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Being questioned as parents: An interview study with Swedish commissioning parents using transnational surrogacy

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Abstract This study sought to explore how Swedish parents who had commissioned surrogacy abroad experienced the process of parenthood recognition. The study consisted of in-depth interviews with five couples and 10 individuals representing 10 additional couples who had used surrogacy abroad, mainly in India. The construction of motherhood and fatherhood in the Swedish system contradicts how parenthood is defined in the surrogacy process. This study found that the formal recognition of parenthood involved a complex and frustrating process where the presumption of fatherhood and step-child adoption as grounds for parenthood make people feel questioned as parents, negatively affecting parental welfare. Policy makers need to take into account the consequences of an unregulated situation regarding surrogacy, and focus more on the child–parent relationship when regulating surrogacy.

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Introduction

Many countries have adapted their laws to address new reproductive methods; however, this is not yet the case with

surrogacy. The introduction of a third party, the surrogate mother, has made most countries hesitant to regulate this type of reproductive method. It is probably the most controversial method used to achieve parenthood. Legal

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restrictions in some countries, such as Sweden, have caused people to seek surrogacy abroad, resulting in obstacles to the recognition of parenthood as a consequence (Crockin, 2013; Deomampo, 2015; Gamble, 2009; Kindregan and White, 2013; Melhuus, 2012; Millbank, 2013; Storrow, 2011). In transnational surrogacy, it has become evident that there are different meanings of kinship across countries that have implications for how people are granted legal parenthood (Melhuus, 2012). It has been observed that 'notions of family, parenthood, and citizenship are simultaneously reinforced and challenged as states, families, and institutions grapple with the impact of the globalization of ART [assisted reproductive technology]' (Deomampo, 2015:212). Although there are some studies of the experiences of the commissioning (intended) parents in using transnational surrogacy (Deomampo, 2015; Everingham et al., 2014; Kroløkke, 2012; Kroløkke and Pant, 2012; Melhuus, 2012), only a few have focused on the issue of commissioning parents obtaining parental recognition after using transnational surrogacy (Deomampo, 2015; Kroløkke, 2012; Melhuus, 2012).

It is currently illegal in Sweden for healthcare providers to help with ART where there is a surrogacy arrangement, but surrogacy is otherwise unregulated (*Act on Genetic Integrity, 2006*). Previous research has shown that Swedish couples who looked to surrogacy as their only option for having a child have pursued surrogacy abroad, mainly in India and in certain states in the USA where commercial surrogacy is allowed (Arvidsson et al., 2015). Although the numbers are uncertain, it is estimated that at least 200 Swedish children had been born through the use of surrogacy abroad up to 2014 (SOU, 2016:11). The increasing use of transnational surrogacy has led to a governmental inquiry addressing the legal situation. The report from this investigation advised against legalizing surrogacy in Sweden (ibid.).

The Swedish Children and Parents Code stipulates that a person who gives birth to a child is considered to be the child's mother, based on the presumption of motherhood (*Act on Children and Parents Code, 1949*). Based on the presumption of fatherhood, a man married to the birth mother is considered to be the father. However, because these presumptions of parenthood do not align with surrogacy, commissioning parents need to turn to the Swedish authorities and the district court for help with the recognition of parenthood.

A previous study among social service officials in Sweden indicated great disparities and uncertainty in the practice of legal parenthood decisions after surrogacy arrangements have been made (Arvidsson et al., 2016). The aim of the present study was to investigate how Swedish commissioning parents have experienced the process of seeking official parenthood status when using transnational surrogacy.

Materials and methods

Study design

This qualitative study was based on in-depth interviews for capturing individual experiences (Dahlgren et al., 2007). A social constructionist approach was used to understand parenthood in relation to transnational surrogacy. According to this view, phenomena and identities are socially

constructed and their definition always depends on the context (Burr, 2003).

Sampling of informants and data collection

Informants were recruited through infertility websites Föreningen för surrogatmödraskap (Association for Surrogate Motherhood, <http://www.surrogat.nu/>) and Vill ha barn (Want to Have Children, <http://www.villhabarn.se/content/>), snowball sampling and word of mouth. An advertisement seeking informants for a study about commissioning parents' experiences of using surrogacy, with the first author as contact person, was sent via e-mail to the two administrators of the two websites above. The Association for Surrogate Motherhood forwarded the e-mail to its members, and the administrator for Want to Have Children posted the notice on their website. Commissioning parents who were willing to participate in the study contacted the first author via e-mail or telephone. The initial respondents knew of other commissioning parents, so the number of participants grew by referral.

As recruitment was conducted through self-selection via infertility websites and snowball sampling, there could be a risk that those who volunteered had a specific type of experience. However, the study sample comprised informants with a wide range of experiences, ranging from couples who had experienced a fairly smooth process to others who had encountered great difficulties.

In-depth interviews with all respondents were conducted in Sweden between July 2012 and January 2015. Broad topics and follow-up questions were used to encourage informants to relate their experiences of transnational surrogacy. Those parts of the interviews that related specifically to experiences of the administrative process of becoming legal parents, both in the country where the surrogacy arrangement took place and in their home country (Sweden), were analysed.

Fifteen couples participated in the study. In 10 couples, only one person was interviewed (two women and eight men), and the selection of who was interviewed was made by the parents themselves. Also, at their request, the parents in one heterosexual couple were interviewed individually, and four couples were interviewed together (two same-sex couples and two heterosexual couples). The interviews took place in their homes, in private settings at their workplaces, or in a café, according to their choice. All informants provided written informed consent prior to the interviews, which lasted between 1 and 2.5 h. The interviews, which were conducted in Swedish, were recorded and transcribed, and the quotations used for this article were later translated into English.

Participants

Fifteen Swedish couples, both heterosexual and male same-sex couples, who had used the reproductive method of transnational surrogacy between 2010 and 2014 were included in the study, although only one member of the couple was interviewed in most cases. The six heterosexual couples were aged 36–44 years at the time they had their children through surrogacy, and the nine same-sex couples were aged 29–52 years. The majority of those interviewed

had university degrees and lived in the capital area (Stockholm). Ten of the couples had turned to India for surrogacy, three had turned to states in the USA (Oregon and Massachusetts), and two had turned to countries in Northern Europe. All of the couples were married, and each couple included a genetic father (further characteristics of the couples may be found in Table 1).

Analysis

Thematic analysis was used to identify patterns of meaning in accordance with the aim of the study (Clarke and Braun, 2006). In order to develop the themes and see patterns in the data, data related to the objective were colour-coded with annotations as each transcript was read. The transcripts were reread several times to find similarities and differences among the colour-coded categories and to establish themes. As the majority (10 couples) of informants had made their surrogacy arrangements in India, the focus was mainly on their experiences.

The trustworthiness of the analysis was ensured by using peer debriefing, where all authors discussed and agreed on the interpretation of data. For member-checking of the findings, a key informant, connected to a network for commissioning parents, was interviewed after most of the analysis had been concluded. That person had used transnational surrogacy and was able to validate general information about the experiences of other commissioning parents (Dahlgren et al., 2007).

The focus of this paper is the commissioning parents' experiences of the process leading towards legal parenthood. However, the paper takes as its point of departure the unregulated situation in Sweden, which seems to be due largely to the state's inability to find a position that protects all parties involved in the surrogacy process. Some of these issues are addressed in the analysis. Using a reproductive justice approach, the perspective of the surrogate mother is also considered. This approach emphasizes unequal power relations, situated knowledge, and who can become a parent (Luna and Luker, 2013). In doing so, and as Luna and Luker (ibid.) describe, 'Reproductive justice highlights the

dynamic yet often tenuous relationship between the law, social movements, and academic scholarship' (ibid.:328).

Ethical considerations

All participants gave their written informed consent prior to the interviews. Being identified through the quotes was a concern expressed by the participants, and therefore they were given the opportunity to read and delete their translated quotes before the article was finalized. None of the participants asked to have their quotes deleted or changed. The study was approved by the Regional Ethical Review Board of Uppsala, Sweden (Registration Number 2012/462).

Results

The surrogacy contracts that the heterosexual couples signed to seek surrogacy in India took the commissioning mother's intention or genetic connection into account, and gave her parental status along with the genetic father. For same-sex couples, however, the genetic father's spouse was not mentioned in the surrogacy contract, and thus he was not recognized as a parent. For those who went to a state in the USA, besides having a surrogacy contract, both in a same-sex couple were recognized as parents in a court decision. However, when the study informants had completed the surrogacy process, all were obliged to turn to the Swedish authorities for recognition of parenthood. India has been closed to foreign surrogacy arrangements since December 2015; thus, all experiences described here occurred prior to this time.

Overall, the commissioning parents described the process of obtaining legal parenthood as a complex procedure with non-coherent decision-making by the authorities. Commissioning parents often had difficulty in comprehending and managing the procedures for becoming legal parents, and found the process very stressful. In particular, the genetic fathers' spouses felt questioned as parents because they were required to adopt what, in their view, was their own child. Five main themes were developed to characterize the commissioning parents' process of obtaining legal parenthood: (i) having difficulty in comprehending the process; (ii) facing uncertainty and contradictions; (iii) trying to navigate the system; (iv) finding the process unnecessarily prolonged and stressful; and (v) feeling unfairly questioned as a parent. The themes are presented in detail below with quotes to support the interpretations made.

Questioning the legitimacy of Indian documents

The foreign documents relating to parenthood were not recognized as being legal in Sweden. Although the commissioning parents were able to secure their legal parenthood eventually, many were disheartened by the complicated process they had to undergo in Sweden:

What is really strange is that Swedish authorities are disqualifying other countries' systems and pretending that these Indian documents are worth nothing. As a result, there is need of an enormous set of papers that state the same thing only to fit into the Swedish system, but most of those things are already covered in the Indian agreement. (Man in same-sex couple No. 6, using India)

Table 1 Background information on 15 Swedish commissioning parents using surrogacy.

Background information	Country where surrogacy took place			Total
	India	USA	Northern Europe	
Type of partnership				
Male same-sex couples	4	3	2	9
Heterosexual couples	6	0	0	6
Mode of surrogacy				
Commissioning mother's egg	1	0	0	1
Egg donor	9	3	0	12
Surrogate mother's egg	0	0	3 ^a	3
Number of children				
Twins	6	1	0	7
Singleton	4	2	3 ^a	9

^a One couple who went to a country in Northern Europe used surrogacy twice.

Despite the DNA evidence presented by the commissioning parents, the surrogate mother's husband was seen as the father of the child based on the traditional presumption of paternity. As the Indian documents on parenthood were not regarded as legitimate by the Swedish authorities, Swedish documents needed to be provided in which the surrogate mother confirmed paternity and the surrogate mother's husband consented to the paternity confirmation. This procedure was questioned by commissioning parents:

You need to establish fatherhood. That is not a procedure relying on DNA because that is not how the Swedish law functions. Then it is instead our Indian surrogate mother's husband who must renounce being the father because he is married to our children's mother – although she is not really the mother, but that does not matter according to the Swedish law. (Man in same-sex couple No. 6, using India).

The Migration Agency needed to grant the child Swedish citizenship (which is based on the father's citizenship) to enable the commissioning parents to bring the child home. However, once they entered Sweden, the grounds for the citizenship were not legitimate grounds for paternity:

The Swedish authorities amaze me. The Migration Agency approves the citizenship with this [surrogacy] contract and the DNA test as a basis, but then the Tax Agency does not (laughs) approve this. (Man in heterosexual couple No. 15, using India).

Instead, this parent needed to follow a legal process at the district court to affirm paternity.

There were no obvious differences between the legal processes for same-sex and heterosexual couples in Sweden. For instance, a non-genetic father in a same-sex couple needed to go through a step-child adoption process in order to be legally recognized as a parent, but so did a non-genetic and even a genetic mother. However, there were differences depending on which country they had turned to for surrogacy. In two cases, court decisions from states in the USA provided the genetic father with paternity but not with custody, while a surrogacy contract from India was not, in itself, seen as grounds for paternity in Sweden.

Facing uncertainty and contradictions

Many expressed uncertainty about how to manage all of the documents and contacts needed to be recognized as parents. One commissioning father, quoted below, also thought it strange and annoying that there were no rules for this process:

It has been very, very much administration and very uncertain how things should be done, and how it would turn out. (Man in same-sex couple No. 2, using USA).

As the Swedish authorities could provide no clear guidance or information about the legal process, the commissioning parents found it necessary to solicit advice from informal networks on the internet of people who had used or planned to use surrogacy. It then became evident to

them that the road to legal parenthood could be very different for each individual couple:

But what is so frustrating and suggests a considerable legal uncertainty is that it is very different from case to case. So it seems to be up to the administrator's own mind to decide. And many who have children who are born in the US do not have to go through this whole process [that we have been through], one dad is then a legal custodian directly ... and they have the same laws as here. (Man in same-sex couple No. 2, using USA)

The complex procedure of becoming legal parents was additionally aggravated by contradictory and sometimes changing information on how to navigate the necessary administrative requirements:

We got a lot of contradicting information from Swedish authorities on how we should do this, since they simply did not have any real laws to lean on. We then got a few answers that were later shown not to be accurate. So we had done a lot of work to fix things in a way that the Swedish authority wanted it and then it was not of any help anyway. So that was really problematic. (Man in same-sex couple No. 2, using USA)

It's very bitter. Had we not been promised that the process was correct, we might have expected it would take some time and become complicated but when you are promised something completely different and then it's like, damn, this cannot happen. (Woman in heterosexual couple No. 12, using India)

Therefore, even if the commissioning parents had prepared themselves according to the advice given, this was not sufficient to obtain custody or become the legal father due to a lack of knowledge or a shift in perceptions of how to administrate legal parenthood. Differences between authorities' decisions could result in nonsensical situations:

What I think is weird is that the National Insurance Office, which is a Swedish authority, accepted the court decision of fatherhood and gave us parental allowance. But another Swedish authority did not accept the court decision. That is strange. (Man in same-sex couple No. 2, using USA)

This couple would then be entitled to parental allowance (which can be paid to any one of the parents during parental leave for almost one and a half years) without being formally recognized as legal parents.

Trying to navigate the system

Some commissioning parents who did not get any help from their own social welfare office turned to other municipalities for help, sometimes resulting in the receipt of completely different treatment:

You did not know what answer to expect and then when we had problems the first time, I called several authorities of family law and thought in the worst case we will move to X where we got an amazing contact with a woman at the authority of family law there. She helped us, she helped us a lot even though she had no obligations whatsoever to do it but she was incredibly positive. She said you will require this, it is the Swedish law and she helped us a lot with legal texts, etc. and where we could turn to, she was a great support for us. (Man in same-sex couple No. 9, using India)

Although some informants understood that the authorities might have difficulties in handling these cases because of having little experience in such matters, they nevertheless expressed frustration about the process, and worried about not being recognized as parents of the children when entering Sweden. Some solved this difficult situation by contacting a solicitor to get help:

In Sweden, despite everything, it has not been so difficult. Much thanks to a solicitor friend. Otherwise it would have felt very arduous. Now we are in control of what we can and cannot do. Have the situation under control ... which we would not have otherwise. (Man in same-sex couple No. 14, using USA)

Solicitors helped out by preparing documents in accordance with the Swedish system for the establishment of parenthood. The commissioning parents could then bring these documents to India for the surrogate mother and her husband to sign:

P1: We hired a lawyer in Sweden. [...] They helped us to produce all documents and read the laws that existed in India, read the laws that exist in Sweden that constantly change, or directives change all the time, so we received full assistance there.

I: So you had forms constructed?

P2: Right, and then we ignored completely the social welfare office and said that we do not care about them now, we run this ourselves. We got the documents needed and then we used them towards the social welfare office and the district court when we later came home. (Man in same-sex couple No. 9, using India).

Couples that managed to get help from a private solicitor in advance to prepare documents found that these documents were seen as being legitimate in Sweden. However, the district court had to grant the genetic father custody, which could take approximately 3–4 weeks. Nevertheless, it was a comparatively short process, and the commissioning parents were less frustrated about the route to legal parenthood.

Another way of bypassing the complex legal process was described by the two couples who sought surrogacy in Northern Europe. They each established direct internet contact with a woman who was prepared to carry the couple's child, and they then used artificial (home) insemination to achieve conception. Both men in the couple stated that this had been less complicated than going to India, and one referred to it as almost not being surrogacy because no medical process was involved. After returning to Sweden, 'surrogacy' was not mentioned to the authorities and the reproductive method was described as sexual intercourse. A signed document was presented in which the woman who had given birth left custody of the child to the genetic father, and agreed that the genetic father's spouse could adopt the child. The Swedish authorities accepted these documents and thus, by not disclosing the use of surrogacy, the recognition of their legal parenthood was expedited.

Finding the process unnecessarily prolonged and stressful

Commissioning parents expressed frustration about the process, and worried about not being considered the parents of their children when entering Sweden:

It feels awfully unpleasant to come home with the child and not be considered their legal parent. (Woman in heterosexual couple No. 15, using India).

Navigating the process of finding out how to become legal parents and the extensive period of time often required to obtain parenthood was described by many as frustrating and stressful:

I think the delays are really tough and that you feel that, theoretically, the surrogate mother who has custody could come to fetch them [the child], or ask someone to send them down or ... It will not happen, I think, but it's more that the laws are there and right now I do not have any rights. (Man in heterosexual couple No. 10, using India)

In one case, it took approximately 12 months before a man was recognized as the legal father of his child, but generally, the process took approximately 6 months. Some worried about what would happen if they separated during this long interval, or if one of them died before both were considered legal parents. During this time, most commissioning parents were denied parental allowance (which covers approximately 80% of their salary). This made them worry about their financial situation, especially as they had already financed the surrogacy (approximately €52,600 in India and €105,000 in the USA):

People [at the authorities] do not know what to do because there is no law regulating this. And it has been very frustrating and a bit distressing; one has had to live with great financial worries because of this. (Man in same-sex couple No. 2, using USA)

An additional difficulty with the legal process was that it came at a time when all the parents wanted to do was concentrate on their newborn child:

It is not easy and not a positive experience, but an annoying struggle. When you have just become a parent, you should be happy – and then you need to deal with this! (Woman in heterosexual couple No. 15, using India)

Feeling unfairly questioned as a parent

In order to be recognized as a parent, the genetic father's spouse had to go through a step-child adoption process at the district court. The surrogate mother, by giving birth, was seen as the mother by the Swedish authorities until an adoption process was finalized. This process could not be initiated until the genetic father had been granted custody. The need to adopt before being recognized as a parent was questioned by several informants:

We had made a step-child adoption investigation and someone came from the social welfare office to talk about what our relationship looks like, which is crazy. [...] I really think it is a weird process for this [type of reproduction]. The whole thing becomes strange somehow, to need to do all this. (Men in same-sex couple No. 8, using India)

In the cases involving heterosexual couples, an adoption process was set in motion regardless of whether the commissioning mother was the genetic mother. Furthermore, the genetic father needed to consent to the step-child adoption, even if his spouse was the genetic mother.

The key informant in this study emphasized how commissioning mothers who had a genetic link to the child felt surprised and annoyed when they realized that they needed to adopt their 'own' child. However, non-genetic commissioning mothers in this study also reported feeling unjustly treated when they had to wait much longer to be recognized as a legal parent than their husbands. Commonly, the spouse of a genetic father had to wait an additional 6 months to obtain parental recognition:

Knowing that you are not registered as legal guardian, makes you feel discriminated against. I cannot really explain it, but the children are more his, on paper. It is so important in this situation to get the papers acknowledging that we are both legal parents when you are here in Sweden. He got his papers long before I did. I think half a year passed before [I was registered as a legal guardian], then I had almost lost hope about it. (Woman in heterosexual couple No. 15, using India)

One commissioning mother reacted with great anger towards the process of adoption:

What right does anyone have to judge me? My children have been with me for a year and a half, and now someone comes and wants to judge me? I just felt, hell, that is offensive! (Woman in heterosexual couple No. 12, using India).

She laughed when she reflected over the fact that she became 'an adoptive mother' to her own children. Furthermore, it made her feel inferior in relation to her husband, and frustrated over lacking a legal relationship to the child until the step-child adoption process was completed:

It felt strange when we were looking for a day-care facility and I was not allowed to sign because I was not the children's legal guardian. I am not going to deny that I am not genetically related to them because my eggs were not used. My husband had become someone's father – he became a father, but me? I became nobody. Well, of course I have always been their mother, but it has been hard on me. [...] So it is pretty cool now to be a legal guardian. That's how I feel. And also, now I am actually able to sign papers. (Woman in heterosexual couple No. 12, using India)

Notwithstanding that she felt like a mother, she said that she 'became nobody' in relation to the children; when she finally became a legal mother, this implied a significant emotional difference. The delays in obtaining parental status could also be frustrating for a non-genetic father. In the quote below, a man points out the negative feeling of not being a legal parent:

It is a bit tough. [It's like] you are always being questioned. It feels like being punched every day. I cannot go to the pharmacy to pick up medicine, and when I call the Social Insurance Office I usually give my spouse's name to avoid hassles. (Man in same-sex couple No. 6, using India)

Discussion

These findings illustrate frustrating struggles in the process of seeking to be officially recognized as parents in Sweden after using surrogacy abroad. The construction of motherhood and fatherhood in the Swedish system contradicts with how parenthood is defined in the surrogacy process, and requires complex navigation in seeking parental status. The process is stressful and makes the genetic father's partner, in particular, feel questioned as a parent, which may take its toll on parental well-being.

To be acknowledged as a parent in Sweden involves an immense amount of paperwork and uncertainty. This burden, in addition to the stressful and frustrating experience, is also described by Daisy Deomampo (2015) in relation to Norwegian commissioning parents' processes in obtaining legal parenthood. Moreover, it is common that parenthood documents from abroad are considered illegitimate in the home countries of the prospective parents (Crockin, 2013; Deomampo, 2015; Gamble, 2009; Kindregan and White, 2013; Melhuus, 2012; Millbank, 2013; Storrow, 2011). The current legal situation might be seen to have unwanted consequences for the parental welfare of the commissioning parents. Some commissioning parents reflected on how their struggle and attention to the legal matters of becoming parents affected their own feelings of joy in having finally become parents. The finding that the welfare linked to being a mother is related to the welfare of the child has been reported previously (D'Alton-Harrison, 2014; Luoma et al., 2001; Treanor, 2016), and the father's well-being has also been shown to affect the welfare of the child (Shafer et al., 2017). The current grounds for determining parenthood might have negative effects for both parents and children, instead of protecting their well-being.

After this study was concluded, a governmental inquiry into the legal situation advised against legalization of surrogacy in Sweden. The parental rights of the commissioning parents were downplayed in the inquiry, which focused more on risks for the child and the surrogate mother, especially in a financially poor context where it can be surmised that there could be a risk of non-voluntary participation by the surrogate mother (SOU, 2016:11).

A state's discouragement of a reproductive method that is not allowed within the country might be understandable. Absence of legal obstacles could be seen as an encouragement to circumventing the domestic law (Van Hoof and Pennings, 2011). An insistence for Swedish documents and procedures for establishing parenthood might be considered reasonable, and it is not surprising that obstacles may occur following the use of a reproductive method that is not permitted in Sweden. It might also jeopardize the rights of the surrogate mother if the determination of parenthood is made without any contact with the woman who has given birth, and in situations where documents are accepted casually, as in the cases described above where arrangements were conducted in Northern Europe. Lack of contact with the surrogate mother could potentially favour a market for the trafficking of children (Bromfield and Rotabi, 2014). A cautious regulation is necessary, where the perspectives of all involved are taken into account. This could be achieved using the reproductive justice approach. Such an approach focuses on unequal power relations, analyses policies that

regulate reproduction, and considers who can become a parent (Luna and Luker, 2013).

The traditional view of motherhood guides the current legal process, but is this view suitable for achieving reproductive justice in transnational surrogacy? The fear of denying a woman her right to care for and be the legal mother of a child she has given birth to is what dominates the surrogacy debate, and underpins decisions surrounding the regulation of surrogacy. This fear, however, also makes governments hesitant to state any clear rules or laws surrounding surrogacy, as they do not want to risk facilitating a questionable reproductive method and risk contributing to the harm of vulnerable poor women.

The consequences of unclear laws have made Swedish social service officials – those who deal with the issues around legal parenthood after surrogacy arrangements – struggle with concerns about the surrogate mother while simultaneously trying to secure the legal situation for the child (Arvidsson et al., 2016). The issue for these officials was whether the surrogate mother had consented to the relinquishing of the child, which they were not able to establish as no direct contact was made with her.

The paperwork and documents designed to meet the Swedish system's requirements for legal parenthood do not affect the surrogate mother's possibility to become the legal and social mother, since she cannot regret her initial consent to relinquish the child (Pande, 2014). This, however, would not seem to be the primary issue for surrogate mothers; although emotional about relinquishing the babies, they are focused on taking care of their own children at home (Pande, 2014; Rudrappa, 2015). In India, researchers have emphasized the surrogate mother's right to be fully informed before she gives consent, (Pande, 2014; Rudrappa, 2015). Suggestions have been made that 'a Hague Convention on Inter-country Surrogacy Agreements would be able to provide increased security, predictability and transparency' in a surrogacy process, (Ramskold and Posner, 2013:401).

When the inquiry decided not to permit surrogacy in Sweden or to facilitate the arrangement of surrogacy abroad, it was guided by a goal to safeguard the rights of the surrogate mother and the child (SOU, 2016:11). In February 2018, the Swedish Government came to the conclusion that they should follow the inquiry's suggestion (Swedish Government, 2018). However, one might question what the interests of the child and the surrogate mother might actually be. In transnational surrogacy, the focus of the surrogate mother does not seem primarily to be recognized as the mother, which is the intention of the current Swedish regulation. The child can be expected to benefit by having a legally secure situation, but also by having parents who can focus on just being parents without undue struggle in becoming recognized as parents. A study in Sweden found that, for a non-genetic mother in a female same-sex couple, the recognition of motherhood, without having to go through an adoption process, had a positive impact on the woman's well-being (Johansson, 2014).

While the inquiry did not want to facilitate Swedish citizens' use of commercial surrogacy abroad, it recognized the danger of a child being without a legal guardian for an extended period. Thus, the inquiry recommended that the process for a genetic father to obtain custody should be shortened. Nevertheless, the genetic father's spouse, who

may have been the child's genetic mother, would still need to go through a step-child adoption with consent from the genetic father (SOU, 2016:11).

In studies with commissioning parents, it has been observed that '[s]tep-adoption undermines their mutual project of parenthood as it does not recognize that the child belongs to both of them, irrespective of genetic tie' (Melhuus, 2012:85). Regarding genetic mothers, it has been further criticized that providing eggs with the intention of becoming the mother of a child is of no relevance to a legal bond (Millbank, 2013; Stoll, 2013). It has been noted that such a situation creates a power imbalance between the prospective parents (Millbank, 2013; Stone, 2014). Studies have also found that commissioning mothers have reacted with feelings of being discriminated against in comparison with fathers when their genetic link was insignificant in determining their motherhood status (Deomampo, 2015; Melhuus, 2012).

There is reason to question the long and complex procedure in gaining parental rights when couples are already in possession of documents that prove genetic parenthood. Luna and Luker speak of the 'right to parent with dignity' (2013:329). The current process to achieve legal parenthood after surrogacy does not facilitate this. They also address the issue of unequal power relations in reproduction. The genetic father is in a favourable position in becoming a legal parent, especially since the government's decision to facilitate him in being the legal father. To achieve reproductive justice, rules to safeguard equal power relations in surrogacy arrangements need to be put in place. For reproductive justice to occur, genetics would need to be equally valued for recognition of parenthood, whether eggs or sperm are used. There has also been a court ruling in line with this assumption, where the commissioning genetic mother was recognized as the legal mother without her going through a step-adoption process (Södertälje District Court, 2014). However, another court ruling denied the genetic mother legal recognition of motherhood based on genetics (Svea Court of Appeal, 2018).

As suggested by McKinnon, 'Which ties will be constituted as "real" or "natural" are being questioned with assisted reproductive technology' (2015:9). Thus, the many different legal processes described by the commissioning parents in the present study corroborate what other researchers have found: parenthood is socially constructed and what constitutes kinship is under constant change (Thompson, 2005). It is questionable whether the current grounds for decision-making of parenthood are reasonable. Step-child adoption may not be the most suitable process for being recognized as a parent for a woman or a man who has been just as involved as the genetic father in initiating the child's coming into being and in taking care of the child from birth. The intention of the genetic father's spouse of being the parent, prior to the conception of the child, differs from the situation of regular step-child adoption (Ragoné, 1998).

Having a subordinate position as the genetic father's spouse affects parental well-being. There is a difference between regarding oneself as a parent and having society recognize one's parenthood. Clearly, a process towards obtaining legal parental status without undue struggles will have positive effects on an individual's self-image as a

parent. Considering a less long and complex legal process, in which there is a focus on equal power relations between the parents in gaining legal parenthood, would help authorities and courts to put more emphasis on the child–parent relationship.

From a reproductive justice perspective, it is indeed necessary to ensure that the woman who has given birth has given informed consent and is willing to relinquish her parental rights. To obtain reproductive justice in this situation as a whole, it is also important to ensure that the process resulting in the intended parents' recognition of parenthood is not one that ends up with their feelings questioned. A smoother, less complex and less time-consuming process would also benefit the child.

Methodological considerations

India is the country to which most Swedish couples wishing to commission surrogacy have turned. However, the Indian Government has instructed clinics not to provide surrogacy to foreigners since 2015 (Sherwell, 2015). Swedish couples have stopped travelling to India for surrogacy, but the clash between surrogacy and the Swedish parental law in Sweden still exists, and the process that makes intended parents feel questioned might be similar when going to other countries for surrogacy.

Only three of the commissioning parents chose a state in the USA for surrogacy, and two others chose countries in Northern Europe. The analysis focused on the experiences of using surrogacy in India, while the information from the USA and countries in Northern Europe mainly served as illustrations of some differences in the process.

Conclusion

The experiences of the commissioning parents pose questions of whether the current complex handling of their legal parenthood is reasonable as they circumvent the Swedish law, or if there might be unwanted consequences during the process that can possibly be prevented. Presumption of fatherhood and the requirement for step-child adoption, especially by a genetic mother, might be seen as unsuitable grounds for parenthood recognition when using surrogacy. The negative consequences of having to navigate a complex and uncertain process towards legal parenting of their 'own child', just when they need to take care of the child and to create an attachment, should be taken into account when considering laws regarding surrogacy. It is also necessary to consider the perspective of the surrogate mother, and to make room for her situated knowledge. Research on the legal processes operating when surrogacy is obtained in countries other than India and the USA is also needed.

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References

- Act on children and parents code, 1949:381. Available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381, Accessed date: 2 May 2017.
- Act on genetic integrity, 2006:351. Available at: http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2006351-om-genetisk-integritet-mm_sfs-2006-351, Accessed date: 2 May 2017.
- Arvidsson, A., Johnsdotter, S., Essén, B., 2015. Views of Swedish commissioning parents relating to the exploitation discourse in using transnational surrogacy. *PLoS ONE* 10e0126518. <https://doi.org/10.1371/journal.pone.0126518>.
- Arvidsson, A., Johnsdotter, S., Emmelin, M., Essén, B., 2016. Gauging the interests of birth mother and child: A qualitative study of Swedish social workers' experiences of transnational gestational surrogacy. *Eur. J. Soc. Work.* 21 (1), 86–99. <https://doi.org/10.1080/13691457.2016.1256869>.
- Bromfield, N., Rotabi, K., 2014. Global surrogacy, exploitation, human rights and international private law: a pragmatic stance and policy recommendations. *Glob. Soc. Welf.* 1 (3), 123–135.
- Burr, V., 2003. *Social constructionism*. Routledge, New York.
- Clarke, V., Braun, V., 2006. Using thematic analysis in psychology. *Qual. Res. Psychol.* 3 (2), 77–101.
- Crockin, S.L., 2013. Growing families in a shrinking world: legal and ethical challenges in cross-border surrogacy. *Reprod. BioMed. Online* 27, 733–741. <https://doi.org/10.1016/j.rbmo.2013.06.006>.
- D'Alton-Harrison, R., 2014. Mater semper incertus est: who's your mummy? *Med. Law Rev.* 22 (3), 357–383. <https://doi.org/10.1093/medlaw/fwt047>.
- Dahlgren, L., Emmelin, M., Winkvist, A., 2007. *Qualitative methodology for international public health*. 2nd ed. Print och Media, Umeå University.
- Deomampo, D., 2015. Defining parents, making citizens: nationality and citizenship in transnational surrogacy. *Med. Anthropol.* 34 (3), 210–225. <https://doi.org/10.1080/01459740.2014.890195>.
- Everingham, S.G., Stafford-Bell, M.A., Hammarberg, K., 2014. Australians' use of surrogacy. *Med. J. Aust.* 201 (5), 270–273. <https://doi.org/10.5694/mja13.11311>.
- Gamble, N., 2009. Crossing the line: The legal and ethical problems of foreign surrogacy. *Reprod. BioMed. Online* 19 (2), 151–152. [https://doi.org/10.1016/S1472-6483\(10\)60064-8](https://doi.org/10.1016/S1472-6483(10)60064-8).
- Johansson, M., 2014. *I moderskapets skugga – Berättelser om normativa ideal och alternativa praktiker [In the shadow of motherhood: Narratives about normative ideals and practices]* (in Swedish). (PhD diss.), Örebro University Available at: <http://www.diva-portal.org/smash/get/diva2:689964/FULLTEXT03>, Accessed date: 2 May 2017.
- Kindregan, C.P., White, D., 2013. International fertility tourism: The potential for stateless children in cross-border commercial surrogacy. *Suffolk Transnatl. Law Rev.* 36 (3), 527–626.
- Kroløkke, C., 2012. From India with love: troublesome citizens of fertility travel. *Cult. Polit.* 8 (2), 307–325.
- Kroløkke, C., Pant, S., 2012. "I only need her uterus": Neo-liberal discourses on transnational surrogacy. *NORA - Nordic J. Fem. Gender Res.* 20 (4), 233–248.
- Luna, Z., Luker, K., 2013. Reproductive justice. *Annu. Rev. Law Soc. Sci.* 9, 327–352.
- Luoma, I., Tamminen, T., Kaukonen, P., Laippala, P., Puura, K., Salmelin, R., Almqvist, F., 2001. Longitudinal study of maternal depressive symptoms and child well-being. *J. Am. Acad. Child Adolesc. Psychiatry* 40 (12), 1367–1374.
- McKinnon, S., 2015. Productive paradoxes of the assisted reproductive technologies in the context of the new kinship studies. *J. Fam. Issues* 36 (4), 461–479.

- Melhuus, M., 2012. *Problems of conception: Issues of law, biotechnology, individuals and kinship*. Berghen Books, New York.
- Millbank, J., 2013. Resolving the dilemma of legal parentage for Australians engaged in international surrogacy. *Aust. J. Fam. Law* 27 (2) (SSRN: <http://ssrn.com/abstract=2312830>).
- Pande, A., 2014. *Wombs in Labor: Transnational commercial surrogacy in India*. Colombia University Press, New York.
- Ragoné, H., 1998. Incontestable motivations. In: Franklin, S., Ragoné, H. (Eds.), *Reproducing reproduction: kinship, power, and technological innovation*. University of Pennsylvania Press, Philadelphia, pp. 118–131.
- Ramskold, L.A., Posner, M.P., 2013. Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates. *J. Med. Ethics* 39, 397–402.
- Rudrappa, S., 2015. *Discounted life: The price of global surrogacy in India*. New York University Press, New York.
- Shafer, K., Fielding, B., Wendt, D., 2017. Similarities and differences in the influence of paternal and maternal depression on adolescent well-being. *Soc. Work. Res.* 41 (2), 85–96.
- Sherwell, P., 2015. India to ban foreign couples paying local surrogates to have their babies. *The Telegraph*. Available at: <http://www.telegraph.co.uk/news/worldnews/asia/india/11961442/India-to-ban-foreign-couples-paying-local-surrogates-to-have-their-babies.html>, Accessed date: 2 May 2017 October 28.
- Södertälje district court, 2014. *Case no T 2110-13 October 3*.
- SOU, 2016:11. *Olika vägar till föräldraskap [Different paths to parenthood]* (in Swedish). Governmental inquiry. Available at: <http://www.regeringen.se/contentassets/e761299bb1a1405380e7e608a47b3656/olika-vagar-till-foraldraskap-sou-201611>, Accessed date: 2 May 2017.
- Stoll, J., 2013. *Surrogacy arrangements and legal parenthood: Swedish law in a comparative context*. (PhD diss.), Elanders Sverige, Uppsala University. Stockholm. Available at: <http://www.diva-portal.org/smash/get/diva2:649875/FULLTEXT01.pdf>, Accessed date: 2 May 2017.
- Stone, L., 2014. *Kinship and gender: An introduction*. Westview Press, Boulder CO.
- Storrow, F.R., 2011. Assisted reproduction on treacherous terrain: The legal hazards of cross-border reproductive travel. *Reprod. BioMed. Online* 23, 538–545. <https://doi.org/10.1016/j.rbmo.2011.07.008>.
- Svea court of appeal, 2018. *Case no T 5424-17 January 23*.
- Swedish government, 2018. Lagrådsremiss. Modernare regler om assisterad befruktning och föräldraskap. [Proposal referred to the Council on Legislation for consideration. Modern regulations on assisted reproduction and parentage]. Available at: <http://www.regeringen.se/rattsdokument/proposition/2018/03/prop.-201718155/>, Accessed date: 19 April 2018 February 8.
- Thompson, C., 2005. *Making parents: the ontological choreography of reproductive technologies*. MIT Press, Cambridge.
- Treanor, M., 2016. The effects of financial vulnerability and mothers' emotional distress on child social, emotional and behavioural well-being: a structural equation model. *Sociology* 50 (4), 673–694 ([doi.org.ezproxy.its.uu.se/https://doi.org/10.1177/0038038515570144](https://doi.org/10.1177/0038038515570144)).
- Van Hoof, W., Pennings, G., 2011. Extraterritoriality for cross-border reproductive care: should states act against citizens travelling abroad for illegal infertility treatment? *Reprod. BioMed. Online* 23 (5), 546–554. <https://doi.org/10.1016/j.rbmo.2011.07.015>.

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