

A word cloud centered around the word "surrogacy". The word "surrogacy" is the largest and most prominent, written in a dark green font. Surrounding it are various other words in different colors and sizes, including "ukraine" (yellow), "russia" (green), "england" (dark red), "australia" (orange), "locations" (green), "panama" (green), "legal" (green), "unitedstates" (green), "canada" (green), "india" (orange), "southafrica" (orange), and "thailand" (yellow). The words are arranged in a somewhat circular pattern around the central word.

australia **surrogacy** russia  
ukraine england  
locations unitedstates canada  
panama india southafrica  
legal thailand

# SURROGACY

“The process through which a woman intentionally becomes pregnant with a baby that she does not intend to keep. Rather, she is carrying the baby for its intended parent or parents, usually because the parent is unable to do so without her.”\*

\*Barbara Stark, *Transnational Surrogacy and International Human Rights Law*, ILSA Journal of International & Comparative Law, Vol. 18, No. 2 (2012)

# TYPES OF SURROGACY

- Traditional Surrogacy – A surrogate contributes her own egg, which is artificially inseminated with the donor's sperm.
- Gestational Surrogacy – A fertilized egg is implanted in the surrogate.

# International Commercial Surrogacy

Commercial Surrogacy – Term that describes a woman in one country who is financially compensated for carrying a baby to term for another party in another country. Gametes (egg and sperm) to be implanted in the surrogate may also be purchased.

# International Landscape

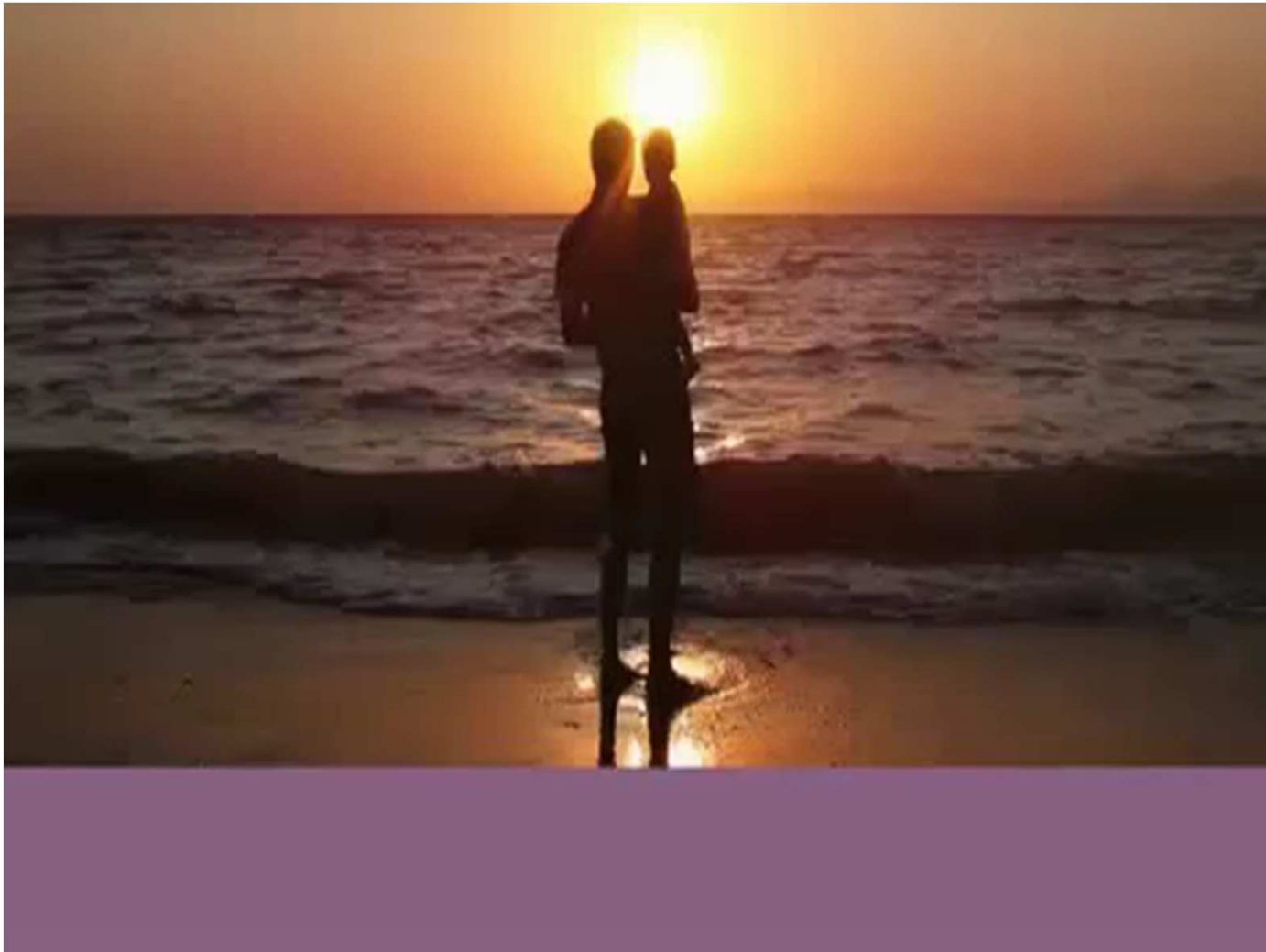
States may provide that surrogacy arrangements are:

- Legal and fully enforceable contracts
- Legal, but strictly regulated
- Illegal as against public policy
- Not addressed in any domestic legislation

# India – A Surrogacy Paradise

- Experience: legal commercial surrogacy since 2002
- Lack of restrictions/legal complications
- High availability of surrogates
- Advanced medical facilities
- Comparatively inexpensive for American and Western European intended parents

# Global Reproductive Tourism



# RIGHTS??

- Rights or Interests of Commissioning or Intending Parent(s)
- Rights or Interests of Surrogate
- Rights or Interests of Child



# RIGHTS OF INTENDING PARENT(S)



# Claims to Parenthood

- Establishing parentage in birth state does not guarantee recognition of parentage in home state.
- *X versus Y* (1FLR 733, 2009): Ukrainian law regarded commissioning parties as parents. British law regarded birth mother and husband as parents. No passports could issue to children.

# Restrictions on Arrangements

- Recent Indian Home Ministry rules disallow arrangements except with heterosexual couples married 2+ years
- ART 2010 draft and Home ministry rules require confirmation that IP home country will recognize parentage/child's citizenship
- Restrictions on ability to refuse contract performance

# Contract Enforcement or Human Right?

- Enforcement of surrogacy arrangements is inconsistent state to state
- Ethical considerations over birth mother's right to control her body
- Claims of human right to reproductive autonomy: Cairo Conference (1994)
- Discrimination against gay and single parents

# SURROGATE'S RIGHTS



Sandeep Joshi

# Bodily Autonomy

- Restrictions on right to use own body, including to contract for surrogacy
- Enforcement of contract where surrogate wants to back out: abortion, delivery
- Questions of economic or social coercion and lack of informed consent

# Forced Parentage?

- Conflict of laws where IP's parentage cannot be confirmed pre-birth
- Presumed parentage of birth mother
- Parental responsibility where IP wants to back out: changed circumstances, "defective" child

# Long Term Interests

- Health concerns: hormone therapy, pregnancy and birth complications, payment of down-the-road medical expenses
- Economic concerns: control over surrogacy payments, trafficking



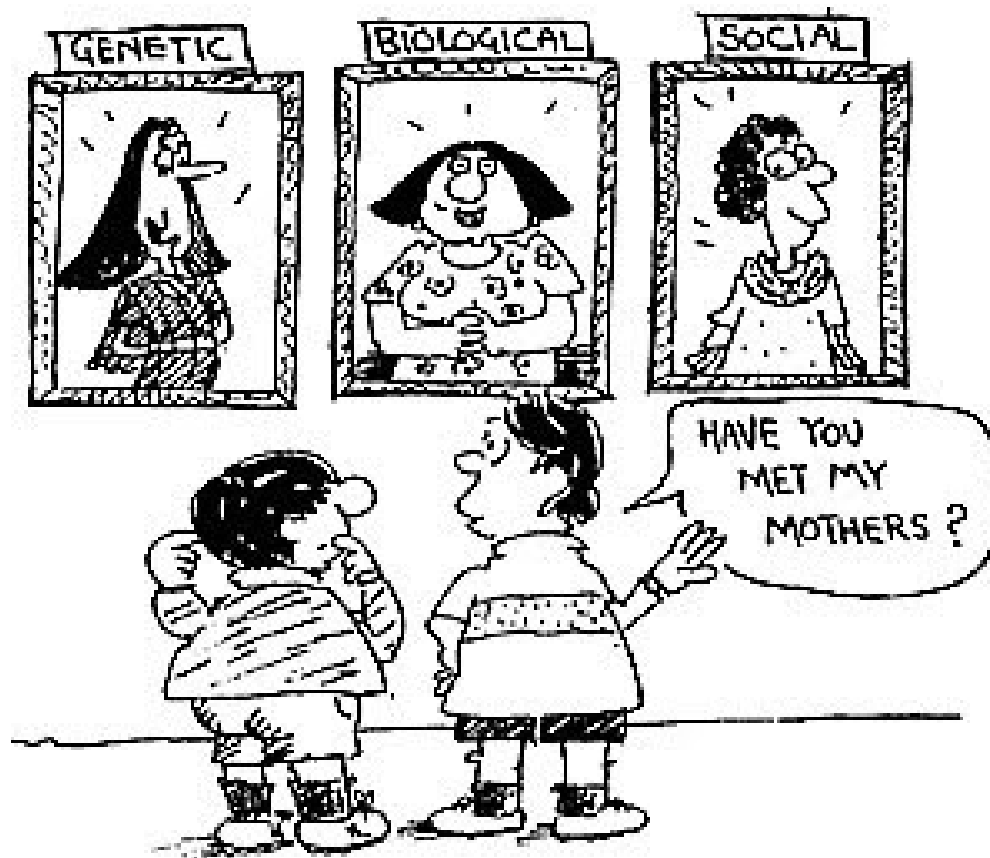
# CHILD'S RIGHTS



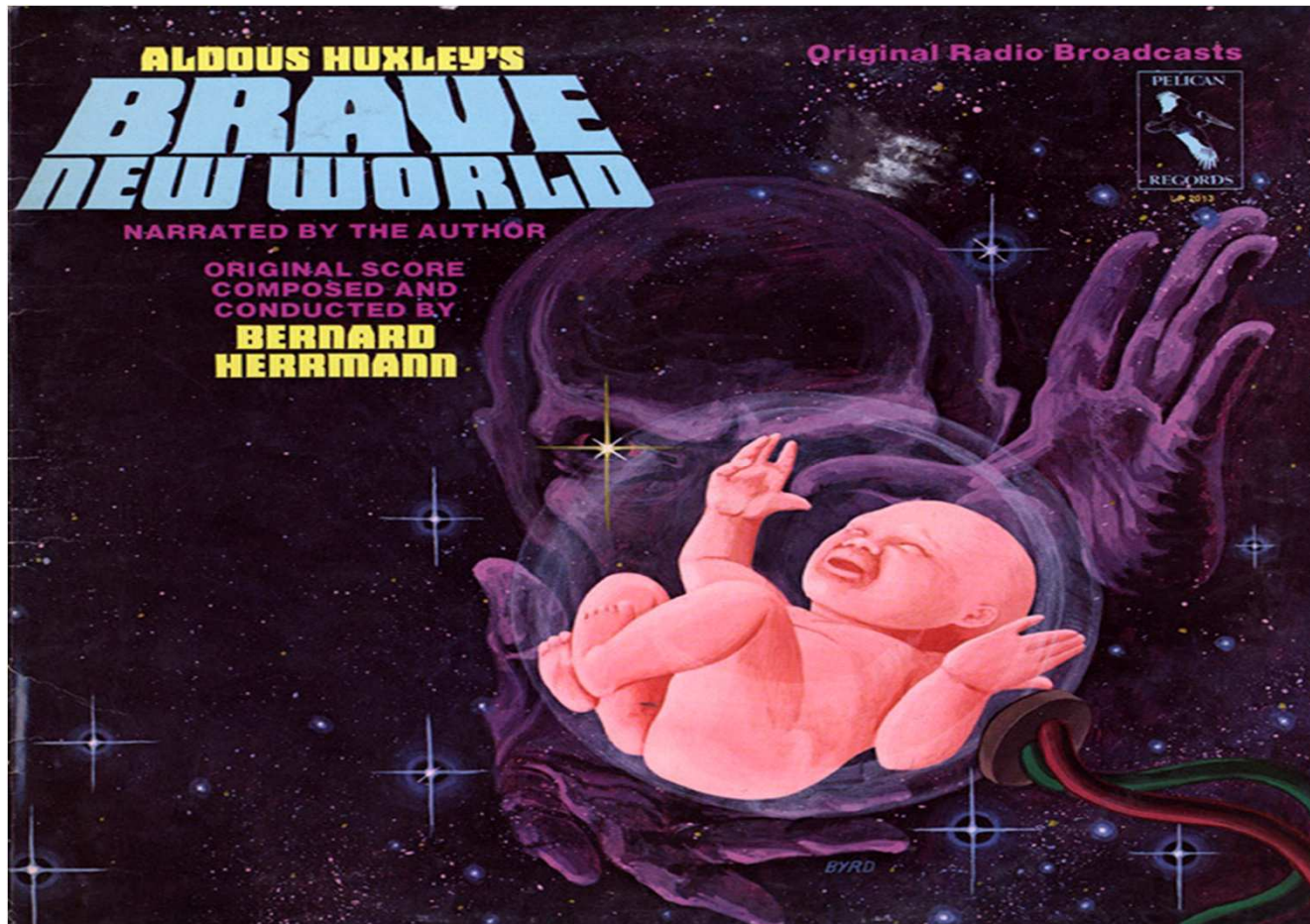
# Possible Consequences

- Uncertainty of parentage and conflicts between birth state and IP home state
- Risk of stateless orphans
- Unwanted children: rejected by surrogate and IP
- Trafficking

# Right to Know Origins/Identity



# Not Science Fiction Anymore



# Surrogacy in Headlines

- Surrogate sues couple who turned down twins
- Surrogate offered \$10,000 to abort baby
- San Diego lawyer pleads to baby selling
- Couple sues attorney after mother refuses to give up triplets
- Baby Farm raided in Nigeria

# Practical and Ethical Objections

- A form of prostitution
- A form of alienated labor
- Turns babies into commodities
- Adoption is better
- Only for the wealthy
- Exploitation of third world women

# Pro Voice for Surrogacy

- Fulfills the need of infertile couples who want to have their own children
- Adoption is not an easy process; same sex couples face discrimination
- Economic opportunity for surrogates

# Regulation Horizons

- Hague Conference, Permanent Bureau 2011  
Note on Surrogacy Arrangements
- Draft Assisted Reproductive Technology  
(ART) 2010 in India
- State efforts to legalize commercial  
surrogacy



# The Meaning of Parenthood

“Surrogacy exposes parenthood, not as a biological fact, but as a legally and socially constructed status with responsibilities and obligations as well as benefits.”\*

\*Barbara Stark, 2012

# Business, Bodies, & Borders

2/2013 Washington Post Editorial:

“So, these borders we are crossing are not just geographic ones. They are ethical ones. Today the global economy sends everyone in search of the cheaper deal as if that were the single common good. But in the biological search, humanity is sacrificed to the economy and the person becomes the product. And, step by step, we come to a stunning place in our ancient creation story. It’s called **The Marketplace.**”