This collection edited by Paula Gerber and Katie O’Byrne offers a timely discussion of surrogacy, law and human rights. It comprises eleven chapters from twelve commentators focusing primarily on the Australian context, the main exceptions are chapters 10 and 11 which examine surrogacy regulation in India and the United States respectively. Chapter one written by O’Byrne and Gerber offers a helpful introduction setting out the structure, main themes and aims of the book. The authors argue that ‘part of the challenge for cohesive regulation lies in the reality that many of the facets and boundaries of the surrogacy issue remain controversial and indeed, that the terminology itself is frequently contested’ (p. 7). Accordingly, the central aim of this book is to ‘present a rich diversity of reflection and analysis about the human rights dimensions of surrogacy, with the aim of adding value to the processes of debate, reform and regulation’ (p. 7).

Following this, chapter two written by Anthony Wood provides an account of the author and his partner’s experience of arranging a surrogacy agreement in the US. Wood describes the uncertainty which surrounded the process, their use of a US surrogacy agency and the difficulties encountered in finding a surrogate mother and egg donor. He also describes the birth of their children and the continued contact his family have with the children’s surrogate mother who is a special person in their lives (p. 12). Starting the substantive analysis in this book with this contribution is important, as it reminds readers at the outset of the concrete human experiences, decisions, and lives involved in surrogacy arrangements. Whilst Wood acknowledges that he is not an objective observer of surrogacy, he comments on witnessing the positive effect that regulated US commercial surrogacy has had on many lives. He also notes the exclusion of many families from participating in overseas surrogacy ‘due to financial impediments’ (p. 12) or laws criminalising surrogacy. This use of law to delineate boundaries on who can avail of surrogacy services is a recurring theme in the collection.

Following this, chapter three by Kate Galloway examines theoretical arguments on the justifications for the legality and regulation of surrogacy (p. 14). Galloway provides an overview of justifications based on the ‘autonomy and self-determination of women and men to beget and rear children’ (p. 16) and offers an insightful critique of the limitations of such approaches. She argues that liberal and feminist critiques fail to fully appreciate the ‘embodied experience of the birth mother’ (p. 24). Instead, Galloway suggests a framework
based on dignity of the person placing emphasis on protecting the person with the least power (p. 28). However, this argument is open to challenge on the basis of the nebulous nature of ‘dignity’ as a concept.1 Deeper analysis of how ‘dignity’ would be employed in this context and particularly, with how competing conceptions of ‘dignity’ might operate and be addressed within this framework is arguably warranted.

In chapter four Tammy Johnson focuses on the regulation of surrogacy in Australia arguing that the variance of approaches in states and territories offers a ‘chequerboard of regulation in which the families involved in surrogacy are reduced to little more than pawns in the game of procreative chess’ (p. 32). Johnson examines approaches to: the enforceability of agreements; intended parents’ eligibility to enter agreements; offences, where applicable; and the legal transfer of parentage (p. 33). She proposes a national model of reform for altruistic and commercial surrogacy, regulating the latter category to minimise the risk of harms occurring. One proposal suggested is to adopt a presumption that a child born following a surrogacy agreement is legally the child of the intended parents (p. 47). This would apply only to gestational surrogacy agreements where there is no biological link between the child and surrogate mother. It would be rebuttable by the surrogate mother who could bring an application to seek legal parentage to be decided based on the best interests of the child. Aside from ethical objections which might be raised to this, a practical concern with this approach lies in how to ensure legal access for surrogate mothers who may not have the financial means or support to challenge such a presumption if they wished to. As discussed elsewhere in the book, surrogate mothers often come from lower socio-economic groups than intended parents and power-imbalances may be exacerbated in situations where the presumption were changed in favour of intended parents without addressing issues of access. Other proposals include that payments permissible for surrogacy agreements be defined by Parliament (p. 49) and that agreements would require approval in advance by a Surrogacy Review Panel to ensure legislative requirements were met (p. 57). Johnson concludes acknowledging the proposals are likely to attach controversy however, she expresses hope that states/territories could use the model to enact consistent legislation or refer power to the Commonwealth to regulate surrogacy at a federal level (p. 59).

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