

**Constructions of the 'best interests of the child' in New South Wales  
parliamentary debates on surrogacy**

**Catherine Ruth Collins**

School of Psychology, The University of Adelaide, South Australia, 5005

**Damien W. Riggs**

School of Social and Policy Studies, Flinders University, GPO Box 2100, Adelaide, 5001

**Clemence Due**

School of Psychology, The University of Adelaide, South Australia, 5005

Shortened title for running heads (50 characters):

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## INTRODUCTION

Across many sectors of Australian society, surrogacy continues to be viewed as a controversial mode of family formation. One possible reason for this is that women who carry and give birth to a child for another person disrupt normative understandings of what it means to be a mother, and what constitutes a family (see Riggs and Due, 2012, for a discussion of how motherhood is constructed in debates over surrogacy). One particular way in which controversy over surrogacy is voiced is via claims that surrogacy is not in ‘the best interests of the child’ (where children’s best interests are normatively understood as served by having a mother and father who conceived and birthed the child). Yet as Jenkins (1998) argues, such recourse to normative notions of ‘the best interests of the child’ serve ‘as a “human shield” against criticism’ (p. 2), due to the fact that what constitutes ‘the best interests of the child’ is rarely, if ever, clearly defined. Instead, claims about children’s interests are deployed rhetorically to bolster the position of the speaker and their own conception of what the category ‘child’ means, rather than necessarily being about the actual needs of children (Baird, 2008).

With the above points about current controversies over surrogacy in mind, the present chapter focuses on one recent example of constructions of children’s ‘best interests’, namely in politicians’ debate on surrogacy legislation recently introduced and enacted in the Australian state of New South Wales (NSW). The NSW Surrogacy Bill was tabled with the stated aim of better managing altruistic surrogacy arrangements, which had previously been covered by three separate Acts:

1. The *Assisted Reproductive Technology Act 2007*, which prohibits onshore commercial surrogacy, makes commercial surrogacy agreements legally void and unenforceable, and requires genetic records to be kept in a central register;
2. The *Status of Children Act 1996*, which contains a presumption of parentage in relation to children born through a fertilisation procedure in favour of the birth mother; and
3. The *Adoption Act 2000*, which allows intending parents in a surrogacy arrangement to apply to adopt the child and thereby become the legal parents of the child.

The Bill followed from an inquiry conducted by the NSW Legislative Council's Standing Committee on Law and Justice. The Standing Committee held four days of public hearings before publishing its *Legislation on Altruistic Surrogacy in NSW* report in May 2009 (Robertson, 2009). The Bill that was subsequently passed by 53 votes to 27 votes did not make altruistic surrogacy in New South Wales any more or less legal than was the case under previous legislation. Rather, the aim of the new legislation was to enable legal parentage to be transferred to the intending parents, and in so doing improve outcomes for women who act as surrogates in an altruistic arrangement, the intending parents in such an arrangement, and the resultant child. The Bill also clarified prohibitions on the advertising of surrogacy arrangements, in addition to prohibiting residents of New South Wales from engaging in commercial arrangements either interstate or overseas.

Yet despite the relatively pragmatic focus of the Bill upon the regulation of surrogacy, much of the content of both the inquiry and subsequent debate in parliament was concerned with whether surrogacy should be allowed at all, and on numerous occasions speakers appealed to 'the best interests of the child' in order to support their argument. Our interest in this chapter,

then, is how the category of ‘the child’ was deployed within parliamentary debate in relation to the Bill in ways that promoted very specific (and for the most part highly normative) understandings of children’s best interests. Importantly, our interest is not to analyse individual politician’s attitudes towards surrogacy *per se*, but rather our focus is on how, as culturally competent individuals who are well versed in public debates over surrogacy, politicians justified their stance on the topic by appealing to notions of ‘the best interests of the child’ as a taken for granted category. Before moving on to analyse extracts from the Hansard for one day of the debates, we first outline in more detail the legal context of surrogacy in Australia.

## **BACKGROUND**

Despite a review process initiated in 2006 by then Attorney General Phillip Ruddock aimed at reviewing and unifying laws on surrogacy, wide variation remains across Australian states and territories (see Page and Harland 2011; Millbank 2011 for detailed examinations of the current state of play of legislation relating to surrogacy across Australia). To summarise existing legislation briefly: altruistic surrogacy is legal across Australia (though there are some differences in who is deemed eligible intended parent and what is deemed acceptable reimbursement of expenses to women who act as surrogates), whilst commercial surrogacy arrangements within Australia are considered a criminal offence. Further, some states and territories (including New South Wales, as discussed in relation to the aforementioned Bill), ban residents from international surrogacy arrangements (Stuhmcke 2011; Page and Harland). Given this variation in legislation across Australia, some commentators have continued to call for another review of legislation relating to surrogacy (see, for example, Stuhmcke), particularly with regard to ambiguity over what constitutes “reasonable

expenses” payable to women who act as surrogates within an arrangement considered to be altruistic.

In addition to debates concerning what type of surrogacy arrangements ought to be legal, there are also inconsistencies across Australia relating to who is legally allowed to be an intended parent, together with what rights intended parents receive in relation to the child’s legal parentage. In regards to legislation concerned with intended parents, Millbank (2011) argues that the “increasingly complex web of eligibility rules” may not in fact function to safeguard interests of either children or their intended parents (p. 4). Part of this is the product, Millbank suggests, of the fact that most of the Inquiries conducted in states and territories across Australia in relation to surrogacy legislation have been undertaken hastily, with the resulting legislation put together on the basis of abstract ideas, rather than the actual experiences of people involved in surrogacy arrangements. This is highlighted in differing legislation across Australia concerning who is able to be an intended parent (and therefore commission a surrogacy arrangement), where some states require that the intended parent(s) are heterosexual and/or in a relationship and/or are female, and with most states requiring that the intended parent(s) prove a ‘need’ for surrogacy or are infertile.

Such debates within Australia reflect international debates over who constitutes a ‘proper’ intended parent (an issue reflected again in the data we examine in this chapter). Following Sorin and Galloway (2006), we would suggest that the child/adult dyad is constituted within such debates as a standardised relational pair, one that always already evokes the image of children as innocent and in need of protection, the corollary being that adults are those best placed to determine children’s best interests. Yet as Burr’s (2000) examination of the British Report of the Committee of Inquiry into Human Fertilisation and Embryology Act (Warnock,

1984) indicates, not all adults are necessarily constructed as equally suitable to be responsible for looking after the best interests of children. Burr found that the concept of the best interests of the child in regards to surrogacy was used rhetorically to justify a position in which the only acceptable approach to conceiving children was within a two-parent, heterosexual relationship. Such instances of heteronormativity within parliamentary debates have also been seen in previous parliamentary debates within Australia, such in the Inquiry preceding the *Sexuality Discrimination Bill* (1995) (see Morgan 1997), the *West Australian Acts Amendment (Lesbian and Gay Law Reform) Bill* (2001) (see Summers 2007), and proposed changes to the *Sex Discrimination Act* (1984) aimed at restricting reproductive technologies on the basis of marital status (Smith 2003). The last two examples in particular highlight the use of ambiguous rhetoric concerning ‘the best interests of the child’ to justify particular arguments about rights for non-heterosexual people (as well as the rights of single men and women regardless of sexual orientation) in relation to children (including the right to adopt and to use reproductive technologies). In the analysis that follows, we provide another example of how debates over reproduction typically evoke a highly normative image of what an intended parent should look like, and how this reifies one family form (i.e., a heterosexual nuclear family where the children are born to the mother) over all others.

## **METHOD**

Our data are the Hansard transcript of the debate that took place on 10 November 2010 in the Legislative Assembly of the Parliament of New South Wales, immediately prior to the vote in which the parliament passed the legislation. We chose the transcript of this day since it was the date on which the Bill was declared with amendments, and, as the final day of debating,

built upon previous debating on the 28 October 2010 in the Legislative Assembly and three other days of debates in the Legislative Council, and thus, we would argue included summaries of the positions of each politician in terms of the Bill. Our analysis of the data is based on the approach to discourse analysis described by Wetherell and Potter (1992), which involves the identification of interpretive repertoires as a way of analysing the content of discourse. Wetherell and Potter define interpretative repertoires as ‘broadly discernable clusters of terms, descriptions and figures of speech often assembled around metaphors or vivid images’ (p. 90). In addition to identifying the dominant interpretative repertoires in relation to constructions of children across the data set, we were interested to examine the ideological claims that supported each repertoire. As Billig (1991) suggests, when expressing their viewpoints, individuals draw upon forms of argumentation that they take to be common-sense, but which are historically and culturally specific and ideologically loaded. Thus, as the data demonstrate, ideologies are dilemmatic, containing competing arguments and characterised by contradiction. Political debate over topics considered contentious – such as surrogacy – are thus excellent sites in which to identify some of the interpretative repertoires and rhetorical devices through which particular argumentative positions are warranted.

Through our repeated readings of the dataset, passages that made explicit or implicit reference to children, the rights of children, and the best interests of the child in the context of surrogacy were identified and extracted for analysis. Extracts from individuals both in support and in opposition to surrogacy were included, although it should be noted that politicians who supported surrogacy made reference to children and their rights less frequently than did those who opposed surrogacy. As a result, the extracts presented in the analysis are not representative of all of the debate over the Bill, which included discussion

around a number of aspects of the Bill (such as the mechanism for transferring parental status from the woman acting as the surrogate to the commissioning parents).

Two interpretative repertoires relating to the best interests of children emerged from the data. These were: 1) The best interests of children are served by having a mother and a father, and; 2) Surrogacy is a lifestyle choice that is not in the best interests of children. In the analysis that follows, we examine a selection of representative extracts that highlight the deployment of these interpretative repertoires, each of which involve specific constructions of the category 'the child'.

## **ANALYSIS**

### **The Best Interests of Children are Served by Having a Mother and Father**

A predominant repertoire in the data emphasised the claim that all children need a mother and father, and that this is in children's best interests. This repertoire includes common-sense notions of conventional nuclear families, along with paired contrasts between heterosexual and homosexual couples, and between single parent families and two parent families.

Overall, those who drew upon this repertoire emphasised heterosexual marriage as the only context in which children should be raised, as the first extract indicates:

#### ***Extract 1***

I believe marriage should be seen as the setting which most fully acknowledges the dignity of the child, and which establishes the relationship of equality between a child and his or her parents, and respects the child's right to enjoy an immediate and enduring



link with those natural parents. Surrogacy arrangements are particularly disturbing because they involve deliberately deciding to bring a child into existence with the intention of separating that child from his or her birth mother. I touch upon the concerns that relate, for example, to the birth mother and to the child. Surrogacy instrumentalises children by placing the process of their conception, birth and upbringing under a contract. A child becomes the object of an arrangement aimed at fulfilling the needs of the commissioning parents.

New South Wales, Parliamentary Debates, Legislative Assembly, 10 November 2010, 27584 (John Aquilina, Parliamentary Secretary, Labor Party)

In this extract, the speaker presents marriage (presumably heterosexual given laws in Australia that prohibit non-heterosexual marriage) as being in the best interests of children, and contrasts this with surrogacy arrangements. Specifically, the speaker constructs marriage as enabling a ‘relationship of equality’ between children and parents, despite the fact that the parent/child relationship is typically unequal, regardless of family structure (due to the fact that in western societies children are seen as helpless objects of care, and adults as those responsible for such care). By arguing that heterosexual marriage is in the best interests of children, the speaker implies, by contrast, that other kinds of relationships and family structures are not in the best interests of children. The heterosexual nuclear family is further depicted as being in the best interests of children by the use of positive vocabulary such as ‘enjoy’, ‘relationship’, ‘enduring’, ‘natural’, ‘immediate’. By contrast, families created using surrogacy are depicted negatively, specifically with the suggestion that surrogacy ‘instrumentalises’ children. Ironically, the speaker themselves instrumentalises children in this extract by relying on the discursive power of the construct of ‘the child’ as a tool to

support their argument. This is an example of the discursive resource of child fundamentalism (Baird, 2008, p. 293), in which a speaker's argument 'relies wholly or in part on an insistence on the child as an impermeable category that must be defended'.

The following extract also draws upon the interpretative repertoire of *children's best interests are served by having a mother and father*, albeit via a different formulation of the adult/child relationship:

***Extract 2***

The strongest argument for a Surrogacy Bill that resonates with me is the submission made in relation to child support. The argument was advanced that children could be excluded from the child support regime if the commissioning parents separated during the limbo phase of the adoption. It seems that this shortcoming in the current transferral mechanism cannot be overcome. It would be wrong to deny a right—a right that would otherwise be afforded to children who have been conceived naturally—to a child, simply because he or she was born in a surrogate circumstance through no fault of his or her own. It is in the best interests of the child to ensure that the law holds both his or her mother and father responsible for the child, for only they could make the decision to bring this child into this world.

New South Wales, Parliamentary Debates, Legislative Assembly, 10 November 2010, 27592 (Victor Dominello, Liberal party)

Contrary to the first extract in which the relationship between a child and its parent(s) is constructed as equal, this extract builds an account of the parent-child relationship in which

the parent is in a position of authority. The construct of ‘child’ mobilised, therefore, is one of passive innocence (‘she was born in a surrogate circumstance through no fault of her own’). This is in contrast to the construction of adults, who are depicted as possessing sole agency in the relationship, ‘for only they could make the decision to bring this child into this world’.

The extract also orients to a normative family structure. That a family comprises a mother, a father and a child is unquestioned and unchallenged. For example, the speaker states that ‘the law holds ‘both his or her mother and father responsible’ and ‘only they could make the decision to bring this child into this world.’ Despite the fact that the debate is about surrogacy and many speakers acknowledged the potential for non-traditional family structures to emerge - such as families with two fathers - the understanding of family as constituted by a mother and father is so taken for granted that it is treated by this speaker as requiring no further elaboration. Another example of such a taken for granted assumption in this extract is the comparison made between children who are ‘conceived naturally’ and those who are ‘born in a surrogate circumstance’. No attention is paid to the multiple ways in which conception amongst heterosexual couples occurs. Instead, the word ‘natural’ - and its implied counter ‘unnatural’ – is effectively deployed to implicitly construct a hierarchy of appropriate modes of reproduction.

The following extract again repeats the repertoire that *children’s best interests are served by having a mother and father*:

***Extract 3***

I had trouble with the recent Adoption Amendment (Same Sex Couples) Bill 2010, which I did not agree to, not because I have any trouble with adults who adopt a gay

lifestyle, that is their right, but because I believe that the issue is not one of gay rights but that the fundamental rights of a child need to be acknowledged. Associated with the paramount rights of the child is the right of a child to have a mother and a father. In an ideal world every child would be cared for by a mother and a father. The law should take every step it can to ensure that children do have that fundamental right.

New South Wales, Parliamentary Debates, Legislative Assembly, 10 November 2010, 27595 (Chris Hartcher, Liberal party)

This extract again links children's best interests to family structure. Specifically, the importance of a heterosexual partnership for bringing up children is emphasised. Whilst the opening statement 'not because I have any trouble with adults who adopt a gay lifestyle' acts as a disclaimer, this is followed by a clear statement *against* non-heterosexual parents by saying that it is 'the right of a child to have a mother and a father'. This argument is stated even more bluntly in the ideological claim that 'In an ideal world every child would be cared for by a mother and a father'. Repetition is a powerful rhetorical device in itself, but this sentence also works on another level, by appealing to the common-sense ideology of 'an ideal world' that is assumed by the speaker to be commonly held amongst their audience. Appealing to an ideal world works to undermine the legitimate counter-argument, namely that many children do not have two parents (due to, for example, single-parenthood by choice, divorce, death, abandonment, and other scenarios that do not occur in an 'ideal world'). There is no defence or argument presented as to why a mother and a father are necessary, and thus the statement is presented as rhetorically incontestable.

The terminology of ‘lifestyle’ with reference to homosexuality is also introduced in this extract, thus touching on the repertoire of *surrogacy as a lifestyle choice* that is taken up in the following section. The inference of the speaker’s use of the words ‘gay lifestyle’ is that being gay is a lifestyle preference. The implication of this is that those who ‘choose’ to be gay thus render themselves ineligible to have children (under the presumption that children should be conceived through heterosex).

As a whole, the extracts in this interpretative repertoire rely on the notion that children need a mother and a father, an argument made to speak against surrogacy as a legitimate mode of family formation. Whilst this is illogical as it effectively excludes heterosexual parents who have children through surrogacy (parents who would otherwise, it appears, be welcomed by the speakers on the basis of their heterosexuality), the statements made by the speakers draw attention to is the fact that they are not simply referring to the best interest of children as having a mother and a father, but more specifically they are referring to the best interests of children as being conceived through heterosex. This brings with it an implicit derogation of many family forms, an issue that is taken up more closely in the following repertoire.

### **Surrogacy as a Lifestyle Choice that is not in the Best Interests of Children**

This repertoire similarly encompassed talk about family structure and the relative rights of parents and children, but focused specifically on the type of family that would be formed as a result of the surrogacy arrangement. Certain adults using surrogacy arrangements to form a family were described as making a “lifestyle choice”, and this was constructed pejoratively, as can be seen in the following extract:

***Extract 4***

I have a significant problem with clause 21 of the bill. I am not concerned if a mother cannot have a child because of a medical issue. I know some fantastic people who would make excellent parents but for medical reasons they cannot have children. I support their right to seek out medical intervention to have a child that I know would be raised in a safe and stable relationship. What has not been explained sufficiently is the phrase in the bill "medical or social need". I have a real problem with what "social need" means. To me social need means that it becomes a lifestyle choice, and I have an issue with that at a very deep level. If people choose to have children, adoption is already available to them. However, if a woman cannot physically have a baby surrogacy may be an option. In principle, I cannot support people going down the surrogacy path when the child will be created to meet a social need.

New South Wales, Parliamentary Debates, Legislative Assembly, 10 November 2010, 27594 (David Harris, Parliamentary Secretary, Labor Party)

In this extract it is argued that surrogacy is acceptable in some situations but not others. The speaker constructs a binary in which the 'need' for reproductive assistance is either 'medical' or 'social'. Medical need for surrogacy is constructed as clearly defined, morally trouble-free, and restricted to infertile heterosexual couples. For example, the speaker refers to a 'mother' who cannot have a child for medical reasons. The use of 'mother' rather than the possible alternatives of 'woman', 'person', 'parent' or 'couple' is noteworthy, and works in a number of ways to reinforce the construction of heterosexual infertility as a medical need for surrogacy. Firstly, the term is specifically female, secondly, it defines the person by her child-rearing role (even though she has not had a child), and thirdly, as part of a standardised

relational pair in the context of a heteronormative society, it is implicitly accompanied by the category 'father'.

The use of the word 'mother' also works to construct people in 'medical' need as people who are familiar and comfortable to the audience, and this is contrasted with the more distant, impersonal, term 'people' to describe those who are in 'social' need. The speaker suggests that such a woman might be someone 'I know', which also works to create an image of the close and known; the 'us' to be compared with the 'them' who are in 'social' need of surrogacy. The use of positive vocabulary to describe people who meet the 'medical need' criteria, such as 'fantastic people', 'excellent parents' and 'safe and stable relationships' is another discursive strategy that allows the speaker to make a strong and effective contrast with the other half of the dichotomy of need.

'Social need' is contrasted with 'medical need' in numerous ways. The speaker's own views on each exemplify this. He is 'not concerned' with infertile heterosexual couples using surrogacy for medical need, but he has a 'real problem with what social need means'.

Medical need is an acceptable reason for 'women' to consider surrogacy, but social need is for 'people'. In a further contrast, adults who 'choose to have children' to address a social need can adopt, whereas for women addressing a 'physical' medical need 'surrogacy may be an option'. With these points in mind, it can be inferred that the implicit message of the statements made in this extract is that surrogacy is an option for infertile heterosexual couples, but not for gay individuals or couples (or indeed single fertile heterosexual people).

Importantly, the language of choice is critical here. Social need is equated with lifestyle choice, which, as was discussed above, is a phrase that plays a powerful role in debates over

surrogacy by raising the implication that a 'choice' brings with it no rights (to reproduce). Notably, neither in this extract, nor in the following, is the language of choice with respect to reproduction applied to heterosexual couples. The phrases 'lifestyle choice' and 'people who choose to have children' work together to imply that people 'choose' to be gay and therefore they choose to be unable to have children. Similarly, this argument could also be extended to include (for example) women who are seen as being 'career oriented' and leave having children until they are 'older', and then may have to enter into a surrogacy arrangement. Again, the phrase 'lifestyle choice' implies that they have chosen to be unable to have children, and thus the line between medical and social needs could well be a blurry one. For the following speaker, this is what constitutes social need:

*Extract 5*

I also find the Surrogacy Bill 2010 difficult because, tested against the fundamental proposition that the rights of the child should be paramount, this legislation would allow adults, people over the age of 18 years, as the member for Wyong so well illustrated, the right to have a surrogate child simply to fulfil a social need. A social need is really an expression of a personal wish because there is no requirement financially, culturally or legally in our society that people have children. The Prime Minister herself is famous for her well-publicised decision not to have children and that is a right that is respected. Social need simply becomes a lifestyle choice and to subordinate the right of a child to a lifestyle choice is to me unacceptable.

New South Wales, Parliamentary Debates, Legislative Assembly, 10 November 2010, 27595 (Chris Hartcher, Liberal party)



In this extract the extreme case formulation of children's rights being both 'fundamental' and 'paramount' maximises the role of children's rights in the justification of a position where surrogacy is depicted as a lifestyle choice. The speaker equates social need with lifestyle choice, and in so doing builds an image of people choosing to have a child in the same way that they might choose consumer items. Having a child is constructed as a selfish act, and the speaker works to defend this position by stating that there is no 'requirement financially, culturally or legally' for people to have children. This is undoubtedly true, but it can equally be applied to the conception of all children, and thus it may be suggested that it is the nature of the family structure that will arise from a surrogacy arrangement that is the cause for concern (for example whether it will be a homosexual or heterosexual parented family, or a single or dual parented family), rather than surrogacy as a mode of conception in itself.

What is interesting in this extract is how the construct of the rights of the child is used to build an emotive argument that surrogacy is an inappropriate mode of human reproduction. The speaker is not saying that surrogacy is unacceptable in his opinion *per se*, but rather he is saying that surrogacy is unacceptable *because* it 'subordinates the right of a child to a lifestyle choice'. This is rhetorically powerful because it implies that children conceived in this fashion will be damaged and disadvantaged, and this is a rhetorical position against which it is difficult to argue. It also positions adults who chose to use surrogacy as doing harm to children.

The key implication of the ideological position elaborated within extracts in this repertoire is that adults who make a 'lifestyle choice' and have children through surrogacy are 'merely' consumers – they have no real desire for children, but rather are just complimenting their 'lifestyle' by adding children, and that this is not in the best interests of children. This type of

construction is not only offensive to parents who have their children through surrogacy, but it also has significant implications for the support that families formed through surrogacy receive, and the exclusion they may face as a result.

## CONCLUSION

A key theme to emerge from the data was the normative understanding of family and reproduction that was evoked. For many speakers, there was a taken for granted understanding that a family consists of two parents - one mother and one father - who together have conceived their children without assistance. This is the image of family that framed much of the debate prior to the enactment of the Bill, and consequently non-heterosexual parents and/or those who use assisted reproductive technology are depicted as unacceptable departures from this norm. Indeed, the notion that a family comprises two opposite-sex parents is so deeply rooted in Australian society that debate around the use of surrogacy by a single man or woman was missing from the data altogether.

One clear implication of this highly normative account of families as it appeared in politician's debates over the Bill was that it served to justify opposition to the use of surrogacy by non-heterosexual couples without the need to explicitly express disapproval in most instances. By drawing upon the interpretative repertoire of *children's best interests are served by having a mother and father*, speakers were able to imply that two mothers or two fathers would be against the best interests of the children. Thus, speakers could position themselves in a way that showed them to be concerned with the welfare of the child (which is a rhetorically impenetrable position) rather than as 'anti-gay'. In this regard, the debate in the NSW parliament echoed themes from the Warnock Report on surrogacy in the UK. In her

analysis of the report, Burr (2000, p.109) suggests that the language of best interests is deployed in the Report to justify claims about the most suitable people to raise children, namely a 'heterosexual couple living together in a stable relationship'. Burr claims that the language of best interests is used to reinforce a heteronormative family structure and a narrow definition of appropriate procreation.

There are of course a number of ironies in the statements analysed in this chapter, not least being the fact that the speakers themselves often exploited the image of 'the child' to build an argument based on upholding children's rights. For example, children were typically constructed as innocent and demanding of protection, and as having the potential to be damaged due to their parent's selfish desires. Another irony is that building an argument against surrogacy on the imagery of children's best interests is a delicate balancing act. By disallowing surrogacy, those whose arguments rely so strongly on the image of the symbolic child are, in fact, denying specific children an existence. At the same time, by focusing on the perils of non-normative families for children's welfare, these same politicians are deflecting attention from the serious problems experienced by existing children in damaging (often two-parent, heterosexual) families.

A consistent feature arising from the analysis was the dilemmatic nature of the rhetoric surrounding children and their best interests. This was to be expected in political debate about a controversial social issue, but it was interesting to observe the range of binary positions that were adopted, each providing insight into the common-sense attitudes that circulate within Australian society. For example, children's rights were contrasted with adult's rights; parents were either 'good' and loving or 'bad' and neglectful; reproduction was either 'natural' or 'unnatural'; and the inability to have children was either medical or social. All these positions

are made up of essentially individualistic stances – a good parent, a child’s rights, an infertile woman – and within such an ideological framework, discussion of family is problematic. In other words, surrogacy was constructed as fulfilling an adult’s needs or creating a child, but absent from the ideology exhibited in this particular forum was the construction of surrogacy as family-formation. The limited empirical research into surrogacy outcomes to date indicates that families formed through surrogacy are as functional and healthy as those formed in other ways, and that the quality of family life is what matters more than family structure (Golombok, 2000).

It is important to point out that the analysis above is but one interpretation of the debate, not least because the approach taken was to focus on one specific aspect of the discourse, that of the ‘best interests of the child’. Similarly, a parliamentary debate demonstrates a very specific form of rhetoric conducted by a very specific group of people that may not necessarily be broadly representative of how surrogacy discourse is constructed in other settings. Through the conduit of the media, however, politicians are perhaps one of the most instrumental groups in shaping policy debate on controversial topics, particularly as has been the case with surrogacy, when changes to legislation are under consideration (Riggs & Due 2012).

Therefore an understanding of how key decision makers build accounts either for or against a particular social issue has wider reach than the parliamentary chamber. The echoes of child welfare discourse in political settings that come from such sources as the surrogacy debates in the UK in the 1980s (Warnock, 1984), and contemporary discussions about child custody in Australia (Fogarty & Augoustinos, 2008), lend support to the assumption that consideration of the issues above has wider relevance.

What individuals really believe about surrogacy is not accessible from the approach adopted in this chapter, but what is critical is that the act of talking and constructing arguments around surrogacy very clearly influences society through the manufacture of laws. Hence, the way in which the topic is spoken about reflects the ways of talking that are socially available today, and also contributes to what will be socially available in the future as a result of the legislative changes. Thus, one of the ways that surrogacy is constructed is as a threat to the welfare of children and a challenge to the future of stable family relationships. Alternative constructions of surrogacy might centre on the best interests of the family unit, whatever form that might take, rather than the best interests of either adults or children as separate from their families.

## REFERENCES

- B. Baird (2008) 'Child Politics, Feminist Analyses', *Australian Feminist Studies*, 23(57), pp. 291-305.
- M. Billig (1991) *Ideology and Opinions* (London: Sage).
- J. Burr (2000) 'Repellent to proper ideas about the procreation of children', *Psychology, Evolution & Gender*, 2(2), pp. 105-117.
- K. Fogarty and M. Augoustinos (2008) 'Feckless fathers and monopolizing mothers: Motive, identity, and fundamental truths in the Australian public inquiry into child custody', *British Journal of Social Psychology*, 47(3), pp. 535-556.
- S. Golombok (2000) *Parenting: what really counts?* (Hove: Routledge).
- H. Jenkins (1998) 'Childhood Innocence and Other Modern Myths' in H. Jenkins (ed.) *The Children's Culture Reader* (New York: New York University Press).

- J. Millbank (2011) 'The new surrogacy parentage laws in Australia: Cautious regulation or '25 brink walls'?', *Melbourne University Law Review*, 35, pp. 1-44.
- W. Morgan (1997) 'A queer kind of law: The Senate inquires into sexuality', *International Journal of Discrimination and the Law*, 4, pp. 317-348.
- S. Page and A. Harland (2011) 'Tiptoe through the minefield: A state by state comparison of surrogacy laws in Australia', *Family Law Review*, 1(4), pp.198-230
- D.W. Riggs and C. Due (2012) 'Representations of surrogacy in submissions to a parliamentary inquiry in New South Wales.' *Techne*, 16, pp. 71-84.
- C. Robertson (2009) *Legislation on altruistic surrogacy in NSW* (Sydney: New South Wales Parliamentary Library).
- J.R. Smith (2003) "'Suitable mothers': Lesbian and single women and the 'unborn' in Australian parliamentary discourse', *Critical Social Policy*, 23(1), pp. 63-88.
- R. Sorin and G. Galloway (2006) 'Constructs of Childhood: Constructs of Self', *Children Australia*, 31(2), pp. 12-21.
- A. Stuhmcke (2004) 'Looking backwards, looking forwards: Judicial and legislative trends in the regulation of surrogate motherhood in the UK and Australia', *Australian Journal of Family Law*, 18, pp. 13-40.
- A. Stuhmcke (2011) 'The criminal act of commercial surrogacy in Australia: A call for review', *Journal of Law and Medicine*, 18, pp. 601-613.
- M. Summers (2007) 'Rhetorically self-sufficient arguments in Western Australian parliamentary debates on Lesbian and Gay Law Reform', *British Journal of Social Psychology*, 46, pp. 839-858.
- M. Warnock (1984) *Report of the Committee of Inquiry into Human Fertilisation and Embryology* (London: Her Majesty's Stationery Office).

M. Wetherell and J. Potter (1992) *Mapping the Language of Racism: Discourse and the legitimization of exploitation* (London: Harvester Wheatsheaf).