

The status of children arising from inter-country surrogacy arrangements: the past, the present, the future

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Propositions relating to the Dissertation

'The Status of Children arising from Inter-Country Surrogacy Arrangements: the Past, the Present, the Future'

by Michael Wells-Greco - 1 October 2015

1. There is an imperative to appropriately regulate the civil status and nationality status of surrogate-born children.
2. European and international human rights law provides the context for national and international responses to and regulation of inter-country surrogacy.
3. The lack of a legal relationship between the child and the intending mother or the second intending parent creates similar disadvantages and uncertainties regarding identity, inheritance rights, and functional parenthood in a way that, in many of the concrete cases, reminds us of the historical position of the unmarried father wishing to establish filiation.
4. The answer to the question whether or not the parent-child family relationship is established or capable of recognition should be considered in the light of the child's best interests, and the identity and family rights of the child more generally, and should be answered in the affirmative if the child is genetically the son or daughter of one of the intending parents.
5. A child born as a result of a surrogacy arrangement should automatically acquire the nationality of the intending parents' state of origin (or of one of the intending parents, if they are not nationals of that state) if the parent-child family relationship with the child is recognised.
6. If the child does not acquire the nationality of the intending parents, the state of birth has an obligation to establish the child with the nationality of that state.
7. The judicial treatment of parentage and nationality are *a priori* national issues. Given a state's legislative position, it is arguably more appropriate that any policy change should be made by legislation, so long as that process does not abridge fundamental rights. It is admitted that there is a case for international responses but those responses will be more efficiently formulated and any supra-national legislative instrument more widely accepted, however, when individual states have formed their own views and are in a position to pool knowledge and experience.
8. The question of the rights and status of children raised in families and the very real human relationships that exist should form part of the wider dialogue about all children raised in relationships based on love and care that fall outside of 'traditional' unions and 'natural' births.
9. The socio-ethical and medical concerns surrounding the surrogacy debate should not be ignored; and many of the first children born by means of surrogacy arrangements are now old enough to speak for themselves.
10. In many ways this research could be entitled children's rights in inter-country surrogacy. Neither public policy or human rights are static concepts. Our understanding of public policy and human rights is constantly evolving as we come to know more about the human condition.
11. Further (empirical) research is required with respect to the role and effects of party autonomy as