

# Maternità Surrogata

**Rachel Cook, Shelley Day Sclater, Felicity Kaganas**

**Maternità surrogata** Roberta Fiore, Annalisa Tomasiello, Maurizio Robertaccio, Romina Lanza, Marzia Bonsignore, 2023-02-28 - Con questo libro si è voluto porre l'accento sul fenomeno molto complesso e controverso della maternità surrogata in quanto, seppur vietata nel nostro ordinamento dall'art. 12, comma 6, L. 40/2004, trova implicazioni fattuali e giuridiche all'interno di esso alla luce del crescente ricorso a tale tecnica nei Paesi stranieri ove la stessa è consentita. Il dibattito italiano sulla gestazione per altri, vietata tanto a titolo oneroso quanto a titolo gratuito si è caratterizzato per le forti contrapposizioni presenti sia nella giurisprudenza che nell'opinione pubblica, reso ancor più complesso dall'accesso di massa alle tecnologie riproduttive e alla paura che si è insinuata nell'opinione pubblica di giungere ad una sorta di industria della riproduzione umana su commissione ("reproductive supermarket"). Qualunque sia l'angolo visuale con cui si decide di guardare al fenomeno della gestazione per altri, sia esso di natura politica, etica o tecnico-giuridica, non si può approdare all'assunto per cui "i figli non si comprano" o "bisogna vietare la maternità surrogata" senza con ciò banalizzare enormemente un tema molto complesso e controverso ma che merita di essere affrontato analizzando tutte le sfaccettature di cui si compone. Tra di esse emergono prepotentemente l'impatto scientifico e tecnologico sulla riproduzione umana, il ruolo della retribuzione e del denaro, strettamente connesso alla manifestazione del consenso dell'intraprendere la gravidanza da parte della donna portatrice e, tema centrale nella presente opera, il diritto all'autodeterminazione sia alla genitorialità che all'utilizzo del corpo femminile. La disquisizione sulla gestazione per altri non può prescindere, inoltre, la condizione delle donne che decidono di svolgere il ruolo di "madre surrogata" che cambia drasticamente a seconda dello Stato in cui si trovano, rispecchiando la condizione femminile in senso giuridico e sociale di quella specifica realtà, sia perché i maggiori problemi sul tema sorgono allorquando, non essendoci nei diversi Paesi il medesimo trattamento giuridico rispetto l'utilizzo di questa tecnica, lo status di figlio così acquisito oltrepassa un confine e arriva in un altro. Si è deciso, per tali ragioni, di analizzare la disciplina di alcuni tra i paesi più evoluti in tema di gestazione per altri, dove questa pratica si svolge da anni e con stringenti e tassativi parametri normativi, e metterla a confronto con quelle realtà, meno evolute e molto meno "democratiche", dove il dettato normativo è scarso e dai contorni confusi. Ad oggi il nostro ordinamento prevede soltanto il divieto della maternità surrogata in Italia lasciando senza disciplina alcuna un fenomeno che sta prendendo sempre più piede. Infatti rimane senza risposta il quesito in base al quale una volta che il figlio

è comunque nato da quella pratica vietata, come può essere tutelato? L'adozione in casi particolari, alla luce dell'evoluzione giurisprudenziale, non è una tutela completa perché fa nascere una discriminazione tra quei figli che sono nati senza la maternità surrogata. A questo punto si attende fiduciosi un intervento legislativo che colmi in vuoto di tutela pesantemente insistente nel nostro Paese.

Leihmutterchaft Nora Bertschi, 2014-02-17 In jüngster Zeit haben sich Praktiken und Techniken zur Erfüllung des Kinderwunsches gewandelt. Dabei scheint es nicht mehr so klar, wer die Eltern sind. Angesichts zunehmender Pluralisierung der Lebensformen und neuen fortpflanzungsmedizinischen Möglichkeiten wird immer häufiger vom klassischen Familienmodell mit einer Mutter und einem Vater abgewichen. Heute muss zwischen sozialer, biologischer und genetischer Elternschaft unterschieden werden. Diese neuen Familienkonstellationen mit einer Vielzahl von Beteiligten stehen im Widerspruch zu bisherigen Vorstellungen von Familie und Verwandtschaft. Im Fall der Leihmutterchaft, bei der eine Frau für Dritte ein Kind austrägt und ihnen dieses nach der Geburt übergibt, werden bisherige Konzepte der Mutterchaft infrage gestellt. Schwangerschaft und Geburt sind hier nicht natürlich mit Mutterchaft verbunden. Die Institution der Leihmutterchaft führt auch im Recht zu Verwirrung. Die Klärung der rechtlichen Elternschaft etwa wirft besonders in internationalen Sachverhalten komplexe Problemstellungen auf. Vom rechtlichen Kindesverhältnis wiederum hängen weitere Bereiche ab, etwa die Staatsangehörigkeit oder das Aufenthaltsrecht der betroffenen Kinder, die es dringend zu klären gilt. Die vorliegende Arbeit nimmt sich diesen, bisher ungelösten Fragen an und untersucht die Institution der Leihmutterchaft, wie sie in der Schweiz, den USA und Indien geregelt und praktiziert wird.

Mutterchaft für Dritte Silvia Dietrich, 1989 Im Zuge der Entwicklung der medizinischen Reproduktionstechniken hat die Frage nach der rechtlichen Beurteilung der Leihmutterchaft stark an Aktualität gewonnen. Die vorliegende Arbeit nimmt zu den wichtigsten Rechtsproblemen der Mutterchaft für Dritte wie Statusfragen, Folgen der Zuordnung, Wirksamkeit von Leihmutterverträgen und Zulässigkeit von Leihmuttervermittlungsagenturen Stellung. Neben einem Vergleich mit den Rechtsordnungen der USA, Australiens, Großbritanniens und Frankreichs werden zur Fundierung der Ergebnisse entwicklungspsychologische und familiensoziologische Erkenntnisse sowie Rechtstatsachen herangezogen. Wesentliche Aussage der Arbeit ist, daß Leihmutterchaft dem Kindeswohl im Regelfall abträglich ist. Deshalb sollte einer Institutionalisierung der Mutterchaft für Dritte mit Hilfe der Präventivwirkungen des Zivilrechts und ergänzender Rahmenregelungen entgegengewirkt werden.

Towards a Professional Model of Surrogate Motherhood Ruth Walker, Liezl van Zyl, 2017-07-10 This book delves deeply into modern surrogacy arrangements, responding to both practical and ethical critiques by offering a radically new model for surrogate motherhood. Current practice distinguishes between two models of surrogacy - the altruistic (unpaid) model and the commercial (paid) model, both of which present social, ethical, and conceptual challenges. This book proposes a novel

arrangement for surrogate motherhood – the professional model. Inspired by professions, such as nursing, teaching, and social work, the professional model acknowledges the caring motives that surrogate mothers have while at the same time compensating them for their work. Walker and Van Zyl adopt an evidence-based approach to explain that the professional model enables trust between intended parents and surrogates, provides professional support at every stage of the relationship, affords legal protections against exploitation and commodification, and recognizes the rights and interests of all parties, including the intended baby. The model applies to both transnational and domestic surrogacy and will be of great interest to policy makers, social researchers, bioethicists, legal scholars, fertility professionals, clinicians, and graduate students in psychology, philosophy, medicine and ethics.

**Muttermaschine** Gena Corea, 1986

*Surrogate Motherhood* Rachel Cook, Shelley Day Sclater, Felicity Kaganas, 2003-06-24 This book is a multi-disciplinary collection of essays from leading researchers and practitioners, exploring legal, ethical, social, psychological and practical aspects of surrogate motherhood in Britain and abroad. It highlights the common themes that characterise debates across countries as well as exploring the many differences in policies and practices. Surrogacy raises questions for medical and welfare practitioners and dilemmas for policy makers as well as ethical issues of concern to society as a whole. The international perspective adopted by this book offers an opportunity for questions of law, policy and practice to be shared and debated across countries. The book links contemporary views from research and practice with broader social issues and bio-ethical debates. The book will be of interest to an international audience of academics and their students (in law, social policy, reproductive medicine, psychology and sociology), practitioners (including doctors, counsellors, midwives and welfare professionals) as well as those involved in policy-making and implementation.

*Grenzenloser Kinderwunsch* Nadine Lederer, 2016 Inhalt: Abstammung - Fortpflanzungstourismus - Adoption von Leihmutterchaftskindern - Sittenwidrigkeit von Leihmutterchaftsvereinbarungen - Internationales Privat- und Verfahrensrecht - Ordre public-Vorbehalt - Kindeswohl - Anerkennung von Personenstandsurkunden - Haager Konferenz für Internationales Privatrecht.

**Surrogate Motherhood** Martha A. Field, 1990-10 Martha Field examines the myriad legal complexities that today enmesh surrogate motherhood, and also looks beyond existing legal rules to ask what society wants from surrogacy.

*Fundamental legal problems of surrogate motherhood. Global perspective.* Piotr Mostowik, Marta Soniewicka, Nathalie Baillon-Wirtz, Mirosław Boruta, Justyna Holocher, Błażej Kmiecik, Ewa Kozerska, Tomasz Scheffler, Katażyna Mikša, Natalja Žitkevitiš, Avishalom Westreich, Andrea Nicolussi, Andrei A. Novikov, Carlos Martínez de Aguirre, Monika Wałachowska, Alla Anatoliivna Herts, Witold Borysiak, Agnieszka Czubik, Łukasz Mirocha, Agata Niżnik-Mucha, Aleksandra Dębowska, Marcin Sokołowski, Agnieszka Wedeł-Domaradzka, Olga Bobrzyńska, Dita Frintová, Ondřej Frinta, Janusz Gajda, Rafał

Łukasiewicz, Elena Júdová, Martin Píry, Wojciech Lis, Piotr Telusiewicz, Michał Wojewoda, Edyta Figura-Góralczyk, Radosław Flejszar, Piotr Rodziewicz, Konrad Burdziak, Łukasz Pohl, Wojciech Górowski, Agnieszka Laber, Dominik Zająć, Karolina Sęk, 2019-07-01 The observation that *mater semper certa est* remains accurate under most legal systems in the world. Maternity is defined as the personal status (filiation) of a woman who gave birth to a child. It is typically complemented by the fatherhood of the man from whom the child biologically originates (often *quem nuptiae demonstrant*). However, in some states, a kind of competitive way of acquiring the legal status of mother and father (or “homosexual parents A and B”) has been introduced via concluding a contract with a surrogate mother. Usually with a woman coming from poorer societies and with the assistance of professional intermediaries and organizers. The postulates to change substantive family law, or at least to recognize the effects of foreign law and procedures (a kind of “procreative tourism”), appear nowadays also in states generally prohibiting surrogate motherhood. The issues discussed in this volume concern both national law and international court cases. Recent examples include the opinion of the European Court of Human Rights of 10 April 2019 initiated by the French Cour de cassation, the judgement of the German Bundesgerichtshof of 20 March 2019, and dilemmas of Polish administrative courts. Focusing on the international perspective, the present volume as well as an accompanying book in Polish are the results of the international cooperation of over 30 experts from both member states and observer states of the Council of Europe. The monograph is structured “from the general to the detail” and includes a comprehensive view as well: from the issues of philosophy and sociology of law, to human rights standards of national constitutions and international agreements, to principles of *ordre public* of forum and their protection with measures of private, public, and penal law. This allows readers, including legislators and judges, the better understanding of the fundamental legal problems that surrogate motherhood brings, both in states where law creates them in a narrower or wider extent, and in other countries of the world, to which these problems can be imported with the movement of people and with *de lege lata* and *de lege ferenda* postulates.

International Surrogacy Arrangements Katarina Trimmings, Paul Beaumont, 2013-05-17 This book addresses the pressing challenges presented by the proliferation of international surrogacy arrangements. The book is divided into three parts. Part 1 contains National Reports on domestic approaches to surrogacy from Argentina, Australia, Belgium, Brazil, China, Czech Republic, France, Germany, Greece, Guatemala, Hungary, India, Ireland, Israel, Mexico, Netherlands, New Zealand, Russia, South Africa, Spain, Ukraine, United Kingdom, United States and Venezuela. The reports are written by domestic specialists, each demonstrating the difficult and urgent problems arising in many States as a result of international surrogacy arrangements. These National Reports not only provide the backdrop to the authors' proposed model regulation appearing in Part 3, but serve as a key resource for scrutinising the most worrying incompatibilities in national laws on surrogacy. Part 2 of the book contains two contributions that provide international perspectives on cross-border surrogacy such as the 'human rights' perspective. Part 3 contains a General Report, which consists of an analysis of the National Reports appearing in Part

1, together with a proposed model of regulation of international surrogacy arrangements at the international level written by the two co-editors, Paul Beaumont and Katarina Trimmings. The research undertaken by Katarina Trimmings and Paul Beaumont from 2010 to 2012 was funded by the Nuffield Foundation.

*Leihmutterschaft im Internationalen Privat- und Verfahrensrecht* Konrad Duden, 2015-07-17 Immer mehr Deutsche lassen sich im Ausland von Leihmüttern Kinder austragen, die sie als eigene aufziehen wollen. Ist das Kind nach der Rückkehr dann aber rechtlich ihr Kind? Die Leihmutterschaft wird heftig diskutiert. In Literatur und Rechtsprechung wurden dabei bisher die Grund- und Menschenrechte des Kindes häufig vernachlässigt. Das will dieses Buch ändern.

Full Surrogacy Now Sophie Lewis, 2021-08-31 Where pregnancy is concerned, let every pregnancy be for everyone. Let us overthrow, in short, the “family” The surrogacy industry is estimated to be worth over \$1 billion a year, and many of its surrogates around the world work in terrible conditions—deception, wage-stealing and money skimming are rife; adequate medical care is horrifyingly absent; and informed consent is depressingly rare. In *Full Surrogacy Now*, Sophie Lewis brings a fresh and unique perspective to the topic. Often, we think of surrogacy as the problem, but, *Full Surrogacy Now* argues, we need more surrogacy, not less! Rather than looking at surrogacy through a legal lens, Lewis argues that the needs and protection of surrogates should be put front and center. Their relationship to the babies they gestate must be rethought, as part of a move to recognize that reproduction is productive work. Only then can we begin to break down our assumptions that children “belong” to those whose genetics they share. Taking collective responsibility for children would radically transform our notions of kinship, helping us to see that it always takes a village to make a baby.

**Wombs in Labor** Amrita Pande, 2014-09-30 Surrogacy is India’s new form of outsourcing, as couples from all over the world hire Indian women to bear their children for a fraction of the cost of surrogacy elsewhere with little to no government oversight or regulation. In the first detailed ethnography of India’s surrogacy industry, Amrita Pande visits clinics and hostels and speaks with surrogates and their families, clients, doctors, brokers, and hostel matrons in order to shed light on this burgeoning business and the experiences of the laborers within it. From recruitment to training to delivery, Pande’s research focuses on how reproduction meets production in surrogacy and how this reflects characteristics of India’s larger labor system. Pande’s interviews prove surrogates are more than victims of disciplinary power, and she examines the strategies they deploy to retain control over their bodies and reproductive futures. While some women are coerced into the business by their families, others negotiate with clients and their clinics to gain access to technologies and networks otherwise closed to them. As surrogates, the women Pande meets get to know and make the most of advanced medical discoveries. They traverse borders and straddle relationships that test the boundaries of race, class, religion, and nationality. Those who focus on the inherent inequalities of India’s surrogacy industry believe the practice should be either banned or strictly regulated. Pande instead advocates for a better understanding of this complex labor market, envisioning an

international model of fair-trade surrogacy founded on openness and transparency in all business, medical, and emotional exchanges.

**Die zivilrechtlichen Folgen der entgeltlichen Tragemutterschaft** Wolfhard Küppers, 1989 Die Probleme der sogenannten «Leihmutterchaft» sind in rechtlicher Hinsicht noch weitgehend ungeklärt. Die Arbeit setzt sich mit den familienrechtlichen und schuldrechtlichen Aspekten der entgeltlichen Tragemutterchaft auseinander, wobei die Problematik der Wirksamkeit eines Tragemutterchaftsvertrages auch im Hinblick auf mögliche Grundrechtsverstöße untersucht wird. Ein Schwerpunkt der Arbeit liegt bei der Frage der statusrechtlichen Zuordnung des Kindes. Der Verfasser sieht in Ehe, Schwangerschaft und Geburt die entscheidenden Kriterien für die Zuordnung des Kindes zur Mutter. Bevor abschließend auf rechtspolitische Fragestellungen eingegangen wird, setzt sich das Werk intensiv mit den aus dem Verhältnis Tragemutter-Wunscheltern-Kind denkbarerweise resultierenden schuldrechtlichen Ansprüchen auseinander.

**Grenzenloser Kinderwunsch** Nadine Lederer, 2016 Die Leihmutterchaft wirft schwierige rechtliche Fragen auf, insbesondere mit Blick auf die Abstammung der Kinder. Das Kindeswohl ist in diesen Fällen maßgeblich zu berücksichtigen. Auf internationaler Ebene besteht dringender Handlungsbedarf. Die Arbeiten der Haager Konferenz für Internationales Privatrecht erscheinen besonders vielversprechend.

Research Handbook on Surrogacy and the Law Katarina Trimmings, Sharon Shakargy, Claire Achmad, 2024-03-14 This essential Research Handbook provides a multifaceted exploration of surrogacy and the law, examining a variety of critical yet under-researched perspectives including globalisation, power, gender, sexual orientation, genetics, human rights and family relations. It covers four distinct topics: surrogacy and rights, the interplay between surrogacy and different areas of the law, cross-border aspects, and regional perspectives.

Surrogate Motherhood Lawrence O. Gostin, 1990-05-22 ... glimpses of intriguing changes in social arrangements and cultural understandings in relation to surrogacy. Disturbing motherhood indeed. -- New Scientist Larry Gostin has put together the definitive collection of essays on one of the most perplexing and titillating topics in contemporary medical ethics. This book includes contributions from some of the leading scholars on the legal, ethical, and social aspects of surrogacy, as well as several critical perspectives on the famous Baby M case -- must reading for understanding the surrogate motherhood controversy. -- Robert M. Veatch Highly recommended... -- Choice ... a valuable resource for those concerned with an exceedingly difficult ethical, legal, and political problem. -- Ethics There is a wealth of information here on the current 'status questionis' in the United States, and anyone involved in the surrogacy debate, in the U.S. or otherwise, will find working through this material very worthwhile. -- Canadian Philosophical Review ... an excellent sample of some of the best and most varied thinking so far on the numerous conceptual, moral, social, and policy questions raised by contract motherhood. -- The Journal of Clinical Ethics

**Handbook of Gestational Surrogacy** E. Scott Sills,2016-10-06 There is an increasing demand for gestational surrogacy in current reproductive medicine practice. Infertile couples often engage overseas surrogates, which increases the risk for legal and ethical complications. This book provides clinical guidance on the provision of gestational surrogacy on a worldwide basis, with brief summaries of the legal position within countries where it is offered. This volume provides a comprehensive overview of surrogacy for clinicians, counsellors, attorneys, legislators and anyone interested in reproductive health policy by filling an immediate niche as a resource for those interested in third-party reproductive treatments.

**Muttermaschine** Gena Corea,1988-01

*Laws and Policies on Surrogacy* Harleen Kaur,2021-09-27 This book is an essential guide on surrogacy, discussing various legal issues that arise in surrogacy cases. It provides a comprehensive coverage to various issues pertaining to surrogacy arrangements due to failure to meet the needs of those involved in surrogacy, be it the intended parents or the surrogate mother, with special emphasis on the most vulnerable party -- the surrogate child. In the wake of this existing imbalance, the call to reform the practice of surrogacy has also increased. The book provides a comprehensive coverage to various laws and policy regulations in existence dealing with surrogacy, and unravels the latest trends and developments happening around the world as surrogacy gains importance. The international perspectives highlight policies and practices being adopted and followed by various nations with regard to surrogacy regulation and associated parenthood rules. This book also analyses some of the significant cross-border disputes revolving around surrogacy, and explores briefly the jurisprudence of the European Court of Human Rights on matters of parentage and citizenship for children born of trans-national surrogacy with special reference to the prospects of a convention on international surrogacy currently being studied by The Hague Conference on Private International Law. Further, it highlights the issues and questions relating to surrogacy arrangements that are so far unresolved and unanswered and suggests measures for improvements to the existing proposed surrogacy legislation in India and need for uniform international regulation. The book is a great resource for legal practitioners, academics, students, policy-makers, infertility clinics, and charitable organizations working on this issue.

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