

[7]

Perfecting adoption? Reflections on the rise of commercial offshore surrogacy and family formation in Australia

Denise Cuthbert and Patricia Fronck

CURRENT INDICATIONS ARE THAT increasing numbers of Australians are moving to commercial offshore surrogacy arrangements—in places including India and Thailand—to satisfy their desire to become parents. This is in line with international trends (Rotabi & Bromfield, 2012). This new phenomenon raises issues of concern to researchers, particularly related to the position of women who act as surrogate mothers (Bailey, 2011; Crozier & Martin, 2012; Deonandan, Green, & van Beinum, 2012). It also raises practice issues for professionals such as lawyers and social workers that are yet to be fully charted. In this chapter, we draw on our experience and perspectives as researchers in the field of adoption, focusing on intercountry adoption, to reflect on the rise of commercial offshore surrogacy as a mode of family formation.

We argue that commercial offshore surrogacy is usefully framed as the latest shift in a highly dynamic market for accessing children for the purposes of family formation. This market has seen several shifts and transformations, at least since the introduction of legislated adoption in Australia in the early decades of the twentieth century. We suggest that insights into commercial offshore surrogacy may be gained by comparing this development with the rise of intercountry adoption in Australia in the mid-1970s, which represented a comparable offshore shift in the market for children when Australians responded to a crisis in the supply of local children available for adoption by sourcing children from overseas. By examining the rise of commercial offshore surrogacy alongside the rise of intercountry adoption some 40 years ago, this chapter highlights a number of characteristics of the current shift in the market in children which, we argue, warrants further close attention by researchers, policy-makers and legislators. It also helps us to see that, while a new phenomenon, commercial offshore surrogacy has historical antecedents and these histories provide us with lessons that we need to heed.

A note on the market terminology

Our research into intercountry adoption and reflections on offshore surrogacy lead us to characterise the exchange and now commercial production of children for the purposes of family formation as a “market” for children that adapts in response to pressures of supply and demand, which may be affected in varying ways by attempts to regulate and control these forces and changing social dynamics (Cuthbert, Spark & Murphy, 2010; Quartly & Swain, 2012; Quartly, Swain, & Cuthbert, 2013). This is not to deny the earnest desires of those seeking children with whom to form families, either through adoption or surrogacy. Nor is it to pass any comment on the quality of parenting provided by adoptive or commissioning parents; nor the outcomes of those children who are exchanged or commissioned in such arrangements. Rather, this characterisation highlights the child (whether sought for adoption or commissioned from a surrogate) as an object of exchange. The market metaphor also highlights the power and influence of the people whose children are taken to be raised by others or who bear children for others, relative to those who acquire and raise them. (Briggs, 2012; Smolin, 2004, 2007).

Inequalities in wealth and power have always underwritten the exchange of children for adoption, and continue to underwrite the production of children in surrogacy arrangements. The children of the affluent are not and never have been exchanged to be raised by the poor. The shift from intercountry adoption to commercial offshore surrogacy does not change these political and economic dynamics, for all that it might, as we discuss below, offer apparently progressive and transformative possibilities for parenthood outside heterosexist norms of family formation in Australia. Women with other financial options available to them do not undertake the risky labour of gestation and child birth for the benefit of others to whom they are not connected through kinship. And, importantly, this risky labour is costed differently in the developing world than in advanced economies such as Australia, where even if it were legal, commercial surrogacy would cost many times more than it costs in countries such as India or Thailand.

Response to a market crisis: The rise of intercountry adoption

In the mid-1970s, Australian couples in search of adoptable infants in the local market faced a crisis. As documented elsewhere (Fronek, 2009; Marshall & McDonald, 2001; Quartly et al., 2013), a confluence of factors—including the 1973 Commonwealth Single Mother’s Benefit, the availability of the contraceptive pill, access to abortion in some states, and shifting social attitudes to extramarital sex and births—led to a sudden decline in the numbers of local babies available for adoption. For decades, Australian couples struggling with infertility could safely assume that adoption would provide the solution to their predicament. In the years before the advent of in-vitro fertilisation (IVF) in 1978 and other assisted reproductive technologies, adoption was the primary solution for infertility. Up to 10,000 infants, mostly born by single-mothers, were placed for adoption in the peak year of 1971–72. So, for many couples local adoption provided the answer to their prayers (Quartly et al., 2013).

As documented in the testimonies of the women who gave birth to babies who were removed from them and placed with adoptive families, and the findings of Commonwealth and state parliamentary inquiries into past adoption practices,¹ the pressures of this

¹ See Parliament of New South Wales, Legislative Council, Standing Committee on Social Issues (2000), Parliament of Tasmania, Joint Select Committee (1999), and Parliament of Australia, Senate, Community Affairs References Committee (2012) for the full reports of these inquiries.

demand led to the normalisation of regimes that sanctioned the exploitive and abusive treatment of mostly single mothers and their children in the service of an adoption industry geared to serve the interests of adoptive families. Further insight into the political force of this demand for babies and its capacity to push new sources of children for family formation is revealed in comments made by Alan Trounson, who worked with Carl Wood, one of the pioneers of IVF in Australia:

What had happened in the late '60s, is that abortion was made available to women, and so suddenly there were no babies ... for adoption. We had to develop something different because the physicians who were then treating women for infertility were being pressured much more to get a solution, and so IVF was born out of that particular need. (Trounson, cited in Donovan, 2011)

The first IVF baby was born in 1978. New markets for children also opened offshore from the mid-1970s. Eventually, both assisted reproductive technologies and sourcing of children overseas combined to produce the commercial offshore surrogacy market.

While the humanitarian rescue of children from war zones was a recurrent feature of warfare throughout the twentieth century (Quartly et al., 2013), the mass removal of children for the purposes of adoption was enabled in Australia by a further confluence of events, which included the growing shortage of children for adoption on the local market, the war in Vietnam, and access to relatively cheap long-distance air travel. Following a steady stream of privately arranged adoptions of Cambodian and Vietnamese children from the late 1960s (Rosenwald, 2009), it was the mass airlift of “war orphans” from Saigon in April 1975 that gripped the attention of the Australian public and thrust the possibility of overseas adoptions into the popular imagination (Forkert, 2012; Fronek, 2012). In the aftermath of Saigon’s “Operation Babylift”, authorities in Australian states and territories were besieged with requests from Australians seeking overseas babies for adoption. Parent groups became organised and some took matters into their own hands and organised visits to countries across Southeast Asia, and elsewhere, in an effort to source adoptable children (Quartly et al., 2013).

The market shifted much more quickly than legislative frameworks or professional practice in the field and for several years the Commonwealth and state and territory governments played “catch-up” in an attempt to regulate this new market for children (Fronek, 2009), which operated for some time without adequate regulation. Within a decade of Operation Babylift, intercountry adoption services were established in all Australian states and territories, and this mode of adoption became a normalised route to family formation for many Australian couples. Over time, intercountry adoption was no longer framed as an extraordinary response to children in crisis, but normalised as a destination—usually the last resort after failed IVF treatments—on the route to alternative family formation.

Déjà vu? Moving offshore for Australian family formation

In March 2009, *The Age* newspaper profiled the first known Australian couple, identified as Matthew and Rachel, to have undertaken a commercial offshore surrogacy arrangement in India (Gray, 2009). Since 2009, many others have followed. Data indicate that this is a rapidly growing phenomenon, outstripping intercountry adoption as a way of making families for Australians unable to conceive naturally or through

assisted reproductive technologies, and providing a route to family formation for those who are socially infertile—a group that does not qualify for adoption, including older adults, single people and gay couples. As discussed further below, commercial surrogacy (outlawed in Australia) is emerging as the preferred model. While legally available and without the financial costs, altruistic surrogacy does not have the same appeal to prospective parents. One obvious challenge is the understandable difficulty in finding Australian women prepared altruistically to bear children for other people to raise, but it also appears the commercial element in offshore arrangements forms part of their appeal.

The Age reported in June 2012 that the numbers of commercial offshore surrogate births to Australian commissioning parents had grown dramatically and rapidly: from 97 births in 2009 to 269 in 2011, and as many as 254 in the first half of 2012 alone (Whitelaw, 2012). ABC's news analysis television program, *Lateline*, reported in March 2013 that nearly 400 babies had been born to Australian parents by Indian surrogates in 2011 (Brewster, 2013). By contrast, 2011–12 figures on adoption in Australia from the Australian Institute of Health and Welfare (AIHW, 2012) show the continued decline of both domestic and intercountry adoption in Australia, registering a 78% decline over 25 years. In 2011–12, Australia registered its lowest number of finalised adoptions with 333, a decrease from the total of the previous financial year, 387. While nearly 50% of all adoptions are intercountry, these numbers continue to decline, from 215 in 2010–11, to 149 in 2011–12. Notably, both numbers fall short of the reported 254 births via commercial offshore surrogacy for just six months of 2012, and the 400 surrogate births in 2011. While intercountry adoptions have exceeded local adoptions in Australia for more than a decade, evidence within Australia and worldwide suggests that this mode of family formation is in decline (AIHW, 2012; Selman, 2012). With the decline in the numbers of children available for adoption and no decline in the demand for children, commercial offshore surrogacy provides another urgently needed source of children.

For Matthew, Rachel and hundreds like them, the move to commercial offshore surrogacy for family formation follows either years of failed attempts at conceiving a child unassisted and through IVF, and waiting for a child through what they call the “failed system” of intercountry adoption; or is undertaken because of ineligibility to adopt within Australian legislated adoption systems. Commercial offshore surrogacy organised through a dedicated clinic in Mumbai, India, delivered a baby to Matthew and Rachel within a year, which intercountry adoption was unable to do within a projected waiting period of six and a half years (Gray, 2009).

The assessment of intercountry adoption within Australia as a “failed system” arises from it being viewed within a family formation framework, and seen primarily as a service for childless adults. However, this is only one way to view intercountry adoption. Properly, and in line with child-focused approaches, it should be seen as one option on a continuum of child care or placement options; generally the last resort when family preservation and other efforts to keep the child within its family and community of origin fail (Cuthbert et al., 2010; Fronek & Cuthbert, 2012a, 2012b). As evidenced in the 2005 parliamentary inquiry into intercountry adoption in Australia, many Australians view intercountry adoption primarily as a *service* for them, and its success or failure is measured in terms of its capacity to deliver them a child within an acceptable time frame (Parliament of Australia, House of Representatives Standing Committee on Family and Human Services, 2005).

New markets, new models

Parallels and some telling differences emerge when the current rise in commercial offshore surrogacy is compared with the rise of intercountry adoption in Australia in the mid-1970s. Both are demand-driven phenomena, prompted by a decline in available children in existing markets and enabled by a range of new technologies and new social circumstances. What accessible long-distance air travel did for the development of intercountry adoption, the Internet and assisted reproductive technologies have done for commercial offshore surrogacy. The trade in children for family formation now operates at a global level of trade in ova and sperm. These technological and biomedical possibilities then combine with much older factors of poverty and disadvantage in the sourcing of women to bear these web-sourced, technologically assembled embryos.

In the mid-1970s and now, the continuing decline in the numbers of babies available for adoption has led not simply to a shift in the market but also, we argue, to the emergence of a new market model. In both cases, the downturn in supply has been described as a “crisis” or as a “failed system” requiring urgent action to meet the needs of adults for access to children (as distinct from the needs of the children themselves). In both cases, the demand for children forged a new market that has both reflected and played some part in shifting prevalent views about family. The move to intercountry adoption from the mid-1970s made adoption visible in ways that it wasn’t previously, and challenged monocultural views of both family and nation in a period when Australia was dismantling the White Australia policy and moving towards multiculturalism.

In the 1960s, the “success” of adoptive placements was measured in terms of its invisibility, which was assured through increasing secrecy and professional practices such as matching (e.g., where a blond infant would be “matched” with fair adoptive parents) (Marshall & McDonald, 2001). The “seamless” insertion of the adopted child into the adoptive family was upheld by adoption professionals as the pre-condition for successful adoption—successful because invisible. This invisibility was further ensured by the secrecy provisions introduced in successive reforms to legislation from the mid-twentieth century (Quartly et al., 2013). By contrast, the intercountry adoptive family visibly declares itself to be a family formed outside biology and across racial and cultural lines—the family formed through intercountry adoption makes adoption visible. Further, early intercountry adoption challenged then prevalent views about what constitutes an adoptable child, what constitutes a family and what constitutes an Australian citizen, thus expanding received definitions and assumptions across all of these fronts.

Similarly, the growing numbers of commercial offshore surrogacy arrangements are currently challenging and seeking to revise received orthodoxies about family and parenthood. As we discuss below, a key market for offshore surrogacy arrangements is gay male couples, a category expressly excluded from adoption in most Australian states and territories. The inclusion of gay and single people within the category of “parent” represents a challenge to dominant heterosexual norms, and to the concept of family as being the preserve of this norm (Pringle, 2004). Thus, where intercountry adoption may be seen to have expanded the definition of the adoptable child within the then monocultural norms of Australian society, family formation through commercial offshore surrogacy has contributed to a shift in the understanding of who is eligible to parent, to include individuals who by reason of age, marital status or sexual orientation have formerly been excluded from heterosexist norms of parenthood and family. This has had the effect of placing the right to parent—over and above the right of children to family-

based care—as of central concern in surrogacy debates in Australia, a point to which we return (Riggs & Due, 2010).

On the money ...

The history of legislated adoption in Australia—from the first decades of the 20th century to the commencement of the adoption reform movement that began in the 1980s and continued over the next two decades across all Australian states and territories (Quartly et al., 2013)—was propelled on the part of legislators by two key factors. The first was the desire to curtail or at least regulate commercially-based markets in babies and children. The second was the desire to provide increasingly greater levels of security of possession of the child, and confidentiality for the adoptive parents. The legislative distaste for commercial baby markets, where parties (whether parents or baby brokers) profit from the exchange of children, reflects deeply held social values and the assumption that human life is not to be subject to trade. For the period from the 1920s to the mid-1970s, legislated adoption was the dominant mode of alternative family formation (although children continued to be exchanged between families informally), and the legislation worked mostly, but not entirely, to keep commercial elements out of the process (Quartly et al., 2013; Swain, 2012). With shifts in the market into activities not encompassed by adoption legislation—the move to intercountry adoption in the 1970s, and the current rise of commercial offshore surrogacy—the absence of a legislated framework for the activity has seen the re-emergence of commercial elements in child exchange.

Work in Australian legislatures from the 1980s, followed by the further restrictions imposed by the Hague Convention on Intercountry Adoption (1993), have resulted in a tightly controlled intercountry adoption market for Australian families. This has not entirely eliminated commercial elements operating in intercountry adoption, nor eliminated criminal activities such as the stealing of children for the adoption market, concerning which several cases have been exposed in Australia (Sara, 2009). Many adoption proponents consider the restrictions imposed by Australian legislators, which place barriers between needy couples and the children they seek to adopt, to be anti-adoption, inhumane and evidence of a “broken” system (Fronek, 2009).

Commercial offshore surrogacy is similar to the early, unregulated intercountry adoption market in some respects, but in others it is very different. The issue of the transparency of the commercial aspect of the transaction is a case in point. Where those engaged in and promoting intercountry adoption are careful to distance themselves from any activity which might smack of baby-buying—with, for example, financial contributions to orphanages and overseas welfare organisations being framed as humanitarian assistance—commercial offshore surrogacy openly declares its commercial basis. Thus, the necessarily veiled commercial elements that persist in intercountry adoption are boldly unmasked in commercial offshore surrogacy. In our view, this commercial element is the basis of its appeal and, given prohibitions against commercial surrogacy in all Australian state and territory jurisdictions, almost ensures the pursuit of this activity offshore. Such is the power of market demand. Prospective adoptive parents face many hurdles that add uncertainty and complexity to the process. Reformed local adoption practices have led to 95% of all domestic adoptions in 2011–12 being “open” (AIHW, 2012), which means that exclusive possession of the adopted child is not guaranteed (Cuthbert et al., 2010). There are also inter-ethnic and other complications of intercountry adoption (Quartly et al., 2013), and the highly publicised complications that may arise from altruistic surrogacy (not to mention the challenges in finding someone willing to bear a

child only to give it away with no recompense). By contrast, the commercial nature of an offshore surrogacy transaction may be empowering for consumers (assuming they have the funds to enter the market). The exchange of money—not for the child *per se*, but for the reproductive labour and associated medical services that produce the child—brings clarity to the transaction and helps obviate potential emotional complications that may exist in altruistic surrogacy arrangements. Especially when brokered through an agency, commercial offshore surrogacy appears to offer both a market model and a surety of possession that are not available through other means.

Thus, as one mother of a child born through commercial offshore surrogacy writes:

I really believe this is a terrific opportunity for those who are on their last legs trying to have a family ... Speaking with a paediatrician recently, he actually thought offshore commercial surrogacy (gestational) was probably a better outcome than domestically, for the one reason, being, the Indian child bearer, would be so unlikely wanting to keep the child. The risk in the US and here of course, is the distinct possibility (it happens) that the birth mother suddenly decides she wants to retain the baby and nurture him/her. (Chrissie, “donnie1973”, 2009)

One prerogative of this transparently commercial market in children is the freedom of consumers to place their interests and needs at the centre of the enterprise. This is about the desire and need to parent; and, for many excluded from parenting by adoption legislation, it is also about securing the right to parent without the intrusion of the state and its demeaning regimes of screening: “If they feel like you aren’t the right kind of person or if you don’t have the right paperwork, you are knocked back. You are treated like a criminal from the start” (Sam Everingham cited in Whitelaw, 2012). Commercial offshore surrogacy offers the opportunity to experience parenthood—as adoption has in the past—but for a radically expanded category of parents: “The word is out to the gay community in Australia. You can be a father, you can pursue that dream of parenthood. Being gay is not a barrier” (Chiang-Cruise, 2011). Even with the recent announcements made by the Indian government restricting surrogacy services to married couples, it is likely that the commercial surrogacy destination of choice for non-traditional parents will simply move from India to Thailand or other countries (Ritchie, 2013).

Further, surrogacy allows for the possibility of a genetic connection between at least one commissioning parent and the commissioned child; something that adoption cannot offer, even with the legal fiction of the child being “as if” born to the adoptive parents.

Repositioning humanitarianism from child to surrogate mother

The transparency of the commercial basis of offshore surrogacy, both sanctioned and suppressed in modern legislated adoption regimes, occasions interesting shifts in the positioning of humanitarian motives in relation to this mode of family formation. Adoptive parents, especially those adopting children born into poverty, and their advocates are able to mobilise sentimental child rescue or humanitarian motives, sometimes to justify or balance their own profoundly personal desires for a “child of their own” (Murphy, Pinto, & Cuthbert, 2010, p. 147). Such motives are inconsistent with surrogacy, as the transaction with the surrogate mother brings the child into existence; there is no pre-existing child to be rescued from poverty, or a life on the street or in an institution.

Historically, adoption has been framed as a means of marrying private desires (for children) with a public good (providing a home for the child and relieving the state of the burden of its care). Surrogacy, by contrast, is a mode of family formation for which a corresponding potential public benefit is hard to identify. Especially for groups and individuals excluded from parenthood by heterosexist legal regimes, commercial surrogacy is the mechanism through which they can assert their equal rights to parent a child, and the commercial nature of the transaction becomes the mechanism for enacting this right to parent. The chief, and perhaps sole, beneficiaries of the surrogate transaction are the commissioning parents.

Nonetheless, we find that reconfigured altruistic or humanitarian effects are frequently claimed for commercial surrogacy arrangements. Rather than the commercial arrangement (especially as it operates in the developing world) being exploitive, as claimed by critics of surrogacy (Bailey, 2011; Crozier & Martin, 2012; Deonandan et al., 2012), proponents of commercial surrogacy suggest that the commerce itself enables humane outcomes. The cash paid by commissioning parents—in the case of Matthew and Rachel, “around \$10,000, the equivalent of five years’ wages” (Gray, 2009)—provides the surrogate mother with:

a chance for (Indian) women to give their children a chance for the future. The fee is worth between 10 and 15 years income ... It meant her family could get out of the slums and she could provide an education for her children. (Gleeson, 2011)

As reported in *The Western Australian* newspaper, President of Surrogacy Australia, Sam Everingham has refuted claims of exploitation and offers a liberation model for viewing the benefits of surrogacy for the surrogate mothers:

[Mr Everingham] disputed the trade exploited women in poor countries after fears were raised that husbands forced wives into surrogacy. But he said money from surrogacy could free a Thai or Indian woman from the cycle of poverty. (Bastians, 2012)

One woman, Kylie Gower, suffered the breakdown of her relationship in the quest to have children, but will raise as a single mother twins born in India through commercial surrogacy. She was convinced that surrogacy offers a “win-win” for all parties: “The surrogate can put her children through school and university, buy their home and hopefully fulfil some of her own dreams, so Kylie firmly believes it is a ‘win-win’ for all parties” (Simmons, 2013).

Notably, surrogacy advocates are silent on the risks to which the surrogate mother is exposed during the pregnancy and birth, with some mothers unwittingly subject to medical contracts that may sacrifice or jeopardise their lives for the sake of the child, the object of desire and of the commercial transaction (*Times of India*, 2012). Medical care may be extended to the mother only in her capacity as the “carrier” of the child.

It is interesting to speculate on this shift of declared humanitarian benefit from the child, who was formerly represented as being “rescued” from poverty and degradation through intercountry adoption, to the surrogate mother, who is represented as the beneficiary of opportunities not otherwise available to her or her children. The question is whether this has some relationship to perceptions of who is the most vulnerable party to these arrangements, with claims of humanitarian benefit being used to balance critical perceptions of exploitation. It is somewhat ironic that commercialised childbearing, with

questionable volition on the part of many surrogate mothers, is cast as “liberatory” by leading surrogacy advocate Sam Everingham. It may be that in the absence of the compelling “child rescue” narratives that have long been associated with intercountry adoption and indeed other modes of adoption, proponents of the attractiveness of commercial surrogacy for all that it offers those desperate for children, feel the need to modify the self-interest of their position by reference to the benefits the cash will bestow on the woman who bears their child. Alternatively, it may be that for all of its appeal to the consumer, the societal disapprobation of trade in human beings that attaches to the commercial aspects of surrogacy prompts the use of the humanitarian argument in order to neutralise the taint of baby trading.

Narratives of the liberating effects of the money earned through surrogacy may assist in the process of “closing the book” on the woman who bears the much desired child; well paid for her labour, she may be forgotten about by the commissioning parents who, through this transaction, secure a child with all the benefits formerly offered through pre-reform “clean-break” adoptions. Money, especially when quantified in amounts of five to fifteen years of earnings for the surrogate mothers, may also assist in soothing consciences and persuading all concerned that the mother and the commissioning parents are well and truly square.

Conclusion

We conclude that commercial offshore surrogacy represents the latest source of children in a shifting market driven by the needs of adults seeking children for family formation. This market is enabled by new technologies, underwritten by old inequalities and repeats patterns that we have seen before. We offer this view as a necessary corrective to pro-commercial surrogacy narratives, which identify it as both a progressive means of re-writing the heterosexist script of family formation and a liberatory opportunity for women in the developing world.

As with the rise of intercountry adoption in the 1970s, and successive changes to local adoption practices from the 1920s to 1980s, all of which worked to make adoption more attractive to adoptive parents at the expense of the other parties involved, the rise of commercial offshore surrogacy demonstrates the degree to which the market in children is continually driven and shaped by the needs and interests of those seeking children for family formation to which the needs and interests of other parties have historically been and continue to be subordinated. The emerging phenomenon of commercial offshore surrogacy offers commissioning parents all the benefits of “clean-break” adoptions (no longer an option in local Australian adoption due to reforms from the 1980s), the possibility of some genetic connection with the commissioned child (which is not offered by local or intercountry adoption), and the opportunity (now somewhat compromised by restrictions imposed by the Indian government) for an expanded demographic—that is, single people, gay couples, and individuals too old to qualify for adoption—to experience parenthood, which those who can afford to do so are now claiming as a right. Its location in developing countries also extends the attractiveness of intercountry adoption for many prospective parents of sourcing children from people who are comparatively powerless and distant (Smolin, 2004). For the moment, with consumers taking to this mode of family formation in large numbers in Australia and globally, commercial offshore surrogacy appears to be adoption perfected.

The move to commercial offshore surrogacy arises from the limitations of the now declining intercountry adoption market, characterised as a “failed system” by many

seeking children. It also significantly transforms the model for family formation offered by intercountry adoption by using commerce to bypass the restrictions and vetting protocols that apply in legislated adoption. Until the international community moves decisively to regulate this global trade, as the Hague Convention did for intercountry adoption (Hague Conference on Private International Law, 1993), it remains—with some fluctuation—a buyers' market. It may take at least 20 years for a critical mass of the children born in such arrangements to attain adulthood and start to raise the disquieting questions that history tells us they will ask in time. Like Australia's Indigenous Stolen Generations, adult domestic adoptees, persons conceived through assisted reproductive technologies and adult intercountry adoptees, as these children attain their majority they will have questions to ask about their identities, the mothers who bore them, the men and women who donated ova and sperm to whom they are genetically linked, and the policy and legislative regimes (or the absence of these) that allowed their births to take place without due regard to the inevitability of their future questions regarding identity, community and belonging. As has been noted in relation to the recent case of a girl born to an Indian surrogate mother and adopted by a convicted Israeli paedophile, the short-term and longer term welfare of children born in surrogacy arrangements are matters to which insufficient attention has been paid by national and international authorities (Pal, 2013; see also Brewster, 2012).

In Australia, over the last twenty years, a grim reckoning has been made of the legacies of pain, harm and confusion caused by children being separated, removed and dislocated from their families and communities, concerning which three national apologies have now been made (Cuthbert & Quartly, 2012, 2013; Fronek & Cuthbert, 2013). It remains to be seen how the legacy for these children will unfold. As a community, with special reference to the professionals now engaged in work facilitating surrogacy for family formation, we have responsibilities to these children, and the adults they will become. We need to be alert to the questions they will raise in the future and ensure we are prepared to answer them.

That it seemed like a good idea at the time is not an adequate response.

References

- Australian Institute of Health and Welfare. (2012). *Adoptions Australia 2011–12* (Child Welfare Series No. 54). Canberra: AIHW. Retrieved from <www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542368>.
- Bailey, A. (2011). Reconceiving surrogacy: Toward a reproductive justice account of Indian surrogacy. *Hypatia*, 26(4), 715–741. Retrieved from <papers.ssrn.com/sol3/papers.cfm?abstract_id=1518026>.
- Bastians, K. (2012, 22 November). Thai surrogate solves WA couple's baby blues. *The West Australian*. Retrieved from <tinyurl.com/n9ekw4e>.
- Brewster, K. (Reporter). (2013, 4 March). Australian babies may be left stateless. *Lateline* [Television news series]. Sydney: Australian Broadcasting Corporation. Retrieved from <www.abc.net.au/lateline/content/2013/s3703301.htm>.
- Briggs, L. (2012). *Somebody's children: The politics of transracial and transnational adoption*. Durham: Duke University Press.
- Chiang-Cruise, R. (2011, 6 November). [Australia]—Surrogacy for Gay Men Forum: Report [Web log message]. Retrieved from <gaydadaustralia.blogspot.com.au/2011_11_01_archive.html>.
- Crozier, G. K. D., & Martin, D. (2012). How to address the ethics of reproductive travel to developing countries: A comparison of national self-sufficiency and regulated market approaches. *Developing World Bioethics*, 12(1), 45–54. doi:10.1111/j.1471-8847.2012.00316.x
- Cuthbert, D., & Quartly, M. (2012). "Forced adoption" in the Australian story of national regret and apology. *Australian Journal of Politics and History*, 58(1), 82–96.

- Cuthbert, D., & Quartly, M. (2013). Forced child removal and the politics of national apologies in Australia. *American Indian Quarterly*, 37(1–2), 178–202. doi:10.1353/aiq.2013.0000
- Cuthbert, D., Spark, C., & Murphy, K. (2010). “That was then ... but this is now”: Historical perspectives on intercountry and domestic child adoption in Australian public policy. *Journal of Historical Sociology*, 23(3), 427–452.
- Deonandan, R., Green, S., & van Beinum, A. (2012). Ethical concerns for maternal surrogacy and reproductive tourism. *Journal of Medical Ethics*, 38(12), 742–745.
- donnie1973. (2009, 11 March). Surrogacy: India [Online forum comment]. Retrieved from <www.essentialbaby.com.au/forums/lofiversion/index.php/t654643.html>.
- Donovan, B. (Writer & Producer). (2011). The baby maker. *Australian Story* [Television series]. Sydney: Australian Broadcasting Corporation. Retrieved from <www.abc.net.au/austory/transcripts/s289014.htm>.
- Forkert, J. (2012). Refugees, orphans and a basket of cats: The politics of Operation Babylift. *Journal of Australian Studies*, 36(4), 427–444.
- Fronek, P. (2009). Intercountry adoption in Australia: A natural evolution or purposeful actions. In C. Sparkes & D. Cuthbert (Eds.), *Other people's children: Adoption in Australia* (pp. 37–54). North Melbourne, Vic.: Australian Scholarly Publishing.
- Fronek, P. (2012). Operation Babylift: Advancing intercountry adoption into Australia. *Journal of Australian Studies*, 36(4), 445–458.
- Fronek, P., & Cuthbert, D. (2012a). History repeating ... : Disaster-related intercountry adoption and psychosocial care of children. *Social Policy and Society*, 11(3), 429–442.
- Fronek, P., & Cuthbert, D. (2012b). The future of intercountry adoption: A paradigm shift for this century. *International Journal of Social Welfare*, 21(2), 215–224. doi:10.1111/j.1468–2397.2011.00799.x
- Fronek, P., & Cuthbert, D. (2013). Apologies for forced adoption practices: Implications for contemporary intercountry adoption. *Australian Social Work*. doi:10.1080/0312407X.2013.777970.
- Gleeson, A. (2011, 19 February). Surrogate in India answers prayers. *The Chronicle*. Retrieved from <www.thechronicle.com.au/news/surrogate-in-india-answers-their-prayers/774052/>.
- Gray, S. (2009, 11 March). Does it matter where babies come from? *The Age*, p. 21. Retrieved from <tinyurl.com/ma38tua>.
- Hague Conference on Private International Law. (1993). *Convention on Protection Of Children and Co-Operation in Respect of Intercountry Adoption*. The Hague: Hague Conference on Private International Law. Retrieved from <www.hcch.net/upload/conventions/txt33en.pdf>.
- Marshall, A., & McDonald, M. (2001). *The many-sided triangle: Adoption in Australia*. Melbourne: Melbourne University Press.
- Murphy, K., Pinto, S., & Cuthbert, D. (2010). “These infants are future Australians”: Making the nation through intercountry adoption. *Journal of Australian Studies*, 34(2), 141–161.
- Pal, D. (2013, 8 June). Israeli sex offender adopts girl: Why India needs to regulate surrogacy better. *FirstPost*. Retrieved from <tinyurl.com/qx772vb>.
- Parliament of Australia, House of Representatives, Standing Committee on Family and Human Services. (2005). *Overseas adoption in Australia: Report on the Inquiry into the Adoption of Children From Overseas*. Canberra: Parliament of Australia. Retrieved from <tinyurl.com/oxr83mx>.
- Parliament of Australia, Senate, Community Affairs References Committee. (2012). *Commonwealth contribution to former forced adoption policies and practices*. Canberra: Parliament of Australia. Retrieved from <tinyurl.com/lfw9we>.
- Parliament of New South Wales, Legislative Council, Standing Committee on Social Issues. (2000). *Releasing the past: Adoption practices 1950–1998. Final report* (Parliamentary Paper No. 600). Sydney: Parliament of NSW. Retrieved from <tinyurl.com/72554>.
- Parliament of Tasmania, Joint Select Committee. (1999). *Adoption and related services 1950–1988*. Hobart: Parliament of Tasmania. Retrieved from <www.parliament.tas.gov.au/Ctee/reports/adopt.pdf>.
- Pringle, R. (2004). Adoption in Britain: Reflexive modernity? *Australian Feminist Studies*, 19(44), 225–240.
- Quartly, M., & Swain, S. (2012). The market in children: Analysing the language of adoption in Australia. *History Australia*, 9(2), 69–89.
- Quartly, M., Swain, S., & Cuthbert, D. (2013). *The market in babies: Stories of Australian adoption*. Clayton: Monash University ePress.

- Riggs, D. W., & Due, C. (2010). Gay men, race privilege and surrogacy in India. *Outskirts: Feminisms along the edge*, 22. Retrieved from <www.outskirts.arts.uwa.edu.au/volumes/volume-22/riggs>.
- Ritchie, K. (Reporter) (2013, 13 April). Concerns as Australians turn to Thailand for surrogates. *ABC News* [Television news series]. Sydney: Australian Broadcasting Corporation. Retrieved from <www.abc.net.au/news/2013-04-13/thai-surrogacy-concerns/4624388>.
- Rosenwald, T. (2009). Ten thousand journeys: A brief demographic survey of intercountry adoption in Australia. In C. Spark & D. Cuthbert (Eds.), *Other people's children: Adoption in Australia* (pp. 197–206). North Melbourne, Vic.: Australian Scholarly Publishing.
- Rotabi, K. S., & Bromfield, N. F. (2012). The decline in intercountry adoptions and new practices of global surrogacy: Global exploitation and human rights concerns. *Affilia*, 27, 129–141.
- Sara, S. (Reporter) (2009, 24 February). Stolen and sold. *Foreign Correspondent* [Television news series]. Sydney: Australian Broadcasting Corporation. Retrieved from <www.abc.net.au/foreign/content/2009/s2493505.htm>.
- Selman, P. (2012). The global decline of intercountry adoption: What lies ahead? *Social Policy and Society*, 11(3), 381–397.
- Simmons, M. (2013, 10 June). Ready to be mummy. *Illawarra Mercury*. Retrieved from <www.illawarramercury.com.au/story/1561521/ready-to-be-mummy/?cs=35>.
- Smolin, D. M. (2004). Intercountry adoption as child trafficking. *Valparaiso University Law Review*, 39, 2.
- Smolin, D. M. (2007). Intercountry adoption and poverty: A human rights analysis. *Capital University Law Review*, 36.
- Swain, S. (2012). Market forces: Defining the adoptable child, 1860–1940. *Social Policy and Society*, 11(3), 399–414.
- Times of India. (2012, 17 May). Surrogate mother dies of complications. *Times of India*. Retrieved from <tinyurl.com/ns6vf67>.
- Whitelaw, A. (2012, 3 June). Hundreds pay for overseas surrogacy. *The Age*. Retrieved from <tinyurl.com/ovg4na8>.