This two-part event was jointly hosted by La Trobe Law School and La Trobe Asia. The event was instigated by lecturer Hannah Robert and chaired by Associate Professor Lee Ann Basser, both of La Trobe Law School.

Research Workshop
La Trobe City Campus, Level 20, 360 Collins Street

At the lunch-time invitation-only workshop, five presenters gave short presentations on aspects of cross-border surrogacy. Attendees included academics from law, public health, anthropology, family studies and sociology as well as the Chief Executive of the Victorian Assisted Reproductive Treatment Authority (VARTA).

New Zealand human rights lawyer, Claire Achmad, currently a doctoral candidate at Leiden University, presented an argument that the welfare of child, who is at the heart of any surrogacy arrangement, should also be the primary consideration in any regulatory framework. She also highlighted protections already existent in international human rights law. Ms Achmad provided examples of well-known cross-border surrogacy cases in which children’s rights have not been adequately respected, including the case of Baby Manji, who was left stranded in India for a number of months because of inconsistencies in law between Japan, where her intending parents lived and India, the country of her surrogate birth (*Baby Manji Yamada v Union of India* [2008] INSC 1656).

Medical anthropologist, Associate Professor Andrea Whittaker, ARC Future Fellow in Anthropology in the School of Social Sciences, Faculty of Arts, Monash University, discussed the trajectory of the sophisticated surrogacy industry in Thailand since 1994. The Thai Military Government has recently recommenced the legislative process for a bill which, if passed, would ban commercial surrogacy in Thailand. Although the bill has been on the table for some time, political instability has prevented its progression through the legislative process until now. Associate Professor Whittaker also discussed preliminary findings from her research interviewing Australians who have become or are planning to become parents through surrogacy.

Dr Kerry Petersen, an Honorary Associate at La Trobe Law School described the legal framework for informed consent and how it could or should protect the surrogate mother. Although most surrogate mothers will have already experienced at least one pregnancy and birth, their experience of a surrogate pregnancy may differ considerably from their previous experiences. There is evidence that surrogate mothers are not well-informed about the medical procedures they will be expected to undergo and that they have little control over decisions such as selective reduction of a multiple pregnancy or mode of birth. The framework of informed consent is one way to protect the surrogate's bodily integrity.

Dr Rhonda Powell, lecturer at the School of Law, University of Canterbury and Honorary Associate at the Judith Lumley Centre, La Trobe University described the case of *Re DMW and KW* [2012] NZFC 2915 in which a New Zealand couple sought to adopt a Thai-born surrogate child, which through a mix-up in Thailand, had no genetic link to them. Dr Powell used this case to discuss problems in the intersection of New Zealand immigration law and family law and to query the importance and role of genetic links in 21st century family formation.
In the afternoon, a two-hour public forum was directed by Professor Lee Ann Basser of La Trobe Law School. The panellists were joined by Professor Jenni Millbank from the Faculty of Law, University of Technology, Sydney, who works in the field of gender, sexuality and the law. Professor Jenni Millbank described an appropriate policy response to international surrogacy based on the principle of harm-minimisation. She also highlighted the importance of letting go of prejudicial beliefs which are not founded in evidence, in formulating social and legal policy around surrogacy. Associate Professor Andrea Whitaker commented on the general tolerance of gay relationships in Thailand and how this has impacted on Thailand’s status as a desirable destination for reproductive tourism. She also noted the relationships between intending parents and surrogates that she has interviewed, and the deep frustration felt by intending parents in Australia, who are prohibited from paying true compensation to the surrogates.

Other panelists spoke about the complications which arise as a result of requiring legal adoption in order to formalise parentage in surrogacy situations; potential principles of an international surrogacy regime, such as protecting the rights of the child, the surrogate and the intending parents, providing for efficiency and certainty, a transparent and centralised process, with early decision-making; the role of informed consent in protecting surrogate mothers; trafficking of women to be surrogates and whether international commercial surrogacy amounts to child-sale.

The audience was very engaged and made a number of well-informed comments. One participant, who works with women entering into surrogacy arrangements, described potential parallels with longitudinal adoption research showing that the grief mothers feel about giving up their child for adoption exacerbates with time, and queried how today’s surrogate mothers will feel in the future.

Overall, the event was an excellent opportunity for engagement on a topical social and legal issue. It was clear that the complexities are considerable and that the evidence-base for policy formation is currently limited. As Professor Jenni Millbank pointed out, this does not prevent the formation of a domestic legal regime. However, any such regime should incorporate mechanisms for periodic review to take into account updated social and legal conditions and new evidence.

Claire Achmad summed up the day by noting that in 20 or 30 years’ time, a generation of surrogate-born children may be asking why they were born in the circumstances that they were born, and why more was not done to put in place a regime to protect their human rights. It is imperative that countries such as New Zealand and Australia look into increasing their reproductive self-sufficiency, and any such effort clearly requires interdisciplinary engagement. The La Trobe Law School and La Trobe Asia events were an important step in the right direction.

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