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Abstract Title: International Surrogacy and Same-Sex Parenthood: Legal Interventions in Parenting Journeys

Abstract:

This paper critically reflects on the intersection of an area of global social change, namely the growth in international surrogacy, with changes in personal life that have led to the increasing visibility of male same-sex parenting. In doing this the paper will consider how global inequalities in terms of socio-economic status, gender, sexuality and power dynamics between the (predominantly western) male couples and the birth mothers, who are often from the global south, should impact the way law intervenes in these arrangements.

The number of male couples making use of surrogacy arrangements that cross national borders has been on the rise in recent years in a number of countries, which has created complex transnational legal issues. The UK's restrictive legal framework in relation to surrogacy has meant that couples are travelling to countries such as India or California where the legal frameworks facilitate their desires to have a family.

At the same time, recent legislative changes in the UK have facilitated the creation of male-led families. As a result, the courts in England & Wales, in particular, have been called upon to recognise the legal parenthood of male couples for children born as a result of surrogacy arrangements conducted abroad. This has led to a number of intractable difficulties, which the courts have had to resolve, surrounding the issue of whether valid consent has been obtained from the birth mother and whether the payment that has been made, much of which may not go to the birth mother, has been excessive in terms of UK law.

This paper will examine not only the way these difficult issues have been resolved by the courts in England & Wales but will also discuss, the relatively scant, empirical research from a number of countries on gay men who become parents through surrogacy. Through doing this, the paper aims to provoke discussion about how the law can facilitate the procreative desires and autonomy of gay men whilst also recognising the vulnerability of those involved, including the birth mother, children and male couple themselves.