as destinations in 2015-2016, despite warnings about the uncertainties and lack of protections for surrogates and intended parents and lack of exit procedures for children born in those countries. I describe the growth of the industry in Cambodia and Laos, used to circumvent Thailand's restrictions on surrogacy arrangements. International surrogacy arrangements are still taking place in Thailand, albeit discretely and circumventing current restrictions. Clinics in Cambodia and Laos are providing embryo transfers for Laotian and Thai surrogates. Laotian surrogates give birth in Thailand and then return to Laos with the child/ren for later exit processes to their destination country and intended parents.

Interviews with facilitators, surrogates and intended parents reveal the complexities of these arrangements and the risks involved for them and the children. I follow the case of two Chinese gay fathers trying to arrange the exit of their twins born through surrogacy. In the absence of clear exit procedures children are at risk of being statelessness.

Anne SARIS

Surrogates in Canada: A Kaleidoscope of Legal Phenomena

Surrogacy agreements involve complex relationships that are spread over time (not necessarily ending with the birth of the child), and appeal to different areas of law in Canada, such as basic rights and freedoms (autonomy, dignity, equality, non-discrimination, security and/or integrity), criminal law, civil law (law of persons, family law, contract law, law of civil liability, private international law), health law, and immigration law.

With the establishment of the Royal Commission on New Reproductive Technologies in 1989, the federal government intended to address the concerns put forward by different professional groups and members of civil society with regard to recent advancements in reproductive technologies. To this end, the Royal Commission launched a survey on the "current and foreseeable advances in science and medicine with regard to new reproductive technologies, in terms of their impact on health and research, and their moral, social, economic and legal consequences" which was summarized in a subsequent report, entitled *Un virage à prendre en douceur* ("Proceed with Care"). In this report, the Commission made the distinction between surrogacy agreements according to the contribution of the surrogate (egg donation and/or gestation), and whether or not the surrogacy agreement was for commercial purposes. With regard to this subject, the Royal Commission called for the prohibition of any and all commercial contracts with *meres porteuses* (surrogates genetically linked to the child).

This report was followed by the announcement of a "voluntary and temporary moratorium", issued by the Federal Health Department to health professionals and researchers, on nine practices, including remuneration in surrogacy agreements.

It was not until 2004 that a federal law came into force - the law on assisted reproduction (LPA). This law prohibits the use of the services of a woman under 21 years in carrying and bearing a child, the financial compensation of a surrogate "mother", and the financial compensation of intermediaries who may obtain the services of a surrogate "mother" (Article 6 LPA). The law establishes the legality of surrogacy agreements, and defines a "surrogate mother" as a "female person who carries an embryo or fetus that is conceived via an assisted reproduction technique and is genetically linked to one or more donor(s), and who has the full intention of returning the child to the donor or to another person following the child's birth". As a result, this law only applies to surrogacies that are carried out with the assistance of health professionals, and not those based on so-called "artisanal" reproductive practices, where the surrogate "donates" her egg, and fertilization occurs in utero (either through sex or the use of a needleless syringe). Moreover, the federal legislator, ever prudent, stressed that the question of whether or not an agreement under which "a person agrees to be a surrogate mother" was valid was up to the individual provinces (Article 7 LPA). Out of all the provinces, only Quebec had passed a law declaring all surrogacy contracts null and void (Article 541 Civil Code of Québec - 1994). As a result of the subsequent reports, consultation papers and notice boards (especially in Quebec), and case law, provincial rights related to legal phenomena linked to surrogates in the Canadian provinces began

to evolve. Case law in particular has focused on the different methods of establishing parentage in the case of assisted reproduction, the definition of adoption and its legality (see litigation on immigration and family law), and, indirectly, on the unpaid nature of surrogacy (I).

As for the doctrine issued by Canadian lawyers (very few men have written about these issues), it has largely reflected liberal schools of thought (very rarely venturing into postmodern thought), and has focused most of the time on a "relational" approach of law in assisted reproduction, sometimes from the point of view of "Law and Economy". This analysis focuses on four points: 1) an analysis of the legal relations in surrogacy agreements with regard to the state of the law; 2) proposals for law reform on certain specific points; 3) an analysis of preconceived notions influencing legal perceptions of the social phenomenon of surrogates; and 4) an empirical analysis of the relationships forged within the framework of surrogacy agreements (II).

After thoroughly studying this corpus of legal writings, one can make some observations on the invisibility of certain issues, as well as the contribution of comparative law (III). With regard to this first point, it is surprising that civil law specialists have not extensively examined the definitions of personal rights linked to the right of filiation. As for the lack of analysis of the ethical obligations of health professionals, whether they take on the roles of facilitators or intermediaries, they seem to have avoided attracting the attention of lawyers, most likely because of the veil of legality that covers surrogacy agreements. The second point, the contribution of comparative law, can be illustrated by the use of the terms *parenté/parentalité* by specialists in civil law in response to the English term "parenthood", and even more so the interpretation of what is meant by "a null and void agreement". While France and Quebec both have a section of the Civil Code that states, in the same terms, the absolute invalidity of surrogacy contracts, the scope of this principle is quite different in the two countries. In France, permitting couples to adopt a child through a surrogacy contract is presented as an authorization to evade the law, while in Quebec, this kind of adoption is perfectly legal, as it takes the best interests of the child into account, and brings another interpretation of the absolute invalidity of a surrogacy agreement (the annulment of which would hinder the execution of said contract).

Heather JACOBSON

Surrogacy as Work in the United States

Commercial gestational surrogacy, in which women are paid to gestate and bear children for others (but not to contribute their own eggs), is a growing option to parenthood for people experiencing infertility and a growing form of paid labor in the United States. Though it is difficult to capture accurate rates of surrogacy in the United States as there is no official tabulation (it is not regulated at the federal level), gestational arrangements (as compared to "traditional" arrangements in which women contribute their own eggs) are thought to comprise the majority of the estimated 1,500 surrogate births per year in the United States (American Society for Reproductive Medicine 2012; Markens 2007). These arrangements present a unique window into the contemporary experience and discourse on work, family, and the reproductive marketplace in the United States context.

The United States, with an estimated ten to thirty-one thousand paid surrogate births since the late 1970s, is arguably the world epicenter of surrogacy (Organization of Parents through Surrogacy n.d.; Teman 2010; Jacobson 2016). Culturally, however, there has been resistance to any form of surrogacy in the United States, but most especially to that which involves monetary compensation. My research examines that dilemma: the paid "work" of surrogacy and how those involved in these arrangements understand their labor in the reproductive market. This was the focus of my recent book, *Labor of Love: Gestational Surrogacy and the Work of Making Babies* (Rutgers University Press 2016). Labor of Love is the first book-length ethnographic examination of the contemporary surrogacy marketplace and experiences of gestational surrogates in the U.S.

The data for my book is based on interviews with sixty-three people involved in surrogacy and included surrogates, surrogacy professionals, intended parents, and family members of surrogates. Over the course of three years, I followed individual surrogates and intended parents through their journeys (for some, several journeys), performing multiple interviews and following up via emails, phone calls, and by reading blogs and website postings. During interview collection I also spent time in the offices of lawyers and an IVF doctor, in five surrogacy agencies, and in the homes of surrogate "caseworkers," having the opportunity to witness some of the daily workings of surrogacy professionals.

The surrogates in my study range in age from 25 to 45; are all residents of Texas or California; and are all mothers. The majority (84%) are married, white (93%), and roughly 60% work either part-time (20%) or full-time (43%) outside of the home in female-dominated occupations. Their median annual household income range was $50-75,000. For roughly forty percent of my sample, the only income they bring into the household was via surrogacy. Nearly two-thirds identified as Christian or a specific Christian denomination. At the time of my first interview with them, all but two of the 31 women in my study had already given birth to at least one "surro-baby," with 13 having had more than one successful journey.

As I detail in *Labor of Love*, when I began interviewing surrogates for this project, I was struck by the amount of labor and time they invest in these arrangements. Their work includes following and keeping track of a complex medical protocol; undergoing a range of medical testing and procedures; attending numerous medical appointments; re-arranging family schedules to accommodate surrogate work; attending surrogate support-meetings (which are mandatory for some); staying in contact with their IPs; visiting IPs; as well as giving birth and the emotional labor of managing the surrogate-IP relationship. Many surrogates also invest considerable time in surrogate networks, including on-line support websites.

Talking with American surrogates about the work of surrogacy—about surrogacy as work—, however, is a very tricky thing. I learned this quickly during data collection. In this presentation, I will share analysis from my book of the ways in which surrogates spoke about surrogacy as work, and then the ways in which they resisted the work framing. I will also discuss the organization of surrogacy work as family work in the United States. Through my interviews with surrogates I came to understand that including the perspective of surrogates' family members was important. Most women in my study were insistent that surrogacy work would not be possible without the support of a close ally—most often a husband or romantic partner. The temporal and emotional demands of surrogacy were too intense, I was told, without someone else to lean on. Husbands are expected to (and do) participate in the surrogacy process in several ways. In my presentation, I will share the various ways husbands and other family members engage in or assist with surrogacy work.

My findings in *Labor of Love* center on the ways in which the United States surrogacy market is dependent on the labor of U.S. surrogates, yet, ironically, cultural anxieties about the commodification of reproduction and children have resulted in a marketing and cultural discourse that largely obscures surrogates' actual considerable labor. In this presentation, I share those findings and speculate on the sociological origins of such a position.

Jacques TOUBON

The Role of the Defender of Rights and the Question of Childrens' Rights Analyzed Through the Prism of Its Intervention on the Legal Effects of Surrogacy in France

The Defender of Rights, founded in 2011, emerged fromfour institutions: the Ombudsman, the Ombudsman for Children, the High Authority to Combat Discrimination and Promote Equality (HALDE) and the National Commission on Security Ethics (CNDS). The Defender of Rights is an independent constitutional institution that has four missions: the defense of rights and freedoms within the context of administrative relations, the fight against discrimination, the respect of ethics by security forces, and the defense of the best interests of children.

It is because of this final mission – the defense of children's rights – that the Defender of Rights has received complaints concerning children born of surrogacy, notably following the two rulings that were issued by the European Court of Human Rights (ECHR) on June 26, 2014 following the Mennesson and Labassee v. France case.

In these two rulings, the ECHR considered that in refusing to recognize the link between the children born of surrogacy and their biological parent, the French authorities had infringed upon the children's right to privacy, which is protected by Article 8 of the European Convention on Human Rights. This article should be understood as the protection of the right of a child to establish the details of their identity, including their parenthood and nationality. This right is also guaranteed by the UN Convention on the Rights of the Child.

Since June 2014, several families have come to the Defender of Rights with stories of the difficulties their children have faced, whether they were refused passports, national identity cards, or French nationality (despite

the memorandum issued by the Ministry of Justice on January 25, 2013), or denied entry into the French civil registry because their birth certificate, though legal, was established abroad.

Depending on the circumstances of the case in question, the Defender of Rights has resorted to different means of intervention: either a settlement agreement with State services, a decision which issues recommendation to the Ministry of Justice, or the filing of legal submissions before the court.

Following these rulings, executive authorities did not take any steps to ensure compliance with domestic law in this jurisprudence, resulting in a new ruling on July 21 2016, following the Foulon and Bouvet v. France case. After hearing the concerns of a father of a child born via surrogacy in Moscow, the Defender of Rights submitted an amicus curiae to the Court of Cassation (Decision No. MSP-MLD-MDE-2015-093), an action which led the ordinary courts to rule on this issue on 3 July 2015.

Reversing its previous case law, the Court of Cassation, pursuant to the ECHR decisions, now considers that any surrogacy contract - though banned in France - should not preclude the recognition of the parenthood of children born via this technique. Since this turnaround, the Court has settled all legal disputes concerning the refusal to enter foreign birth certificates mentioning the father and the surrogate mother into the French civil registry.

The Defender is also able forward legal opinions to the Parliament, as it did in July 2015 as part of the « Assistance médicale à la procréation et gestation pour autrui : le droit français face aux évolutions jurisprudentielles » (“Assisted Reproduction and Surrogacy: French Law in the Face of Developments in Case Law”) fact-finding mission (Defender of Rights Notice No. 15-18, July 3 2015).

Finally, in order to ensure the enforcement of the ECHR’s rulings in France, the Defender may make comments on their execution to the Committee of Ministers of the Council of Europe. It will soon provide such comments on the Mennesson and Labassee decisions.

However, the problem of the legal recognition of a child’s intended parents remains unsolved, not least because the case law regarding this issue is still uncertain. If and when appeals are made to the Court of Cassation, it will need to take a position on the issue yet again. According to the Defender, solutions must be found so that children born of surrogacy can, like other children, establish and legally recognize their identity and parenthood in France, and benefit from the legal protection that would enable them to integrate into their families.

As the ECHR pointed out in the Mennesson and Labassee rulings, the legal status of children born of surrogacy should be handled differently from that of their intended parent(s). While it is conceivable that France would discourage its citizens from using a method of reproduction that it prohibits on its own territory abroad, or refuse any legal recognition to the intended parents of a child born abroad via surrogacy, the situation of the parents should be distinguished from that of the children in question, who should in no circumstances be held liable for their intended parents’ choice of reproductive method, and should have the right to have their identity legally recognized by the state.

Sunita REDDY

Saga of Surrogacy in India: Journey from Commercial to Altruistic

A New Surrogacy Bill was passed in the parliament in Aug. 2016 by the current Bharatiya Janata Party (BJP) government in the center. Going by its ideology of being restrictive, orthodox and conservative, the bill bans commercial surrogacy and allows only altruistic surrogacy. This bill emanated from the long pending Assisted Reproductive Technologies (regulation) Bill. This new surrogacy bill came as a surprise and swung from one extreme position to another. In the previous government, where commercial gestational surrogacy was allowed, it was liberal with no regulation and no law to monitor the working of the ART Clinics. It was also open to all: single persons, gays, lesbians, heterosexuals, Indians, Non Resident Indians (NRI), Persons of Indian Origin (PIOs) and foreigners. Now the new Surrogacy bill completely bans commercial gestational surrogacy for all and allows only altruistic surrogacy to heterosexual couples, married and not able to bear children for the past 5 years. This is being currently debated across the media on the lines of ethics, morality, legality, ideology, reproductive rights and also personal choices.

This paper traces the beginning of surrogacy in India nearly two decades back, who are the key players and how it became a 'baby cradle' for the world? It further discusses how in the past, commercial gestational surrogacy benefited infertile couples, the single fathers, gay couples and foreigners, making India a preferred destination - precisely, because of low cost, legal context with minimum laws to monitor and regulate and easy availability of surrogates for the lowest price. Due to the ban on surrogacy in many other countries, India became the preferred destination. The paper addresses the process in which surrogacy became a debatable and controversial issue, due to many social, ethical and legal issues pertaining to commercial surrogacy.

The paper ends with the continuing debate on surrogacy practice and how academic papers, media, and women's groups' advocacy led to the change in policy. However the swing from one extreme to another with this complete ban on commercial surrogacy has generated a new debate and how this practice would go underground and the possibilities of more exploitation and illegal practice occurring under the table.
This paper thus traces the saga of surrogacy in the Indian context and also the losses and gains by different stakeholders. This paper is situated in the context of neoliberal policies, medical markets, and the growth of medical 'tourism', and 'reproductive tourism'. The paper also looks at the issues from the perspective of commodification and commercialization of fertility services.

The demographic characteristics and social norms within India, like early age of marriage, facilitate early childbearing, completing the family, yet young and fertile women, willing and ready for reproductive services feeds the ART industry.

Patriarchy and the sacrificial nature of mothers, and the economic conditions of the poor, desperate to sell their bodies in part or whole and also bodily fluids and reproductive services made India a perfect ground for proliferating IVF clinics in all the major cities. While trading bodies for sex work brings on a different kind of debate, the debate around surrogacy, has been in the eye of storm due to its global impact and thronging of couples across the world to India to have children. The illegality of surrogacy in many countries also led to the puzzle on how to resolve the issue of citizenship for the children born outside their countries. Embassies in India are curious to know what is happening in India on the surrogacy front.

The advancement in science and technologies, especially gestational surrogacy, could clearly separate the child from having any genetic links to the surrogate, making it completely commercial. Law could not catch up with the advances in biotechnologies. There were cases of children being abandoned due to disability by the couples, there were cases like Baby Manjhi, where the commissioning mother after divorce did not come back to India to take the baby and the grandmother had to come to take the child back. There were also reports of surrogate children being ill-treated and were victims of pedophilia by Australian men, who came to India for surrogate children. While all this was happening, there has been hardly a debate on the rights of the surrogate children. Children born through surrogacy had to pass various tests at various times, before they are even conscious; of waiting in clinics to be picked up by the CPs, or abandoned in case of disability, hence being shifted to orphanages, or denied breastfeeding and also uncertainty of getting citizenship, or left in lurch, 'undocumented' and 'stateless'.

The practice of commercial surrogacy in India grew leaps and bounds and brought in unethical means of clinical practice. Although few clinics followed standard clinical protocols and followed Indian Council for Medical Research (ICMR) guidelines, in a few other ART clinics, in order to have 100 percent success rates, especially for foreign couples, more than one surrogate was hired and the successful one was chosen, and the fœtus in the other(s) was aborted and the surrogate sent away without having been informed that they were used as standbys. Other unethical and uninformed practices included placing many embryos ranging from 3-8 to observe growth and select the better one and thus proceed with fœtal reduction, and invariably for a C-section, with no concern for the surrogate's health. Even though the (ICMR) came up with guidelines, due to lack of any law, the clinics had their own standard practices, most of which were harmful for the surrogate. The surrogates were exploited in payments and many had to turn back mid-way, discouraged and blamed themselves for the failure, went back with low self-esteem due to this imposed failure, even though they had proved their natural fertility in birthing their own biological children.

These unethical practices, highlighted in research by this author and studies by other scholars, advocacy by women's organizations and activists and presented in the media, led to first banning of surrogacy to foreign couples, gay and lesbian and single parents, later even to POIs/ NRIs by the High Court. Finally, the Surrogacy bill has been carved out of the ART bill, which is still pending. Equally important are numerous issues in ART

clinics, however, surrogacy has become the bone of contention due to the involvement of the third party and a woman. It is now to be seen as the repercussions of banning completely. While some argue that it will encounter the same fate as the PCPNDT Act, where despite having an Act to curtail sex-selection abortions, still continues unabated, though discreetly. The banning of surrogacy too, may push the practice under the carpet discreetly and continue to secretly occur, at least for Indian couples. No doubt the possibility to have a child through surrogacy by foreign couples will not be possible due to the legal procedures of getting citizenship, passport and visas.

This debate needs to be addressed from different perspectives. On the one hand, it proposes to regulate and on the other hand, to ban completely. However, the recent banning of commercial surrogacy is welcomed by few, but strongly critiqued by the IVF clinics themselves. It may be said that it is the commercial interests of the clinics which is making them go against this recent decision, however, from an ethical perspective, looking from an anthropological lens, the author sees this as a loss of opportunity for those women who got involved into surrogacy, benefited from this service during their life time to better their lives and their families. There is no recourse, other than this, due to the neo-liberal economy, lack of job opportunities for both men and women, pushing women to take up risky and exploitive work. However, it is desperate poverty and helplessness which pushes women into surrogacy. The debate also raises issues of morality, questioning the acceptance of only heterosexual marriages and undermining and not recognizing any other form of newer families; gay, lesbian, living in an unmarried relationship, single parents, who are seen as deviance and against the ethos of Indian culture. This hides the authentic realities of existence of all forms of newer families, though small in number.

Trudie GERRITS

Surrogacy in Ghana: An Exploration of Practices, Experiences and Dilemmas

In the last two decades, assisted reproductive technologies (ARTs) have become increasingly available in the global south. In sub-Saharan Africa, they are predominantly provided for in private clinics. In Ghana, the country this presentation focuses on, the first IVF was conducted in 1995. Over the last decade, private clinics offering ARTs have become a 'booming' business in the country, with some of them also offering ARTs using donor material and surrogacy. The first surrogate pregnancy in the country was carried out in 2005. While the early introduction of 'traditional IVF' did not lead to too much societal concern in Ghana, the more recent and increasing use of third-party involvement in conception has raised questions about its acceptability, both on the part of the Ghanaian government and the Pentecostal Church. To date, no legislation on ARTs exists in Ghana. Currently, in 2016, Ghanaian professional organizations of embryologists and fertility specialists are being created, which may lead to legislation and/or professional regulations in the near future. Thus far, social science insight into third-party involvement in procreation – be it the use of donor gametes or surrogacy – in Ghana or any other sub-Saharan African country is more or less non-existent.

This presentation – exploring the practices, experiences and dilemmas concerning surrogacy in Ghana – is based on ethnographic research I carried out in 2012 and 2013 in two private ART clinics. The fieldwork (3 months altogether) was undertaken as part of a collaborative research project examining the appropriation of ARTs in a number of sub-Saharan African countries. Data were collected through interviews and informal conversations with staff members, women and men in treatment, surrogates working for one of the private clinics, and the director of an agency mediating between intended parents on the one hand and surrogates and donors on the other. In addition, observations were carried out in various spaces in both clinics.

In my presentation, I will first offer insight into the organization of surrogacy practices in both clinics at the moment of fieldwork. At that time, one of the clinics was performing all non-medical tasks related to third-party involvement on its own, such as finding, screening, informing and contracting donors and surrogates and organizing related legal procedures (their practices have changed since then). The other clinic, on the contrary, used the services of an intermediary agency for surrogates, while clinic staff carried out donor selection and screening themselves.

I will discuss a number of differences between these two ways of organizing the practice of surrogacy. Insight herein is partly based on the experience of the director of one of these intermediary agencies. She initiated the agency – the first of its kind in Ghana – in 2005, inspired by her own experience with fertility treatments and the need to find a surrogate. In her account, she referred to the challenges she faced when setting up the

organization, which she herself relates to 'Ghanaian culture'. I argue that intermediary agencies like this one play an important role in shaping and re-shaping cultural and societal notions, values and practices regarding, for example, the essence of kinship, social and biological parenthood, and the importance of blood/genetic ties. This constitutes an area of anthropological study that is still unexplored in the sub-Saharan African context.

Next, I will examine the position and views of six surrogates whom I encountered in one of the clinics. I explore their motivations, their experiences with the clinic – where they were hospitalized during the entire period of their pregnancies –, their views on the practice of surrogacy – which changed by actually being involved in it –, issues of kinship and secrecy with regard to surrogacy, and the impact surrogacy had on (some of) their lives. I will show and argue that these surrogates explicitly avoid viewing the children they carry as their own children. They are 'not-doing' kinship, which is in opposition to what Amrita Pande (2009) argued for the surrogates she encountered in India. I will unravel and explore why and how these surrogates in the Ghanaian context construct this particular relationship with the children they carry.

Furthermore, I will address issues related to the commodification and exploitation of surrogates' bodies. The position of surrogates is usually discussed in terms of 'stratified reproduction' (Inhorn and Birenbaum-Carmeli 2008), as it is generally well-off couples who access ARTs using surrogacy, and they can only do so because the bodies of other woman – in need of money – are 'bioavailable' (Cohen 2008). Based on my fieldwork, I am not inclined to consider the Ghanaian surrogates whom I spoke with – and who were "selling their wombs" – as victims *per se* of the ART industry, as these reproductive jobs provide them with financial opportunities that they would not otherwise have. However, I do contend that it is of extreme importance that their position, rights and obligations are transparently and fairly settled, and that they are well taken care of – physically, emotionally and financially – to avoid any form of exploitation.

Finally, I will draw attention to the complexities and dilemmas of doing fieldwork in the realm of surrogacy given the manifold sensitivities involved. These include the fact that infertility and childlessness are stigmatized conditions that are often not openly shared with others, not even with close friends and relatives. Furthermore, while the use of ARTs is often – for a number of reasons – kept secret (until the child is born), the use of a third-party is dealt with even more secrecy. In addition, surrogates are also inclined to hide their engagement in this form of earning money from those in their environment. For these and other reasons, clinics and intermediary agencies might not be very willing to share all the details of their practices with researchers and/or will be hesitant to introduce researchers to their clients who make use of surrogacy services.

Delphine LANCE

Reflections on Motherhood Through the Experiences of Surrogates in the US and Ukraine

Maternity as a theoretical concept is in perpetual evolution. Maternity, both in the common sense of the term and in connotations found in feminist debates (Ragone, 1996 Descarries, 2002; Collin and Laborie, 2004) carry many different meanings. They touch on the sphere of parenthood by establishing the legal status of the "mother", while also imposing upon her the rules and duties to the child of whom she has been designated the parent. The term also refers to the reproductive function that involves a biological, genetic, and/or gestational contribution, or can refer to the care the child is given, for example in the name of a medical service or hospital ward.

The evolution of New Reproductive Technologies (NRT) invites us to reconsider the Roman maxim *mater semper certa est*, and to reexamine the concept of maternity. The NRTs discussed in this presentation, especially surrogacy, put into action practices that multiply, expand and diversify so-called "maternal" roles. Thanks in part to these new technologies, several female participants can now be invested in the roles traditionally linked into the experience of motherhood: desire, gestation, raising the child, educating the child, and so on.

Discussing the role of women in what some people call *la maternité pour autri* ("maternal surrogacy", a term which will be discussed in this presentation) (Delaisi de Parseval and Collard, 2007) enables us to address the different dimensions of "maternity", while reflecting upon the relevance of such terminology. Indeed, the characteristics that have traditionally characterized maternity can be recognized in the experience of some surrogates, without necessarily associating these women with supposedly maternal roles. Instead, other aspects can be put forward as elements in the foundation of maternity, and vary from one participant to another.

Qualifying surrogates as “mothers” by their gestational function and relationship with the fœtus goes against a number of critics who find the ideological separation of the child and surrogate to be unacceptable (Pateman; 1988; Agacinski, 2009; Tasca, 2011; Dolto, 2014). Some feminists also consider that denying the surrogate her maternal role in the process of reproduction can have the effect of reducing the woman’s uterus to a sort of “container” that carries out a reproductive function (Corea, 1985; Raymond, 1994). In contrast, limiting a role to its function brings us back to the designation of any pregnant woman as a “mother” (Badinter, 2010). This option erases the plurality of terminology and statutory options available to a woman who carries a child for another person or couple, and calls for the reassessment procedures like anonymous childbirth and adoption.

In order to break free from of the deadlock into which this perspective forces upon us, we will examine the limits and possibilities of the use of the term “mother” through the stories of the female surrogates we met in Ukraine and the United States. This paper was written after nine months of fieldwork in Ukraine, followed by five in the United States. During these few months, sixty surrogates were interviewed. The wide scope of our study has allowed us to appreciate the diversity of international representations of motherhood, and think of pregnancy as a potential initiator and creator of links, links that cannot be reduced to a simple maternal dimension.

Through our interviews, we were able to identify and examine four main characteristics associated with motherhood, which were put forward by the surrogates themselves: parentage, intention, corporeality and emotion. In this presentation, we aim to consider motherhood through the lens of these four dimensions by placing them in context. We will present and analyze the experiences of these women during the period extending from their first experience of giving birth to their own child to the postpartum phase of their surrogacy. By considering the various steps involved in the process, we are able to measure the evolution of their conceptions of maternity, their interrelations, and their flexibility over time. We can therefore see that the surrogates’ conceptions of their roles may vary depending on their interactions with the institutions involved (the Church, the State, the family, doctors, and so on) and/or with the intended parents.

Therefore, we aim to question the dialectical relationships between 1) the idea of maternity and the lived experience of maternity, and 2) “motherhood for oneself” and “motherhood for others” (surrogacy). With this aim in mind, we will put forward the negotiations made by the participants in surrogacy regarding their definitions of motherhood.

María-Eugenia OLAVARRÍA, Françoise LESTAGE

Surrogates, Doctors and Legislators: A Shift in Mexico’s International Assisted Reproductive Technologies Circuit (2015-2016)?

In March 2016 an initiative on the part of the Mexican Senate regulated the use of Assisted Reproductive Technologies (ARTs)—including surrogate motherhood—for the first time on the federal level.

Since a 1997 modification to two articles in the Tabasco Civil Code (Tabasco is one of Mexico’s thirty-two state-like federal jurisdictions) had validated surrogacy contracts, this practice had been undertaken for nearly eighteen years, legally, yet without explicit regulation. During that period, intended parents of all nationalities, ages and sexual orientations who sought out such practices had access to a wide range of medically-assisted reproductive services, from artificial insemination to sex-selection, ICSI and surrogacy. Their procedures were undertaken both in Mexico City as well as in Tabasco’s state capital, Villahermosa, where medical infrastructure and laboratories were assured, with the proviso that birth certificates be issued in Tabasco. The resort city of Cancún was added to this clinic- and agency-network, allowing Mexico to insert itself within an international medically-assisted reproduction network.

In 2014 and 2015, a number of Mexican press reports of Spanish citizens who found themselves unable to leave Mexico because they could not obtain passports for their children born of Mexican surrogates, as well as a series of media reports transmitted on a widely-watched, nationwide newscast, brought the issue of surrogacy in Tabasco to the center of a media, legal and public-opinion-related polemic.

Our presentation analyzes changes that occurred between 2015 and 2016 based on the voices of those who were their agents—physicians, legislators and surrogates—and poses a series of questions with regard to their meaning and importance. The change brought on by a federal Senate initiative on April 26th 2016

largely translates to a prohibition on non-Mexican citizens' access to ART, alongside prohibitions on those older than forty or who do not suffer from medical infertility. In particular, the legal initiative's scope centers on the prohibition of surrogacy agencies; i.e., it combats the presence of intermediaries, whose practices are currently penalized yet whose involvement—up to the time of the law's approval—guaranteed participation on the part of surrogate mothers and egg-donors on the regional, national and international level.

The Mexican experience leads to three conclusions regarding surrogacy:

The first is based on ethnographically documented, empirical evidence that in no case did a surrogate mother used her own oocyte; specifically, in the period when it was not an illegal practice, that a woman with a genetic link to the embryo hand it over to the intended parents after having gestated it, was avoided. This restriction—that Tabasco civil code, in practice, allowed—had to do with "objections of conscience" imposed by physicians and attorneys, as well as on the part of the surrogates themselves, who expressed an unwillingness both to hand over genetic offspring as well as donate oocytes.

Therefore we could posit that, in the case of Mexico, cultural factors and belief systems operated above and beyond legislation or regulation to establish an ethical threshold with regard to surrogacy practices.

The second experience, an outcome of the first, confirms the vast distance that exists between legal structures and belief and cultural systems in a nation as culturally and ethnically diverse as Mexico. The fact that between 2010 and 2016, more than eight ART legal initiatives have been unsuccessfully brought before Mexico City's Legislative Assembly reflects, in addition to a lack of consensus between political parties and factions, the ignorance of those who draft such legal initiatives when it comes to the technical, medical, bioethical and cultural factors that surrogacy entails.

Finally, a consideration of the immediate consequences this change in Mexican legislation has provoked reveals a series of affected levels:

- At the "user" level, surrogacy has been restricted to Mexican citizens in a particular age range and with diagnosed infertility; this requires single parents and gay couples or those who have exceeded the age limit to seek other legal means to carry out the practice.
- For physicians and attorneys, the 2016 initiative represents a reduction in the number and origin of users; the economic fallout is not yet commensurable.
- And clearly, potential surrogate mothers and surrogacy agencies are the most affected parties. The former because the new law establishes that only direct agreements between surrogates and intended parents may be carried out within an "altruistic" legal framework; and the latter because their activities have not been merely prohibited but also made punishable by law.

In the national context, the change to the law reveals a rejection on the part of legislators to presenting an image of Mexico as a nation that offers "geopolitical" benefits with regard to these practices (as Thailand and India once did), in favor of that of a developed nation that prohibits them (France, Denmark, Spain) or regulates them (Canada and the United States).

Nevertheless, based on testimonies gathered in our fieldwork, it becomes evident the true change with regard to Mexico's participation in the ART industry basically comes down to a geographical re-routing. We suggest this re-routing responds to global-level market imperatives and not to the type of participation that an emerging nation like Mexico represents internally. Our presentation title alludes precisely to this issue.

Karen M. HVIDTFELDT

"All One Needs is a Credit Card". Transnational Surrogacy in India on Weblogs and in Documentaries.

This paper is a part of a research project funded by the Danish research council from 2010–15: '(Trans)Formations of Kinship: Travelling in Search of Relatedness' (KinTra), a group of researchers working on different areas of fertility treatments, fertility travel, transnational adoption, and transformations of family and kinship. The project questions how assisted reproduction technology interacts with understandings of kinship, including the importance of new media and social networking sites, which not only speed up communication between different stakeholders but also create new ways to express and negotiate relatedness.

My work is based on studies of narratives and discourses on weblogs held by Western parents and intended parents of Indian surrogate children and documentaries on the subject, produced by Western filmmakers. I have followed about 20 weblogs since 2009, all dealing with the specific subject of surrogacy in India. The documentaries include the HBO-produced documentary "Google Baby" (2009) by the Israeli instructor Zippi Brand Frank, the American documentary "Made in India" (2010) coproduced by Rebecca Haimowitz and Vaishali Sinha, and "Ma Na Sapna – A Mother's Dream" (2013) by Valerie Gudenus produced in Switzerland.

Commercial surrogacy has been legal in India since 2002. Indian fertility clinics have until 2015 provided treatments and surrogacy services to non-Indian customers at prices that were very competitive in a Western market. In 2015 a bill was passed that banned all international surrogacy in India. Since then, commercial transnational surrogacy has moved and spread to other parts of Asia and Mexico. The documentaries and weblogs were produced in the period when surrogacy was legal in India and hardly regulated. It is my aim to provide insight into these media productions from a cultural studies perspective as social and cultural practices, and question how relatedness and the making of kinship is mediated and formed in a globalized world. I identify metaphors and study the arguments constructed by the bloggers in order to make sense of the situation and legitimize the use of an Indian surrogate, and examine how the surrogates are presented and constructed both through the point of view of the bloggers and as acting subjects in the documentaries.

I argue that new understandings of kinship and relatedness arise, as surrogacy is framed as a 'do-it-your-self project' within a neoliberal framework of understanding. New media and communication technology play a decisive role, as desire, joy and despair are circulated in order to frame transnational surrogacy as a "natural" and respectable choice situated in an environment of global possibilities. However, my aim is also to point out that the blogs and documentaries offer nuanced insight into the understandings and motivations of involved parties. Fixed identities are resisted and changing understandings of kinship and relatedness develop in the narratives while surrogacy is considered, negotiated, and acted out by the individual surrogates, the intended and commissioning parents, the fertility clinics, and intermediaries.

Globalization is both the basis for the Internet-based community of bloggers and a major theme in the construction of virtual mother and parenthood. The bloggers at the same time identify and extract the act of transnational surrogacy from a commercial transaction of buying or hiring a womb by virtue of these metaphors of global connection. For instance the relationship with the Indian surrogates is narrated as a late-modern global teamwork where all stakeholders are granted agency and respectability. Both the childless Westerners and the Indian citizens are transformed into active entrepreneurs and presented as rational subjects who deliberately make their own choices using neoliberal logic. Surrogacy is described as an emotional investment for the intended parents; the journey metaphor (and the fairy-tale resemblance) is used to underline the intensity of the process.

The blogs and digital technology compensate for the lack of embodiment and proximity, as well as the feeling of isolation and loneliness often experienced by commissioning parents who are expecting children through surrogacy. They blur the line between being pregnant and not pregnant in the flow of reproductive fluids, body parts, intentions, and desires, and the social and genetic relationships are also blurred.

The weblogs and documentaries underline that Indian surrogates and Western prospective parents operate on very unequal terms. While the economically privileged intended parents travel across continents several times during the process, Indian surrogates typically do not leave their local environment. Many do not speak English, and do not have Internet access. Like access to reproductive technology, agency on the Internet is unevenly distributed; there is a clear hierarchy and direction of power in the global movements. Indian surrogate mothers do not have the same opportunities to influence their situation as Western intended parents do, for whom writing blogs and viewing films are just two of many ways in which to develop and exchange views.

However the narratives also reveal that all parties involved in the process add to new and changing understandings of what kinship and relatedness means in a globalized society. The narratives found on the weblogs and documentaries voice the concrete challenges of individual agents of transnational surrogacy and offer insights to the ambivalent and diverse understandings of kinship and relatedness that have followed the globalization of medical and technological reproduction.

Anika KÖNIG

Transnational Surrogacy: German Intended Parents Going Global

In Germany, the first commercial (traditional) surrogacies were performed in the early 1980s. Twenty-four agencies brokered surrogacy until 1988. However, as a result of the "Baby M" case in the United States, which attracted attention far beyond the national level and led to political and legal discussions worldwide, many countries revised or introduced legal regulations concerning surrogacy. Among them was Germany. In 1989, amendments were made to the Adoption Placement Act which prohibited the brokering of surrogacy, followed by the introduction of the Embryo Protection Act two years later which proscribed most of the medical procedures that are performed in the context of surrogacy (such as the implantation of an egg cell into a woman other than the one from whom the cell was taken, the implantation of an embryo into a woman other than the future social mother, etc.).

As a result, today the brokering or medical performance of any form of surrogacy is strictly prohibited. Medical professionals as well as staff and personnel may be charged with up to three years' imprisonment or a monetary fine. In addition, doctors may have their license withdrawn. Consequently, medical procedures necessary for surrogacy are not performed in Germany and surrogacy agencies do not exist. However, neither surrogate mothers nor intended parents are prosecuted. Nevertheless, even though they do not have to fear imprisonment or monetary fines, surrogacy is illegal and intended parents have to fear sanctions such as the loss of custody of the child, lengthy negotiations with the authorities, and problems with the acquisition of a passport and citizenship. However, regardless of the restrictive legal situation and the problems they must expect following the birth of their child, a considerable number of intended parents decide to travel abroad and commission surrogacy there.

This presentation is based on several years of anthropological research on German intended parents, their transnational travel and the networks within which their surrogacy experiences take place. Methodologically, this research is a multi-sited ethnography, starting from the intended parents in Germany and following them to the countries where their surrogacy takes place. Moreover, not only intended parents and surrogates are of interest to this research, but the entire surrogacy network, including agency personnel, doctors, lawyers, etc.

This paper focuses on the interplay between the prohibition of surrogacy in Germany, resulting transnational reproductive travel, and the stigmatization surrogacy is subject to in Germany. First, I will show that surrogacy (along with other assisted reproductive technologies) is a highly stigmatized practice in Germany. Accordingly, a large proportion of intended parents conceal the fact that they are commissioning a surrogacy not only from their colleagues but also from close friends and family. They use strategies such as lengthy sabbaticals and holidays, relocation, but also fake bellies, in order to make their surroundings believe the intended mothers themselves gave birth to their child.

I suggest that this stigmatization and the restrictive legal situation mutually influence and reinforce one another. In interviews, intended parents as well as parents, who already have children through surrogacy, complained about the fact that surrogacy is legal and accepted in some countries, while it is illegal and stigmatized in others. While they, for example, can openly talk about their surrogacy in California and, after having performed the necessary legal procedures, even appear as the child's parents on the birth certificate, many choose to conceal the surrogacy when applying for the child's documents in Germany. Although IPs do not have to fear punishment, they still fear loss of custody or other problems with the German authorities. One way to circumvent German laws is claiming the father's involvement in a holiday affair with the surrogate. The surrogate officially agrees that the child stays with the father and the social mother subsequently adopts the child. Many intended mothers have serious problems with this procedure. They feel stigmatized and penalized on several levels: first of all, they cannot carry a child themselves and thus do not possess something that many regard to be a very basic female capability; secondly, they are legally not regarded to be the child's 'proper' mother, even if their own egg cell was used and/or they cared for the baby since the day of its birth. Finally, they keep being reminded of this since, legally, they are the child's step-mother – a role that has a strongly negative connotation.

For these reasons, many IPs strongly appreciated a decision rendered by the Federal Court of Justice in late 2014: A gay couple from Berlin, who according to Californian law were the parents of a child born through surrogacy, had fought for several years to be recognized as the child's parents in Germany as well. Despite the prohibition of surrogacy in Germany, in this particular case the court ruled that it was in the best interest

of the child to indubitably know with certainty who is regarded to be its parent and legal guardian. The open discussion of this case and the court rule led to more (also heterosexual) parents trying this way of gaining custody for their child rather than claiming an extramarital affair. And indeed, the case was successfully used as a precedent by some of my research participants and their lawyers.

More recently, an Israeli-German couple won a court case in which they had fought for their child's German citizenship. In this case, too, the court used the best interest of the child and a well-functioning family as arguments to justify their decision.

It seems that an increasing number of intended parents in Germany have become more open about their surrogacy as a result of the recent court rulings. On the other hand, the practice continues to be regarded as highly problematic throughout the broader German society. Fears of the manipulation of embryos and the creation of 'designer babies' prevail. They are mirrored in the hesitation of politicians to engage with the topic and revisions of the law are thus unlikely. Therefore, reproductive travel abroad continues to be German intended parents' only option if they decide to have a child through surrogacy.

Sheela SARAVANAN

Liberty for Whom? Reproductive Justice and Surrogacy Arrangements in India

Academics and activists have strongly debated the use of assisted reproductive technologies such as surrogacy and sex-selective abortions from an ethical, feminist and human rights perspective, especially cross-border movements. Some of the most popular destinations for transnational surrogacy have been in countries with transitional economies and comparatively permissive regulations, while most countries in Europe have restricted laws on the use of these technologies, creating a patchwork of permissive and restrictive countries. India had been one of the most prominent destinations for surrogacy and recently banned the practice for foreigners, but the debate is ongoing. Some of the main concerns from an Indian perspective involve structural inequalities, violation of human rights and commodification of children, which are viewed mainly from a feminist perspective in this presentation.

Liberal feminists have argued that surrogacy should be allowed as belonging to procreative rights, and its restriction would be a violation of reproductive liberty. Global markets based on the supply of 'free-of-cost' or cheap and uncomplicated wombs have been rationalized as a solution to 'infertility' and reduction of 'socio-economic inequalities'. Inequalities in the Indian social system are evident in the difference in access to education, health and other basic amenities. Approximately 50% of both girls and boys drop out of school before completing 10th grade. Those who drop out of school are more likely to be married and begin having children. The maternal mortality rate in India is 174/100000 live births and half of the women in the reproductive age group (15-45) are anemic and one-third are underweight. It is important to look at the socio-economic and maternal health situation because it is mostly women from this deprived group of people who become surrogate mothers. This is also reflected in the motivation of surrogate mothers; most become surrogates to pay for their basic needs, education, health and shelter. While intended parents come to India because they have the buying capacity, it is cheaper and surrogate mothers have lesser rights over the child. Hence, inequalities between medical practitioners, intended parents and surrogate mothers are profound.

These inequalities lead to the violation of human rights due to unjust surrogacy contracts such as; detaining women in surrogate homes, inhumane and extremist means of relinquishment, unfair sharing of benefits, and violation of deontological medical practices. Women are detained in surrogate homes for 10 months, they are also expected to care for the baby after birth, they are over-fed, restricted in their movements and reunions with their family members. Women detained during their pregnancy are likewise denied participation in public life as well as the realization of their non-reproductive aspirations. There is indeed a violation of deontological medical practices as almost all deliveries are invariably caesareans, more than 5 embryos are transferred when only 3 are legally allowed and in-utero selective abortions are practiced. All this is done without any medical or life insurance for the surrogates, nor psychological counseling or appropriate consent from the surrogate mothers. Many of these surrogacy procedures constitute a violation of basic human rights, dignity and freedom as stated in Articles 1, 2, 9 and 14 of the Universal Declaration of Human Rights and The Universal Declaration on Bioethics and Human Rights 2005 (UNESCO 2006; UN 1948).

Moreover, there is a commodification of children in the process. Many children are born premature due to some or other complication(s) during pregnancy. The mortality rate of infants born in India through surrogacy is unknown due to lack of records. Payments are made according to weight and no payment exists for miscarriages, hence the payment is for the child and not for the reproductive process. Disabled children are known to be left in orphanages or even left on the street. Children of those evading the law are left stranded without citizenship. All this is evidence of the commodification of children in the surrogacy process.

Women have historically been constrained within stereotypical roles, especially 'motherhood'. Liberal feminists have argued that surrogacy practices liberate women by separating the role of 'rearing' from 'reproduction'. Meanwhile, radical-socialist feminists question this 'liberation' associated to surrogacy wherein women have to be liberated by participating exactly in the same roles of reproductive agents that they have always been assigned to. They argue, on the contrary, that this activity alienates woman's reproductive expressions and choices. Liberal feminists also say that the State should not interfere with individual choice and procreative liberty. Others argue that the violation of a person's dignity and her economic exploitation cannot be considered as a constitutional right, and that having to choose between 'poverty' or surrogacy cannot be termed as a matter of 'choice'. They further argue that more attention should be paid to providing basic needs for these women rather than debating on issues of individual choice. In short, those supporting liberal views advocate the regulation of surrogacy based on avoiding harm and international regulatory harmonization, while others seek full prohibition.

My own approach is to oppose the 'liberal feminist' standpoint supporting surrogacy, sex-selective abortion and prostitution to a context-sensitive, power-reflexive postcolonial feminist analysis. Surrogacy is presented as a solution to infertility and profound inequalities. Those without children face social stigma, psychological problems, physical stress of infertility treatment and violation of bodily integrity. I argue that surrogacy can situate another woman (the surrogate mother) within the same set of problems; social stigma, psychological challenges, violation of her bodily integrity and also, risk to her health, freedom, and even life. There are few deaths due to surrogacy reported in India, but maternal or newborn mortality is only the tip of the iceberg. What remain unreported are near-miss morbidities. 'Reproductive Justice' aims to reduce inequalities and not to exploit someone's vulnerability as a solution for another person's infertility. Based on the demand and supply of the surrogacy "market", free-of-cost or cheap and uncomplicated wombs hence cannot be a solution to 'infertility'.

Persistent issues continue to evolve about surrogacy in India. Commercial surrogacy is completely banned but altruistic surrogacy will be allowed, which means still unresolved issues of power and inequality. Surrogacy is banned in India for foreigners but will continue within the country, and the aforementioned human rights issues will still remain unresolved.

Vanya SAVOVA

Surrogacy and Attachment. Assessment of Psychological Applicability for Gestational Surrogates

The nature and social significance of gestational surrogacy, its legal, medical and bioethical borders are clarified. The necessity of a psychological assessment of the intended surrogate is based on the major problem concerning the attachment between a surrogate and a non-genetic child. Hence the predispositions to genetic links through comparative analysis of the psychological significance of genetic links in normal and gestational surrogate pregnancy in the perspective of the theory of attachment are studied. This research is based on examination and classification of attachment patterns of respondents-intended surrogates and therefore a pattern of attachment is evaluated in the perspective of its applicability to a procedure of surrogacy. According to our hypothesis, a woman with dismissing-avoidant pattern is applicable, presumably applicable is a woman with autonomous-secure attachment and non-applicable is a woman with anxious-preoccupied pattern. The responders are examined by an Adult Attachment Interview instrument. The results validate the hypothesis about the dismissive attachment as relevant to the gestational surrogacy procedure, the preoccupied as completely inapplicable. The autonomic pattern is rather irrelevant. The argumentation of attachment and life experience as determinants of motivation to be a surrogate in gestational surrogate procedure is verified.

This research is divided into 6 chapters, an introduction and analysis sections, appendix, containing the respondents' recordings and a total bibliography of 261 sources. The first three theoretical parts serve as a theoretical base for the main empirical research of two parts.

Societal grounds and justification have been provided in the introduction. The term “surrogacy” is clarified through its medical, legal and psychological connotations. Different types of definitions, statements (medical, legal, bioethical and religious) across Europe, the States and Bulgaria are researched and discussed. National regulations in terms of legislation and faith are also investigated. Social debate and the Church’s point of view in Bulgaria are exposed. Medical criteria for surrogacy treatment in a global and national context is provided. Types of surrogacy and the model of gestational surrogacy’s legal implementation in Bulgaria is presented and the need for risk prevention, serving as justification, reasoning the need for attachment investigation of the intended surrogate is built upon.

Psychological investigations on surrogate roles in gestational surrogacy is provided through current methodological problems, i.e. validity - variability of social attractiveness of the procedure, dependence on national legislation and sociocultural influence of the Western European value model. In most studies, the psychological standard for assessment is an unexperienced surrogate pregnant woman. The methodological problems in psychological research on gestational surrogacy are concentrated in lack of data, interference between different approaches and viewpoints and types of surrogacy (i.e. – inadequate comparison between traditional/genetic and gestational surrogacy), and insufficient studies on the significance of genetic link. The genetic link significance in gestational surrogacy is researched in detail by Van den Akker and the priority of the genetic link is proved in various comparative studies of genetic and gestational surrogacy procedures.

The theory of prenatal attachment in normal pregnancy in accordance with Deutch, Bibring, Winnicott, Rubin, Lumley, Cranley (multidimensional model of attachment, Maternal-Fetal Attachment - MFA), Müller, Condon & Corkindale is exposed. All these studies lead to the conclusion that early theorists talk about bonding, not about attachment; that studies on traditional surrogacy provide hypotheses about presence/absence of attachment disorders, which is inapplicable to gestational surrogacy. IVF-pregnancy differs from normal ones in the specifics of its prenatal bond.

Central knowledge for this research is provided by Elly Teman, revealing that surrogates do not connect affectively with the babies. The process of the transaction of motherhood, structured into dividing, connecting and separating, the perception of a surrogate pregnancy as an artificial process, imitating the natural one, opposition between artificial and natural pregnancy and a few other concepts in Teman’s theory strongly support the major idea of the current research.

Altruistic and self-affirmative motives of surrogates are also investigated. Psychological argumentation against gestational surrogacy carriers in a family context is provided.

The research is based on John Bowlby’s theory of attachment, as the central problem in gestational surrogacy is attachment. Bowlby’s concept of attachment as an instinctive reaction to an ultimate object, attachment figure and safe haven, and Mary Ainsworth’s ideas about a secure base and parental sensitive responsiveness explain the nature of attachment, which is applied as a criterion for the procedure of gestational surrogacy. The patterns of secure, avoidant, ambivalent and disorganised attachment and attachment disorders in this context are clarified. This research is only a part of a model of psychological expert evaluation, counseling and therapeutic work with both sides. According to the hypothesis dismissing attachment patterns in adults is an appropriate criterion for gestational carriers; the autonomous attachment pattern is likely to be relevant to the psychic experience of gestational surrogacy carrier; preoccupied attachment pattern of surrogates is categorically irrelevant criterion for surrogacy procedures as there is a correlation between preoccupied attachment and psychopathology scales.

Assessment of attachment patterns by classification of attachment patterns is provided by a questionnaire and classification scales, belonging to the semi-clinical tool for the study of adult attachment (AAI). The overall evaluation of applicability for gestational surrogacy carriers is served by content-oriented analysis of the results (attachment patterns) of the AAI survey, the whole apparatus of attachment theory and research data and observations on gestational surrogacy, including Bulgaria. More research on motivation as a factor in psychological assessment of applicability for gestational surrogacy carriers is needed.
The study contingent consists of 5 responders, investigated in two stages: 1) AAI; 2) motivation and socio-biographical context.

AAI is the only tool for overall and parallel assessment of: 1) intergenerational transmission of attachment patterns. 2) attachment patterns in responders’ child 3) responders’ attachment to a figure of attachment

in childhood. Based on these criteria, total score (classification) of attachment patterns in adults formulates: autonomous (secure), dismissing (avoidant), preoccupied, unresolved/disorganized patterns.

Analysis of the results of the empirical study of psychological applicability regarding gestational surrogacy, assessed with the Adult Attachment Interview tool demonstrates that three of the five respondents are evaluated with dismissing representation of attachment pattern (N1, IL N4, N5) and two – with preoccupied one (N2 and N3.). The eligibility of a surrogate with an autonomous pattern of attachment is problematic regarding gestational carriers. A surrogate with dismissing attachment patterns would adopt compensatory cognitive restructuring mechanisms to cope with the formation of bond and affection and would have realistic expectations regarding the outcome of the procedure and such is evaluated as applicable for a gestational career. A surrogate with preoccupied pattern of attachment is completely inapplicable for participation in the process of gestational surrogacy.

Main conclusions from the attachment assessment as a factor for psychological applicability for gestational surrogacy carriers are that the attachment pattern registered according to the classification system of AAI is reliable criteria for assessing the overall psychological applicability and that the dismissing (avoidant) attachment pattern in adults is an applicable criterion for gestational surrogacy career. The study of attachment in surrogacy is a reliable standard for assessing psychological applicability. Attachment is also a reliable prognostic factor in terms of motivation for gestational career.

A three-component model of overall evaluation of applicability for gestational surrogacy carriers reveals three main questions: 1. What is the pattern of attachment of the surrogate?; 2. What is the motivation of a woman, commissioning gestational carrier?; 3. What is the personal life narrative of her biography? Social, economic and cultural status and psychopathological history and psychopathological risk should be evaluated. Cognitive-behavioral therapy for psychoprophylaxis and therapy is considered appropriate for the intended parents and the gestational role.

Vasanti JADVA

Surrogacy in the UK: The Experience of Surrogates and Their Families

The UK has seen a rise in the number of people seeking surrogacy arrangements domestically and abroad although the exact number of children born following surrogacy is not known. In practice, there are two different ways in which a surrogate may achieve pregnancy. In traditional surrogacy, the surrogate's own egg is fertilised (also referred to as straight or genetic surrogacy), and in gestational surrogacy (or host surrogacy) the surrogates egg is not used (instead the intending mothers egg or a donor egg may be fertilised in-vitro). In the UK, one of the intending parents gametes must be used in order for the parental order (process of transferring legal parenthood from the surrogate to the intending parents) to be granted. Furthermore, there is no limit on the number of surrogacy arrangements a surrogate can carry out and whilst previous studies have examined the motivations for women of becoming a surrogate, the current study aimed to examine reasons why some surrogates entered into multiple surrogacy arrangements. In addition, the present study looked at the long-term experiences of surrogacy for surrogates including whether or not they were in contact with the intending parents and the child. There has also been a dearth of research into the psychological wellbeing and experiences of surrogates own children. This study examined the views and experiences of the surrogate and her family and how they felt towards the intending parents and the surrogacy child (the child born from surrogacy).

A total of 34 surrogates were interviewed and administered questionnaires for the present study. Surrogates had completed between 1 and 8 surrogacy arrangements each, totalling 102 surrogacy arrangements. The majority of arrangements (96) were for heterosexual couples, four were for same-sex male couples, and two surrogacy arrangements were for one single gay man. Four surrogacy arrangements were completed for couples who lived outside the UK. In terms of the type of surrogacy undertaken, sixty-one of the surrogacy arrangements were traditional surrogacy arrangements, and forty-one were gestational surrogacy arrangements. The children born from the surrogacy arrangement were aged from 0-18 years with a mean of 7 years.

Surrogates from the study who had children over the age of 12 years were asked if their child wished to take part in the present study. Children must have been aware of their mother's involvement in surrogacy in order to be asked to take part (none of the surrogates reported having children aged over 12 years who were not

aware of their involvement in surrogacy). Thirty-four children of surrogates were interviewed and administered questionnaires.

Contrary to previous studies which had found that surrogates carried out either traditional or gestational surrogacy arrangements, the present study found that some surrogates had carried out both traditional and gestational surrogacy arrangements. The vast majority of surrogates had remained in contact with the intending parents and child although the frequency of contact was found to be associated with the type of surrogacy. Specifically, surrogates in genetic surrogacy arrangements maintained less frequent contact than those in gestational surrogacy arrangements. They were also less likely to report feeling a 'special bond' with the child. However, they did not differ in terms of whether or not they were in contact with the family, suggesting that surrogates may manage their relationships with the intending parents differently for gestational and traditional surrogacy arrangements. In addition, almost three quarters of surrogates who had carried out more than one surrogacy arrangement reported having different contact arrangements with different families. The determining factor here appeared to be the strength of the relationship between the surrogate and the intending parents rather than the type of surrogacy arrangement carried out.

Questionnaire assessments of depression found that most surrogates were not experiencing depression at the time that data was collected for this study. However, ten of the surrogates had reported experiencing some form of depression prior to becoming surrogates with 7 women reporting that they had experienced post-natal depression.

In terms of the children of surrogates, the present study found that they do not experience negative psychological health or family functioning. A few differences were found between children of genetic and gestational surrogates on measures of family functioning, indicating children of gestational surrogates had better relationships with their fathers and better perceptions of family life than children of genetic surrogates. However, most of the children of genetic surrogates had experienced parental separation which may explain this finding.

The majority of surrogates' children held positive views of surrogacy and felt proud of their mother's role in helping someone in this way. Only one reported that handing over the child was difficult. Just over half of the children mentioned that they were not in touch with the surrogacy child, and some were unaware if the surrogacy child had been told about their surrogacy birth and about who their surrogate was. Some children of surrogates said they did not have contact with the surrogacy child and this was sometimes attributed to seeing the surrogacy child's life and family as being separate from their own. Many of the children who were not in contact were content with this and some mentioned that although they did not have contact currently they could have contact in the future if they wished. Those who were in contact with the surrogacy child differed in the way in which they viewed these relationships and used a variety of terms to refer to each other. The terms used, such as, surro-sister and half-brother did not differ between traditional and gestational surrogacy arrangements but instead appeared to reflect the closeness of the relationships that had formed between the children of surrogates and the surrogacy child.

Sharmila RUDRAPPA

What Difference Does Money Make? Surrogate Mothers in Bangalore, South India

Between 2002 and 2015 India emerged as the top surrogacy destination in the world, garnering profits estimated at $2 billion for those involved in the industry. Beginning 2012 the country began to change its laissez faire approach to surrogacy, first banning all gay men and single parents from pursuing surrogacy, and at present, moving much closer to banning all commercial surrogacy. Meant to protect the interests of surrogate mothers and halt their exploitation, the Indian government is on its way to implementing only altruistic surrogacy. These reproductive arrangements, where money shall not be exchanged, are to be negotiated between only family members. This new law bans all foreigners, including those of Indian descent but do not hold Indian passports, and all gay couples and individuals from pursuing commercial surrogacy in India.

This paper juxtaposes commercial surrogacy in India to the country's current turn toward altruistic surrogacy for solely Indian citizen heterosexual couples. What did commercial surrogacy mean for surrogate mothers? And, why is this impending turn to altruistic surrogacy far worse for surrogate mothers within the Indian context? Commercial surrogacy in India, as other scholars and I have discussed elsewhere, was already understood

as an altruistic exchange by a significant number of social actors. That is, surrogacy agencies and clients for surrogacy asserted that the global trade in reproduction was a mutually beneficial agreement where clients from the global North received much-wanted genetically descended babies to complete their nuclear families, and Indian surrogate mothers received much-needed cash to improve the life chances of their own children. Thus, in their perspective, the exchange of money for babies did not lead to exploitation; instead, both the clients and mother workers equally aided each other in making, and supporting nuclear families. The legal contracts for commercial surrogacy, in their perspective, did not mediate commodity exchange, but facilitated a gift exchange between First World and Third World families, all made possible by working class women's biological labor.

The Indian surrogate mothers, however, told a more complicated story about these sorts of reproductive contracts. Based on a transnational ethnography of surrogacy in India, with a specific focus on Bangalore (2008-2011), I show that the surrogate mothers were not averse to the money they received; yet simultaneously, they were also reluctant to think of surrogacy as solely a commodity exchange. Let me explain—in commodity exchange, the workers receive wages for their labor in exchange for the product they have created. Once the exchange has been made, the worker and the client do not maintain any social contact whatsoever. Indeed, the "commodity," in this case a baby, is now in no way associated with the surrogate mother.

The surrogate mothers I met with in Bangalore repeatedly pointed to the vacuity of money because it dissipated rapidly. They spent their surrogacy earnings on meeting the urgent needs of their various family members, including debt payment, medical services for elderly parents or sick relatives, schooling for children, and better housing options for their nuclear families. They explained that in order to move out of poverty they needed money, but far more important, they also needed to establish networks with privileged families. Such ties could potentially lead to all sorts of advantages; for example, they might receive recommendations for better employment; they might receive regular tuition payments for their school going children; or, they might have access to better health services through their ties with elites. Thus, they hoped they would be able to maintain permanent social ties with the Indian and foreign families for whom they birthed children, which could potentially lead to access to other benefits in the long run. In other words, they wanted surrogacy to be perceived as a gift exchange, which is characterized by enduring social ties. By building ties with elites, who ordinarily remained far outside their social worlds, they hoped they could eventually move out of urban precarity. Following the lead of the seventy surrogate mothers I spoke with in Bangalore, and feminist scholar Lisa Adkins (2015), I highlight the inefficacy of injecting cash through surrogacy into working class communities in neoliberal Third World cities such as Bangalore.

But what does all this mean when commercial surrogacy has come to a virtual stop in India because of the current Surrogacy Bill 2016, which allows only altruistic surrogacy where no money shall be exchanged? I argue that this new Bill, which is poised to become the law, further deregulates the surrogacy industry. First, the law limits exchanges between clients and surrogate mothers who are already related to each other, and in all probability within the same caste status; that is, these exchanges are meant to happen within kin networks. Thus, working class women's abilities to access networks beyond already established kin networks have effectively disappeared. Second, the law creates a situation where women are not even deemed workers because they are altruistic individuals; they will receive no compensation for their considerable reproductive exertions. Not monitored by contract law specifying compensation, the clients can show as much, or as little gratitude to their altruistic "relative" who has donated her reproductive labor. Third, there is very little protection for surrogate mothers.

Through law, surrogacy in India has been moved from being a market-driven exchange to a kin-mediated exchange. That is, all reproductive exchanges shall happen within kin networks. The current law dubiously assumes that no exploitation occurs among kinfolk, when in reality this is far from the truth because traditional family and kin networks are characterized by gendered and class hierarchies, and deep inequalities. To posit kin networks as the panacea for market driven surrogacy leads to two developments for surrogate mothers. First, even as exploitation is deepened, it remains masked because kin networks are idealized as being characterized by selfless love and sacrifice. Second, working class women are limited to negotiating within just their kin networks, effectively further circumscribing their social worlds. Thus, I conclude altruistic surrogacy is far worse than market-driven commercial surrogacy for working class women in India.

Elly TEMAN

Local Surrogacy in a Global Circuit: The Embodied Intimacies of Israeli Surrogacy Arrangements

Today the word surrogacy seems to go hand in hand with the notion of "cross-border reproductive tourism" and much of the scholarly discussion of surrogacy is dominated by a focus on global concerns about this practice and its moral and ethical complications. At the center of cross-border surrogacy is the understanding that individuals entering these arrangements are often from different nationalities, frequently do not speak the same language, and hold diverse cultural understandings about money, kinship and technology. The possible legal entanglements arising from these arrangements as well as the lack of regulation are often theorized as potentially harmful to surrogates, intended parents and the babies born from the arrangements. Within this framework, the case of surrogacy in Israel emerges as a very particular, local and nationally-bounded case in which surrogacy arrangements are closely monitored and regulated under a singular law and government-appointed committee.

In this paper, I draw upon my ethnographic research on surrogacy in Israel to argue that because of the restricted nature of these arrangements within this nationally, culturally and geographically bounded space that the type of surrogacy emergent in Israel creates a starkly different narrative than that emergent from the transnational context. As a result of the very restricted pool of participants in local surrogacy arrangements in Israel, all of the surrogates and intended mothers I interviewed were Jewish-Israeli citizens. Since Israel is such a tiny country, participants interacted far more frequently and intensely than what might be possible in transnational surrogacies and even in US surrogacies, where surrogates and intended parents usually live in different countries states. All of the surrogates and intended parents in my study had not only met but routinely interacted with one another without mediation throughout the process, sharing the common spoken and written language of Hebrew. They also shared cultural knowledge, including basic cultural attitudes and pro-natalist understandings toward motherhood and childbearing.

I argue that Israeli surrogacy law creates the grounds for embodied intimacy between surrogates and intended mothers involved in these arrangements. Within this local practice of surrogacy it is intimacy and sameness, rather than distance and otherness, which emerge as key frames of the surrogacy arrangement. Through comparative remarks, I argue that this model of surrogacy puts the human relationship at its center and may be viewed as a more ethical form of surrogacy.

Specifically, I suggest that within this local framework a strong genetic kinship narrative emerges which surrogates draw upon to distance themselves emotionally from the baby. This distancing, in turn, leads the surrogate to "share" the pregnancy with the intended mother, often imagining her body as interlinked with the body of the intended mother, creating a shared, embodied intimacy between them. The women often described a closeness incomparable to any other intimate relationship, an intimacy they had never shared before with another person.

Surrogates and intended mothers alike tried to fit the relationship into a known category: they compared their relationship to that of sisters, mother and daughter, or best friends. Some described how they seemed to look alike, or had been mistaken for twins. They would joke that they were like lesbian lovers or that they were married to one another during surrogacy, always noting that their unique relationship called for its own category. They discussed their relationship during surrogacy as a blurring of boundaries between them, being merged into one body, and strong identification with one another, even as each of them for her own reasons constructed firm boundaries between herself and the baby. The relationship existed along a continuum between lack of connection, often leaving the surrogate disappointed-- "shared holding" through negotiation of boundaries-- and suffocation, leaving the surrogate feeling "trapped" in the body.
In the majority of cases that fell along the middle of this continuum, the intimacy of the surrogate-intended mother relationship humanized the technologically-assisted, contractually-arbitrated agreement, transforming it into a potential gift relationship. Surrogates expected acknowledgement of their contribution as a heartfelt set of "gifts" rather than a contractual exchange. Surrogates who received meaningful acknowledgement would construct a heroic narrative in which they recall their surrogacy experience as the most significant thing they had ever done in their lives. In these accounts, the moment of relinquishment, when they saw their intended mother hold the baby in her arms or saw the intended father's face when he first saw the baby, was the surrogate's proudest and happiest moment.

These surrogates would speak of their bond with the intended mother nostalgically, like one speaks of one's comrade in arms or best friend from high school, even if they had not seen the intended mother or spoken to her for several years. Surrogates whose actions were not acknowledged constructed narratives of disappointment and betrayal. Being reminded by defensive intended parents about the rules of the contract or of the money they had paid her for carrying the baby was often interpreted as a very hurtful insult, disrespectful of the enormous amount of "emotional labor" (Hochschild 2003) the surrogate had invested in their relationship.

I conclude with some thoughts on the global surrogacy arena from the perspective of this local case, comparing Israeli surrogacy specifically to the ethnographic data emergent from India. Elsewhere, I have critiqued the Israeli surrogacy law for its restrictiveness and argued that legislators passed it so as to ensure that local surrogacy will only produce Jewish-Israeli citizens to hetero-normative, nuclear families. Yet it is in light of what goes on in the global arena that I suggest that when surrogacy is strictly regulated there is not only far less of a chance for legal entanglements to occur, but it may also be the grounds for establishing relationships that can "warm up" the surrogacy process and be interpreted and experienced as meaningful and even empowering for surrogates, potentially transforming a contractual agreement into an intimate reciprocal relationship. In this light, I suggest that the Israeli surrogacy law may serve as a ground for the humanization of surrogacy and may serve as a model for what can make surrogacy relatively more ethical.

Lucy BLAKE

A Longitudinal Study of Surrogacy Families: Parenting and Child Development from Infancy to Adolescence

The most controversial of all assisted reproductive technologies is surrogacy, a process in which a woman bears a child for the intended parent(s). This can be a relatively low-technology procedure in which conception occurs using sperm of the intended father and the egg of the surrogate who carries the child to term (referred to as genetic or "traditional" surrogacy). However, a more common type of surrogacy in countries such as the United States, is gestational surrogacy, a high-technology procedure in which an embryo is created using the sperm of the intended father and the egg of a donor, which is transferred to the surrogate. The surrogate who carries the pregnancy to term and gives birth has no genetic connection to the child.

Concerns have been expressed regarding the relationship between parents and children in surrogacy families and the surrogate over time. Although contact with the surrogate may be beneficial in helping children understand their origins, there have been fears that ongoing contact with the surrogate may undermine the relationship between the parents and the child. There have also been concerns about the involvement of an egg donor in families created through gestational surrogacy. Parents may select an egg donor with whom they can have contact in the future (an open-identity donor), or a donor with whom they will have no contact (an anonymous donor), although the possibility of achieving anonymity is increasingly in doubt. A relationship between the child and the egg donor may be viewed by intended parents as threatening given that genetic relatedness is often given primacy in family relationships. Even where there is no relationship between the child and the donor or surrogate, it has been argued that these 'birth others' may have a place in the child's family tree.

There have also been concerns that intended mothers in surrogacy families have no opportunity for pre-natal bonding with their child, and that parents and children may perceive or experience disapproval or stigma from family and friends for having pursued an unconventional and controversial path to parenthood. Lastly, there have been fears that the children in these families may be psychologically harmed from having been relinquished by surrogate, especially if the surrogate is the genetic mother and money has changed hands
In this presentation, findings will be presented from a longitudinal study of surrogacy families in the UK. This is the first investigation of surrogacy families in which in-depth data on family functioning and child development have been obtained from infancy to adolescence. The study initially involved 42 surrogacy families, recruited through the UK Office of National Statistics and the surrogacy agency COTS. Of these families, 38% were gestational surrogacy arrangements and 62% were genetic/traditional surrogacy arrangements; 31% were known surrogates and 69% were unknown to the parents prior to the surrogacy arrangement. Data were also obtained from two comparison groups: 51 egg donation families to control for the use of assisted reproduction and 80 natural conception families who were matched as closely as possible to assisted reproduction families. At the time of recruitment, these families had a 1-year-old child and represented 61%, 75%, and 73% of the families who were invited to participate.

The study used an in-depth, multi-informant, multi-method approach, obtaining interviews, questionnaires and observational data from mothers, fathers, children and the children's teachers in school. The sixth phase of the study has just been completed, therefore data have now been obtained from the families at six time-points, when children in the families were aged 1, 2, 3, 7, 10 and 14.

The following research questions were addressed: do surrogacy families differ from egg donation or natural conception families with respect to a) the psychological well-being of the parents; b) the quality of relationships between parents and their children; c) the psychological adjustment of the children. The study also obtained data on how the children themselves feel about being born through surrogacy, how parents told their children about surrogacy and how the relationship with surrogate has progressed over time.

Data examining parent psychological well-being, the quality of parent-child relationships and children's psychological adjustment will be presented from each of the six phases of the study. This will be followed by an exploration of children's perspectives of their family life, the way in which parents disclosed surrogacy to their children, and relationships between parents, children and surrogates over time. Finally, the various strengths and limitations of the study and questions for future research will be addressed.

The presentation concludes that families created by surrogacy are well-functioning families with loving, committed parents. Surrogacy is not undertaken lightly and couples are willing to accept a third party in the process of forming a family. The children in the families have been found to be psychologically well-adjusted, and few differences have been found in family functioning between surrogacy families, egg donation families and families in which children were conceived naturally.

This is the only study worldwide to investigate parenting and child development in surrogacy families over time. As this is a study of families who pursued surrogacy as a path to parenthood within the UK context, is now vital that these findings be replicated in different legal and cultural contexts, and that the experiences of parents and children in families created through surrogacy arrangements in the global market is explored.

Marc PICHARD

"Surrogate Motherhood" or "Ordering a Child"? Reflections on a Overlooked Distinction

The phenomenon of "surrogates" became known in French law through a particular figure: a couple, a man and a woman, the latter of whom could not bear children and who sought the aid of another woman in carrying the child. In French law, this arrangement has been aptly named *gestation pour autrui* ("gestation on behalf of another party") - notably in Article 16-7 of the French Civil Code. This "gestation on behalf of another party" is widely considered as undermining the "principle" of the inalienability of one's civil status. Accordingly, what is primarily stigmatized is when a woman – the intended mother - after a consensual agreement between the two parties, takes the place of the woman who gave birth to the child in the relationship, the woman who gave birth to the child. This is because under French law, maternity is based on the biological act of giving birth to the child. Preventing the substitution of one mother by another, then, is in line with this ideology. But this analysis will examine the sanction imposed by Article 16-7 of the Civil Code, which states that any agreement which undermines the structural rules of French law concerning kinship ties is null and void. We will consider relevance and therefore the effectiveness of the normative system, which has been designed to understand a phenomenon that is at once similar and profoundly different, at least in the legal sense: when a man seeks to have a child with the help of a surrogate.

When it comes to the legal implications of this situation, everything changes. The notion of surrogate motherhood is irrelevant, as there is no intended mother to replace the "mother" who gave birth to the child. Furthermore, the intended father does not wish to become the child's mother, but his or her (only) father, and cannot, strictly speaking, enter into a gestational surrogacy agreement, as the surrogate is not technically carrying the child on his behalf - that is to say, in his place - and does not plan to replace him. She does not carry the child in his stead, as a man cannot bear a child in the first place. Since the surrogate performs a role that the man is unable to fulfill, her task is not one the man would normally carry out in order to become a father – a man will always need a woman to carry his child. Furthermore, the surrogate does not carry the child so that the man in question can eventually take her place; this man intends to become the child's father, that is to say, occupy the paternal line of parenthood. Even when the qualification of gestation is taken on, the proposed penalty proves ineffective - because the sponsor does not seek to claim maternity in place of

the surrogate, the agreement does not threaten the inalienability of personal status, protected by Article 16-7 of the French Civil Code. Thus, the invalidity of the agreement, which brings us back to the application of the mandatory rules of the law of kinship ties, does not have any bearing on the paternity of the child. Article 16-7 of the French Civil Code is thus rendered ineffective and beside the point, and unnecessary in the case of a man seeking the aid of a surrogate in order to become a father. In a wider context, this demonstrates how the French law was, with regard to this issue, conceived with the exclusive aim of protecting the child's maternity from the challenge of a rival maternity.

This raises the question of whether other theoretical bases might be applied in the understanding of the phenomena of men who seek to become fathers through surrogacy - especially if the operation is carried out on French territory. In a national context, a woman participating in a surrogacy can, under Article 326 of the French Civil Code, request that her identity and admission into the medical center stay anonymous. The male "sponsor" need only recognize the child as his own: it is accepted, at least since the decision of the First Civil Chamber of the Court of Cassation made on April 7, 2006, that anonymous childbirth cannot prevent the establishment of paternity by recognition, particularly in the case of antenatal recognition. Therefore, there is no reason to place the child under the care of social services and into a permanent family placement - the child already has a parent. Could this kind recognition be annulled on the grounds of Article 336 of the French Civil Code, under which it would constitute a circumvention of the law? This is the position that the Court of Cassation adopted in 2013. Their analysis of extreme fragility of the wording of the article, that is to say, the wording of the ultimate foundation of paternity in French law, namely that treated the genetic link with the child, was abandoned in the two decisions of the Plenary Assembly of July 3, 2015. Under the terms of these decisions - even if in this case merely concerns the registration of the child's civil status, and contains no challenges to the child's kinship ties - the basis of fraud, which taints everything, including the positive definition of paternity, is "disabled". Accordingly, the paternity of the intended father is, according to the law, indisputable - even if the public prosecutor is informed of the reality of the situation.

In effect, any agreement through which a child is "ordered" that is made on French territory is, by definition, ineffective in that it cannot prevent the surrogate mother from establishing her maternity. The probability of establishing the child's kinship ties in favor of the partner or husband of the "sponsor" and biological parent is, to say the least, uncertain; since he lacks any biological link with the child, he therefore seeks a role in the family unit that should, in principle, go to the surrogate, thus preventing him from taking his rightful place. The paternity of the "sponsor" father, however, is out of the reach of French Civil Law. One might wonder why for many citizens, a surrogacy agreement is considered "prohibited" in French law, when the French legal system, due to the requested categories and available definitions, does not allow for the penalization of such contracts.

Laurence BRUNET

Jurisprudence at the European Human Rights Courts Relative to Kinship Issues of Children Born Via Surrogacy: Different Interpretations?

The growing authority of the Court of Cassation to deny the establishment of parenthood for children born with via surrogacy in favor of their intended parents culminated with the decisions of September 13 2013 and March 19 2014, which sought to prevent evasion of the law to the point of blocking any and all means of establishing biological paternity. As a result, the status of children born of surrogacy is uncertain: the transmission of French nationality is not guaranteed, which can prove very problematic once these children enter into French territory. These difficulties remain despite some limited corrections whose sustainability is not guaranteed (see the decision of the State Council granting travel documents, the "Taubira" memorandum of January 25 2013). In the absence of a bequest or will, the children have no right to an inheritance, and the intended parents have no fundamental right to exercise parental authority.

This position led the European Court of Human Rights (ECHR) to condemn France's unanimous decision in the *Mennesson et Labassee v. France* case on June 26 2014. The Court sought to make a clear distinction between the "family life" of the parents who had entered into surrogacy contracts (of which no violation was found), and the children's right to privacy (which, in these cases, was violated). This distinction made between "family life" and "privacy" deserves special attention, as it allows the European courts to recognize the right of every country to ban the use of the surrogacy within its territories, while also denying these countries the right to discriminate against children born via surrogacy.

The ECHR found that the refusal to enter children's birth certificates into the French Civil Registry infringed upon "their identity within French society". To European judges, the legal consequences of the refusal to recognize the familial ties between children born of surrogacy and their intended parents "significantly affected their right to respect for their private lives, a right which implies that everyone can establish the substance of his or her own identity, including his or her kinship ties". As a result, there arose "a serious question of the compatibility of the situation with the best interests of children, the respect of which must guide all decisions that concern them". The ECHR noted that this concern was "particularly significant" when, as in these cases, the biological father is deprived of any opportunity to establish his paternity of the child in question.

This precision nevertheless caused some confusion in France with regard to the exact scope of these decisions. Among France's lawyers, opinions on the interpretation of the decision, the wording of which left room for uncertainty, were divided: had the ECHR issued an order to recognize the dual parenthood of the children with respect to both their biological and intended parents, or to solely recognize the child's biological parenthood? Although there is still a degree of ambiguity on the matter, "In their analysis, the Court has never come to the conclusion that there has been any infringement upon the best interests of the child (born abroad via surrogacy) when legal recognition is refused to the child. This refusal constitutes an infringement on the child's best interests if, and only if, the child's intended parent is also his or her biological parent".

Although the right to identity is a crucial element in the establishment of a biological relationship, it seems that in the eyes of the judges, this right goes beyond the limits of genetic parenthood and can encompass the parenthood of the intended mother and/or father, namely the maternity of the woman who helped to conceive and give birth to the child, without being either the surrogate or the progenitor. Indeed, the Court was careful to denounce, as a whole, the consequences of non-recognition in France of the parenthood of children born abroad via surrogacy with regard to their intended parents. The Court expressly included the problems that could arise for the children, including the lack of recognition of their right to inherit property, whether from their intended mother or intended father (§ 98). There also seems to be an overall assessment, with regard to both maternal and paternal parenthood, wherein the Court examines whether or not situation is in the best interests of the child. In view of the scope of the law, which appears to cover one's right to establish "the details of his or her identity as a human being", it is unclear how, when applied to parenthood (as was done by the ECHR), this right would not include the establishment of parenthood in favor of an intended parent, despite the lack of a biological link to the child.

This interpretation is consistent with the reasoning of the ECHR in the Wagner v Luxembourg case, decided on June 30 2007: the court upheld the recognition of the "status established abroad under valid conditions through an adoption order, and which corresponds to the definition of a "family life" as established by Article 8 of the Convention", as well as the family ties between the child and the adoptive mother from Luxembourg, even though the legal ban on adoption for single men and women was still in effect in her home country.
Such recognition of the parenthood of children with regard to their intended parent(s) is also consistent with the logic of the free movement of people within the Eurozone (see ECHR *SH v Austria*, November 3 2011), as well as the concern for the permanence of the state of individuals (from which this logic is inseparable), even if at present the European Union is reluctant to engage in the debate on the recognition of the situations recorded by foreign acts of civil status.

Several countries have adopted such a "broad" interpretation of the child's right to identity.

In a decision made on December 10 2014, the German Federal Court (BGH) agreed to recognize a California ruling that recognized two men, bound in Germany by a registered civil union, as the parents of a child born via surrogacy. The intention behind the parenthood (in this case, paternity) was thus validated alongside biological aspect of parenthood. The request, however, was for the recognition of a legal decision that was made in California (the recognition of the two men as the fathers of the child), and not the transcription of the child's birth certificate. It was not a simple matter of recording the situation, or entering the civil status into the French registry. With this in mind, the German judges found that surrogacy, when considered in the abstract, should not be understood or treated in the same way as when the child has already been born. Thus, the judges relied explicitly relied on the ECHR's decisions. It is also important to note that the German judges ruled out the solution of adoption as a means of establishing the second line of paternity because parents are both responsible for the existence of the child as well as its identity from its conception, a situation which is very different from that of adoption. According to the judges, an adoption could entail the risk of the intended parent changing his mind, and eschewing his responsibilities to the child.

In Spain, a representative of the Ministry of Justice ordered on July 10 2014 that a mandate be sent to all Spanish consulates obligating them to enter the birth certificates of all children born abroad via surrogacy into the country's civil registry. Previous to this decision, these registrations had been stalled due to the Spanish Supreme Court's ruling on February 6 2014. Today, this ruling is being appealed to the Constitutional Council. The Spanish Ministry of Justice considers that the legal effects following the decisions of the ECHR should be directly applied in Spain.

Yet the large majority of legal doctrine has only agreed on the bare minimum of this interpretation: the ECHR only requires the transcription of the parental relationship(s) which is/are based on a biological link. It seems that the Court of Cassation also chose to apply this minimal interpretation in its two rulings made on July 3 2015. The situations were particular, however, and the question of the registration of the parenthood of the intended parent established abroad was not raised (see the paper by A.M. Leroyer).

Other questions remain regarding the Mennesson and Labassee decisions, questions which affect the decisions' execution and even the recognition of biological parenthood. Once the French courts make a final decision to cancel or refuse the registration of a foreign birth certificate into the French civil registry, the decision is protected from any further appeal by the res judicata doctrine, a fundamental rule of French civil proceedings. It is for this reason that the births of the Mennesson children have still not been entered into the French civil registry. Although the French legislature is currently introducing the possibility of a civil review process (see the plan for a law to modernize XXIst century justice), the obstacles that remain have led the ECHR to once again condemn France in the wake of the Foulon and Bouvet decisions of July 21 2016.

Irène THÉRY

Surrogacy: Revealing the Specificity of the French Bioethics Model

In France, where surrogacy (GPA) has been banned since the Court of Cassation's 1991 decision (confirmed in 1994 by the first bioethics laws), the political debate on this issue has evolved substantially. A first period which saw the "Baby M" case reached global notoriety, during which criticism of surrogacy mainly focused on the "risks" incurred by the woman, the child, and to some extent by the intended parents, was succeeded by another period. Now, opponents of surrogacy have a more radical argument that is based on the principle that any surrogacy is a morally abhorrent, pursued at the instigation and to the benefit of the intended parents, and that the only option is to fight for its worldwide abolition. There are currently two groups that serve as the main representatives of this radical opposition.

The first group can be found on the right of the political spectrum. This group, an offshoot of the "Manif pour tous" group that served as leader of the opposition to the law of May 17 2013 on same-sex marriage, consists mainly of Catholic traditionalists, but more generally adheres to a vision of the "traditional" family and a hierarchical parenthood which places "natural" kinship ties above all other kinds.

On the other side of the spectrum is another group that opposes surrogacy. This group is more ideologically diverse, bringing together leftists who have remained unsupportive of the law of May 17 2013, whether they've actively opposed it or simply sought to limit its scope by fighting against the opening of access to medically assisted procreation to female couples. On the other hand, this group also encompasses some feminist groups that can be identified as leaning to the extreme left, in favor of same-sex marriage and for the opening of access to medically assisted procreation to female couples, especially radical feminists.

Both of these groups, though radically different, have similar ideologies when it comes to surrogacy. The primary target of both groups' criticism is not the market excesses of global surrogacy, but the very notion of "ethical surrogacy". Arguing that "ethical surrogacy" is in and of itself a paradoxical term, these groups are fighting the regulations decided upon by the Hague Convention (in the continuation of its work on international adoption). For them, the only solution is abolishing surrogacy throughout the world. While it is exclusively anti-surrogacy groups that express themselves in the political arena, they are not representative of French opinion. A recent survey has indicated as much: in 2016, the majority of French respondents expressed support for the establishment of "regulated" surrogacy in France for heterosexual couples of intended parents, which shows that the general population is far from hostile to surrogacy in general.

It is crucial that the social sciences remain aware of this paradox. On one hand, public opinion on surrogacy is evolving, becoming more conscious of the extreme diversity of legal situations and experiences in the world, and increasing awareness of the concept of "ethical surrogacy" through the dissemination of testimonies from intended parents and surrogates. On the other hand, it is the abolitionist rhetoric that dominates the French political debate, a rhetoric which presents surrogacy, regardless of the regulation and execution of the technique, as an inhumane industry which promotes the commodification of women and children.

In this paper, we will defend the hypothesis that the political debate on surrogacy cannot be understood without viewing it within the context of the wider question of how contemporary societies integrate this new reality, *l'engendrement avec tiers donneur* ("giving birth with a third-party donor") (Théry 2010), with the help of medical institutions. This question is particularly difficult to formulate in France.

Indeed, it is peculiar that France's bioethical model, which has remained unchanged since 1994 (in fact, since 1974), does not give proper recognition to this new way of bringing children into the world, which is transformed by the law into a "procreation" of the receiving couple.. The radical rhetoric of anti-surrogacy abolitionists must be replaced in this very particular context. It reveals the extent to which the French bioethical model erases the donation and influences the political and legal debate, making women's donations, a major issue, particularly "unthinkable". This paper will examine three issues in turn:

A) The French bioethical model does not truly recognize "reproductive donations", which are presented as pure gamete donations, modeled on blood or organ donations. Female donations (eggs, and even more so gestation) which imply the donor as a person, concerned in her own body, force us to confront the question of reproductive donations, and ask under what conditions such a donation can make sense and represent a valuable experience for the donor herself. The first premise of the abolitionist rhetoric is that a woman cannot offer gestation as a donation, and that therefore, surrogacy can never be of sense or value to a woman.

B) The French bioethics law does not recognize the new opportunity that has resulted from in vitro fertilization, that is to say the division of physiological motherhood into two categories: genetic maternity and gestational maternity. Presently, the law only considers gestational motherhood to be "real", in effect disqualifying women who seek a surrogate due to gestational infertility from motherhood. This can also explain the refusal to listen to the testimonies of surrogates who say they are not "mothers" and see their role as surrogate (be it for a heterosexual or homosexual couple of intended parents) as simply "bearing someone else's child." The second premise of the abolitionist rhetoric is that there is no difference between *la gestation pour autrui* ("gestational surrogacy") and *la maternité pour autrui* ("traditional surrogacy").

C) The French bioethics law is part of a family law that has never reviewed the conflict between maternity via the body ("the mother is the one who gives birth") and fatherhood via intention ("the father is the one designated by marriage"), a feature of a marital model which dates back to the Napoleonic Code (1804). The third premise of abolitionist rhetoric is linked to this logic, in that it presupposes that the participants, even within in an institutional context that supports them, cannot be aware of or intent upon the meaning of their actions. If "the mother is the one who gives birth", the links that develop between a fetus and the woman who carries it can only be understood as a natural process of kinship. From this perspective, any and surrogacies entail, by definition, child abandonment.

In conclusion, we will review the proposals in the report "Filiation, Origines, Parenté" ("Filiation, Origins, and Parenthood") report (Théry and Leroyer, 2014), and attempt to recognize giving birth via a third-party donor as a *sui generis* way of bringing children into the world and instituting them with a line of parenthood in French law. While this report does not aim to settle the debate on surrogacy, it nonetheless encourages its reframing.

Anne-Marie LEROYER

Kinship Ties in French Law of Children Born via Surrogacy

Although surrogacy is prohibited in France, the kinship ties of children born abroad via this technique are starting to gradually be recognized. However, the road ahead is still long for these children, who are still being penalized for the "fraudulent" actions of their parents. We will recount the story of that long road, focusing on the latest case law of today, and the many questions it continues to raise.

In two decisions issued by the Plenary Assembly of July 3 2015, the Court of Cassation noted the European Court of Human Rights' criticism of France on June 16 2014. In both cases, the child's birth certificate had been drawn up in Russia, and listed the father as of French nationality, and the mother, that is to say the woman who gave birth to the child, as Russian. Upon the family's return to France, the parents requested that their child's birth certificate be entered into the French civil registry. This transcript was admitted by senior judges who, on the basis of Article 47 of the French Civil Code, considered the birth certificate to be neither irregular nor falsified, and that the facts therein corresponded to reality.

This decision was partly made in light of the jurisprudence of the European Court of Human Rights. Two issues in this decision deserve particular attention: paternity and maternity.

With regard to paternity, it was agreed among the judges that because the man listed as the father on the birth certificate was indeed the biological father, there was no doubt that the transcript should be admitted. In this case, it is also interesting that the judges did not require proof of biological paternity, even though this fact was implicitly recognized in their decision, which deemed the paternity of the father as conforming to reality. However, the opposite decision could just as well have been admitted, as evidenced by the terms of a ruling made by the Rennes Court of Appeals of September 28 2016. On the other hand, it is unclear how the paternity of the child would have been decided if the intended parents had used a sperm or embryo donation.

This conception of maternity certainly poses a number of problems, not least because, as in this case, the woman identified as the mother on the birth certificate takes on this quality in neither the legal nor the real sense. One could assume that the person who marries the father, whether husband or wife, could adopt the child if he or she wishes. It is far from certain, however, that such an adoption would be admitted by French judges, as attested by a recent decision made by the Dijon Court of Appeals on March 24 2016, in which the judges refused an application for adoption on the basis of its of violation of the ban on surrogacy in France. This is made even more uncertain by the fact that these decisions do not address the question of maternity when the name of the intended mother appears on the birth certificate. In many countries that have legalized surrogacy, however, the kinship ties of the children conceived are established of in favor of the intended parents by way of an adoption order. It is clear, then, that in this case the judges would to consider that the maternity listed on the birth certificate does not correspond to reality, since the name of the woman mentioned on the birth certificate is not the name of the woman who gave birth to the child. Such was the decision made by the Rennes Court of Appeals on September 28 2015, which refused recognize the woman named on the birth certificate as the mother of the child on the grounds that, having not given birth to the child, her claim to maternity was incompatible with reality.

In any event, these recent rulings lead us to consider the fate of the children born abroad, and we find that it is far from satisfactory. Today it is widely recognized, even by French law, that kinship ties are both based on blood ties and intent; the litigation concerning surrogacy, however, takes a leap backward, returning to the dogma of biological parenthood. At a time when equal rights for parents, whether heterosexual or homosexual, is being promoted on a global scale, French legislation continues to exercise arbitrary discrimination, refusing to consider that maternity can be as intentional as paternity, or that homosexual couples can be as intent on having a child as heterosexual couples. It is these issues, therefore, that we must discuss today.

Hélène MALMANCHE

Giving Birth: A "Thick Description" of Surrogacy

Since the passage of the 1994 bioethics laws, Article 16-7 of the French Civil Code has stated that *"any agreement, whereby for procreation or gestation, is null and void"*. By what definition should we give to the French words *"procreation"* and *"gestation"*? This question opens to the history of the French debate, which has many consequences in the law today. In the 1994 parliamentary debates, the word *"gestation"* was not meant to distinguish "gestational surrogacy" (a situation in which there is no genetic link between the surrogate and the future child) from "traditional surrogacy" (in which case the surrogate carries an embryo resulting from her own eggs, and is genetically linked to the child).

On the contrary, this distinction, now considered crucial by many legislators, appeared in neither the parliamentary debates nor the law of 1994 (M.X. Catto, 2013). As for the difference in French between an agreement "for gestation" and a "for reproduction": the former is made with a "surrogate" (without distinction),

and the latter with a third party who donates his or her gametes (sperm or eggs) by way of an interpersonal agreement without the help of a sperm or egg bank accredited by the French state (Centre d'étude et de conservation des œufs et du sperme, or CECOS).

The importance of distinguishing surrogates with or without a genetic link with the children they carry, became apparent very early on. In 1985, Jacqueline Rubellin-Devichi, director of the Center for Family Law at the Université Lyon 3, proposed to distinguish surrogacy of the "first type" and of the "second type". Today, the widespread use of the term *gestation pour autrui* ("surrogacy") in French seems to be evolving. In many cases, it is the translation of the English term "gestational surrogacy" - in contrast to "traditional surrogacy" - which helped to make a clear distinction between terms like *maternité pour autrui* and *mères porteuses* (which both imply a biological link between the surrogate and child), and *la gestation pour autrui* and *gestatrice* (no biological link), not only in the French lexicon but in French minds as well. In some cases, however, the use of the term is more vague, and covers both situations, whether for lack of clarity (as in Article 16-7) or deliberately (to signify, for example, the refusal to distinguish between the two in terms of values). As a result, there is currently a set of specific issues in France's legal and political debates on the meaning of the term *"gestation"*.

This should not, however, prevent researchers from further examining the issues that may arise with the use of the term *gestation*, or from examining these issues from a different angle. The need for surrogates to redefine and distance themselves from their own pregnancies when they are carrying someone else's child is well-known (E. Teman, 2010) - they often use terms that are technical ("incubator") or more graphic ("oven"). In French, it seems that the only terms available when it comes to defining the specificity of surrogacy all carry heavy connotations. On one hand, the term "gestation" refers solely to pregnancy, and seems to overshadow childbirth, even though many studies have shown the extent to which the planning of the child's birth is crucial in the carrying out of a surrogacy. On the other hand, the term "gestation" seems to consider the role of the surrogate in strictly biological terms, to the point of using the term "gestation"(used in French for all animals) instead of "pregnancy", (used only for women), thus narrowing its meaning, and rendering it much more reductive than all the other terms used to describe pregnancy. This "biologisation" has significant consequences, even if they often go unnoticed. In both cases, to state the specificity of surrogacy is, ipso facto, to devalue and disqualify the role of the surrogate, and reduce her to a passive and unconcerned participant, as if to avoid designating (or threatening) her with the role of "mother". This very ideological perception demonstrates, by contrast, the difficulty in finding the appropriate French words to express that surrogates can find new kinds of meaning in their pregnancies, and even find real value in their experiences.

In social science research, the stakes are high: one must acquire the conceptual tools to describe the experience of surrogacy in all its complexity, in all its dimensions, without deferring to ideological terms and notions (devaluation, stigma) or reductionist "biologising" (turning women into a "belly"). In order to study surrogacy from a social science perspective, one must be open to all kinds of different descriptions, positive and negative, intended and unintended, usual and unusual, physical and psychological, moral and emotional, that can characterize the experiences of women who bear other people's children as a new social experience.

From this perspective, we aim to demonstrate the importance of reintegrating the relational and social dimensions of surrogacy into our work. In order to avoid marginalizing surrogacy, or treating it as an "exceptional case" among the various modes of procreation, we will propose a new way to tackle this issue through a redefinition of the concept of childbirth (enfantement in French). The challenge this concept poses in social anthropology is not only encompassing pregnancy and childbirth (accouchement) under the same terminology, but also (and especially) to recognizing the eminently ritual and social dimensions of childbirth, an act that the French debate tends to reductively categorize as "organic" or "natural". Because birth always has an "established" or "instituted" dimension, the use of this category allows one to avoid the reducing the body to the biological, or the relational to the personal, and create a new empirical approach to surrogacy, offering what anthropology calls a "thick" description (Geertz, 1973) of social life, in which the main question is the meaning given to human acts, of which childbirth is an outstanding example.

Jérôme COURDURIÈS

French Heterosexual Couples Engaged in Surrogacy. About Relative Roles of the Woman Who Gives Birth to the Child and Intended Parents

Gestational surrogacy joins market and kinship practices, which usually belong to two worlds thought to be diametrically opposed in France. It calls into question an important principle of certain national laws, that of the unavailability and inalienability of the human body. This is a subject for social, ethical and intellectual debate, but behind these other questions emerge those that are of particular interest to anthropologists who study kinship and personhood. From the perspective of reproductive technology, gestational surrogacy introduces a radical novelty. However, with regard to forms of parenthood, it prolongs traditional forms of adoption and the circulation of children. Gestational surrogacy is a commercial practice in many national contexts, but it is also a practice of parenthood that consists in giving a child to those who are childless. It leads to the creation of multiple elective bonds for this child, and in some cases, to the making of kinship.

The evolution of technology in the realm of procreation has produced a division that, up until now, would have not only been impossible but unthinkable. Assisted reproduction with donor gametes differentiates the woman who carries the baby for nine months and gives birth from the woman who donated her oocyte. As of now, in the case of heterosexual couples who resort to gestational surrogacy, not only are these two women distinguishable, but also a third woman, who conceives the project, who rears the child and is the mother. Here, procreation is a three-dimensional procedure carried out on different levels that usually merge: exposing the desire of parenthood (which is always made explicit in procedures for assisted reproductive technology and for adoption), the conception and the gestation.

Fatherhood and motherhood are established by law and by the entourage that recognizes parents as such. But they also develop on the basis of other numerous ingredients such as biogenetic links, sharing a common substance, feeding, expressing the desire for children, the facts of education, parental love and filial or parental care. When one becomes a parent through the intervention of third parties in procreation, one may wonder how the relationship is built between the child and parents who wanted her/his birth. According to the Western ideology of motherhood, a child should have a mother and motherhood is based on the experience of pregnancy. What can we say about the relationship between the intended mother and the woman who gave birth to the child? What role does the intended father have in the course of surrogacy? I will focus particularly on the genesis of their common history, the surrogacy sequences, and gestures around the child in its first moments after being born.

The woman who becomes a substitute for another by carrying her child, implements through her action a certain aspect of motherhood and at the same time she enables the intending mother to become a real mother (some devout surrogates even cite Biblical passages pertaining to former customs to justify their action). Carrying a child for another, taking into account the perception of procreation and parenthood is, in our society, an equivocal action for most of the people I met during this research. If for some people the surrogate remains a willing third party who enables the realization of a parental project, for others she becomes part of the family circle with her own family and stands on the edge of kinship. The terms used to describe her and to address her, whether they are borrowed from the domain of kinship or whether they recall the link of nourishment between the child and the woman who carried it, are striking examples. But whatever the nature of the ties with the surrogate family, it inevitably varies according to the situation and the means used for gestational surrogacy, and perhaps even with time.

This research on gestational surrogacy is underway. It is supported by the ETHOPOL program involved in research on the institutional regulation of family intimacy funded by the Agence Nationale de la Recherche (n° ANR-14CE29-0002). I have conducted interviews in France among twenty-four families (I had already interviewed a few families in the context of a scientific program I supervised with Michelle Giroux, legal scholar and professor at the University of Ottawa). Thirteen of these families were formed by male couples, ten of them were heterosexual, and in the last case, the ART was conducted for a gay male who was then single. One ART took place in Russia, one in Poland and another in India; the others were carried out in North America (mostly in the US but also in Canada). I will focus on the ten heterosexual cases for this paper.

Martine GROSS

Where Do the Relationships Between Gay Fathers and the Surrogates Who Carried Their Children Stand Five Years after the Child's Birth?

This paper will explore the relationships between gay men who have resorted to surrogacy and the woman who carried their child.

Two qualitative surveys, one on gay fatherhood (2009) and the other on the functioning of same-sex families (2012), collected the testimonies of fifty men who had required a surrogate to become fathers. Of these fifty men, a dozen agreed to let me interview them again in January 2016 as part of a follow-up survey which explored the relationships these men had built with the women who had given birth to their children.

First, we will analyse discourse regarding the decision to resort to surrogacy, either with the help of one woman (who gave the necessary genetic material), or two women: a surrogate and an egg donor.

When a child is raised by two fathers and no mother, the women who helped to create the child are not necessarily excluded from the fathers' vision of the child's conception, nor the way they explain it to the child. On the contrary, these women are sometimes represented as a mother, or two mothers, with whom the family keeps in touch. This paper will analyse the representations at work concerning fatherhood and motherhood, and the different biological, legal and emotional dimensions of each when it comes to the decision of whether to keep in contact with the "third participant" in the child's birth. Whether the fathers in the study chose to enlist the aid of one woman in an effort to simplify the story they would tell to their child, or the aid of two women, neither of whom they would consider the child's mother, we often found the same representation of motherhood. A "complete" mother, according to the men in the study, united the gestational and biological aspects of motherhood, even in the absence of the intentional dimension.

The interviews were conducted with the fathers in the previous study who had expressed an interest in maintaining a relationship with the woman or women who helped create their child. This study explores the development and maintenance of these relationships.

It should be noted that much of the current research on the contact between surrogates and intended parents shows that relationships are generally maintained after the birth of the child (Jadva et al., 2012; Imrie and Jadva, 2014; Horsey et al., 2015).

Most of the men we interviewed had undergone surrogacy in the US, and had established a strong connection with their surrogate. Anne Cadoret (2000 and 2002) and Geneviève Delaisi (2008) had already noticed this intense relational dynamic between gay fathers and surrogate mothers. Elly Teman (2010) and Shireen Kashmeri (2008) also reported that many women prefer to carry a child for male couples, reportedly because the relationship is less stressful than it would be with a heterosexual couple. In male couples, no intended mother comes to occupy the maternal role, which can thus be reserved for the surrogate, even if she chooses to deny it. Some of the fathers developed new family ties not only with the surrogate, but also with her children, her husband and her relatives. Often, the surrogate was considered a member of the couple's extended family, and vice versa. In some cases, the children saw the woman who carried them as a mother, even though the fathers did not. In other cases, the children included the surrogate in the story of their conception by referring to her as their mother, or their mother from America, and considered her children as their own brothers and sisters.

As Jerome Couduriès (2016) notes, if a gay couple wants to build an environment that is as consistent as possible with dominant societal expectations for their child, one option is to represent the woman who carried their child as a mother figure. This is a risky choice, however, as there is no guarantee that the surrogate will want to take on this role. Anthropologists who have met with surrogates have shown that they do not generally consider themselves to be mothers of the children that they carry (Almeling, 2011; Teman, 2010, Pande, 2014). Some fathers, especially those who used traditional and not gestational surrogacy, are convinced that it is in the best interest of the child to have as conventional a family as possible. These fathers are tempted to give the surrogate (and, sometimes, the egg donor) a maternal role, blurring the reality of the surrogacy process, which does not require motherhood in the creation of a child.

In one case of traditional surrogacy, the surrogate who had agreed, at the request of the fathers, to be designated as the mother, came to develop a very close relationship with the child. Over time, however, the vicissitudes of life led her to take a step back, a situation that confused the child and his parents.

Families with same-sex parents, like many other families where procreation and parenthood do not overlap, experiment with new family ties. While fatherhood and motherhood are in the process of being redefined, families are testing the flexibility and malleability of societal mores. Gay parenting, especially in the case of male couples, is a crucial part of this reconstruction and subjectification of family ties.