

ADOPTION AND SURROGACY: TWO SIDES OF THE SAME COIN?

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THE RISE AND FALL OF INTERCOUNTRY ADOPTION

- Since 2004, 80 per cent decline in intercountry adoption in top 20 receiving states
 - 45,483 (2004) to 9,387 (2017)
- Estimated 1000 per cent increase in surrogacy between 2006 and 2010
 - Estimated 20,000 children born through surrogacy per year

USING ADOPTION TO TRANSFER PARENTHOOD FOLLOWING SURROGACY

- Used in jurisdictions which do not have surrogacy specific transfer mechanisms
- Has the advantage of being familiar, with well-established procedures and protections
- Most states keep records of birth parents, meaning that the child is able to access information on their origins

DRAWBACKS AND DOWNSIDES

- International surrogacy is often commercial
 - In many jurisdictions, there are strict rules about allowing adoption following payments to the birth mother
- Should we put eligibility restrictions on commissioning parents
 - If surrogacy is akin to natural reproduction: role of the state should be minimal
 - If surrogacy is akin to adoption: eligibility should be carefully monitored
 - Baby Gammy Case
- What would happen if the adoption order were not granted?

REGULATING INTERNATIONAL SURROGACY

- Could the 1993 Hague Adoption Convention provide a template?
- When drafting the 1993 Convention, the Hague Bureau put forward three bases for consideration
 1. Dramatic increase in intercountry adoptions
 2. Serious human problems with manifold legal aspects
 3. Insufficient existing domestic and international legal instruments

HOW DOES THIS RELATE TO SURROGACY?

- There has also been a dramatic increase in international surrogacy
- This has brought with it significant legal difficulties
 - Conflict of laws regarding who is the legal parent
 - Children left stateless
 - Children taken away from commissioning parents
- Countries that are popular destinations for surrogacy have been shut down

DIFFERENCES BETWEEN ADOPTION AND SURROGACY

- In relation to adoption, the UN Convention on the Rights of the Child anticipates its use, and sets out minimum standards
- BUT there is still no consensus as to how to approach surrogacy
- Four responses to surrogacy
 - Complete prohibition
 - Tolerance of altruistic surrogacy
 - Regulation
 - Commercialisation

CONCLUSION

- While there are many similarities between international surrogacy and intercountry adoption, there are also many differences
- Adoption may be a helpful tool where there is no legislation specifically on surrogacy
- BUT it is only a stopgap measure, and therefore fails to fully cater for all situations