



BioLaw Journal

Rivista di BioDiritto

CALL FOR PAPERS

Rivista di Biodiritto – Biolaw Journal



2/2016



Issues about Surrogacy

The Editorial Board, composed of Carlo Casonato, Roberto Bin e Antonio D'Aloia, has the pleasure of launching, in occasion of the seventh issue of the Journal, a call for papers dedicated to the theme of surrogacy.

WHY THIS CALL?

Surrogacy is a very popular issue in the present time and it raises ethical and legal questions calling for urgent answers. Technology did not create a new problem. Rather, it highlighted the ethical and legal profiles of a very ancient affair: the carrying of a pregnancy by a woman who delivers the baby for parents unable to conceive by themselves.

Assisted reproductive technologies (ARTs) created in fact an extremely wide panorama in which some very different forms of surrogacy appear.

Embryos can be created either using the intended father's sperm and intended mother's ova or third parties' gametes. Otherwise, gametes could come one from inside the commissioning couple and the other from a third donor. Moreover, the implied ovum could be that of the surrogate mother (traditional surrogacy). Reasoning in the context of same-sex unions, this tableau becomes even more complex.

According to the different hypotheses, links among involved subjects change: both commissioning parents could be genetically linked to the child; just one of them could be or none, when third parties are involved in gametes' donation. The surrogate mother will be linked to the baby in the case of traditional surrogacy only.

The case of intended parents (gay or heterosexual) achieving the effects of surrogacy by any form of adoption is not included among the previous examples. This hypothesis, traditionally regulated, can only be considered relevant for the purpose of this call in relation to the proximity with the case of an embryo created with gametes both coming from external donors.

KEY QUESTIONS OF THE CALL

A. Surrogacy and Equality

The aim of the call is, first of all, to investigate the relationship between the regulation of surrogacy and the **principle of equality**. Given that the above-mentioned possibilities – both in the case of heterosexual couples and in homosexual ones – are deeply different (for example, with reference to genetic and biological links), would it be reasonable and compatible with the principle of equality to offer the same legal treatment to all cases of surrogacy? Is there any **ground to differentiate** the legal regime depending on the type of surrogacy at stake? And, in this last case, to which point would it be appropriate to set **limits and boundaries**? Where to draw the line between different rules and regulations?



In which cases could the legal order recognize surrogacy arrangements?

And when and how can the recognition of the intended parents as the legal parents be limited, either before or after the birth of the child? On the contrary, in which cases should surrogacy agreements and related practices be criminalized? On which grounds?

For the purposes of the present call, the distinction between same-sex or heterosexual couples is relevant just within the frame of previous questions.

B. The legal relationship with the surrogate

A second set of issues concerns **negotiations** and **legal agreements** with the surrogate. Should surrogacy be understood as a completely free donation or should it be considered as a legal agreement? In other words, is the distinction **between commercial** and **altruistic** surrogacy relevant? Obviously it is quite relevant from an ethical point of view, but what about a strictly legal perspective?

In the context of social inequality and economic dependency, the call suggests also to investigate these issues from a wider perspective, beyond the narrow contemporary issues.

For instance, consideration could be given to the traditional practice to hire a wet-nurse, which was quite common among the high society until a few decades ago: was it so deeply different than surrogacy from a moral or ethical point of view?

C. The best interest of the child

The **best interest of the child** has been adopted as a key argument in the debate and has been used as a central principle by national and international courts dealing with the legal conflicts connected to surrogacy.

For the purposes of the present call, a discussion on the relevance of the best-interest of the child principle should be elaborated with particular reference to two general aspects:

- whether the assessment of the best interest of the child is extended to the evaluation of the socio-economic context in which the child will be grown up, as opposed to the one in which she is born;
- whether courts are keen on taking into account also other interests, such as the solidity of the intended family, the psychological consequences of infertility or, on the other side, the relevance of genetic links or the emotional bonds with the surrogate mother or the genetic parents.

WHO CAN PARTECIPATE AND HOW?

The call welcomes contribution not only from all legal disciplines, but also from other sciences, such as ethics and philosophy, history, sociology, psychology, economics and so on.



Submitted papers will be anonymously evaluated by an ad hoc scientific committee and selected for publication on the Journal also on the basis of their **touch of originality**.

Manuscripts shall not exceed 80.000 characters (spaces included) and could be submitted in Italian, English, Spanish or French (an abstract in English is required). Author guidelines are available at <http://www.biodiritto.org/ojs/index.php?journal=biolaw&page=about&op=submissions#authorGuidelines>.

The deadline for electronic submission to biodiritto@gmail.com is **1st May 2016**.

