

# Framing International Surrogacy Workshop

Monday 25 July 2016 9.30 am – 5.00 pm  
School of Global Studies Resource Centre,  
Arts C175, University of Sussex, Brighton, BN1 9SJ



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# Workshop programme

## MORNING SESSION

**09:30**      **Registration and coffee**

**09:50**      **Introduction**

**10:00**      **The Legal Regulation of Domestic and International Surrogacy** (Chaired by Craig Lind)

James Netto: International Surrogacy Arrangements the Potential for International Recognition and a Multinational Convention

Dr Kirsty Horsey: Surrogacy 2.0: What can the law learn from lived experience?

**11:00**      **Coffee**

**11:15**      **Surrogacy, Genetic Identity and Birth Registration Reform** (Chaired by Dr Kirsty Horsey)

Dr Marilyn Crawshaw: Children at the centre of surrogacy – a human rights & social work perspective within a lifespan approach

Professor Olga van den Akker: Accepting ‘difference’ thereby allowing for accurate genetic and gestational (birth) information for all

Julia Feast OBE: Birth Registration Reform- A time for change

Dr Arianne Shahvisi: The cherished gene: gestational surrogacy and the genetic imperative

## AFTERNOON SESSION

- 12:45** | **Lunch**
- 13:30** | **Panel discussion: Experiences of Surrogacy**  
(chaired by Philip Bremner) with Alan Watt, Deborah Sloan, Sandra Bateman.
- 14:45** | **Coffee**
- 15:00** | **Domestic and Regional Responses to Surrogacy**  
(Chaired by James Netto)
- Dr Claire Fenton-Glynn: Regulating International Surrogacy: European Developments
- Alan Brown: “Two means two, but must does not mean must”: recent decisions on the conditions for parental orders in surrogacy
- Christina Weis: Making the Relationship Work: Ethnographic Accounts of Surrogacy Relationships in St Petersburg, Russia
- 16:30** | **Domestic and International Surrogacy**  
(chaired by Maya Unnithan)
- Debra Wilson: Response to the international framing of surrogacy: a New Zealand perspective
- Craig Lind: Domestic and International Surrogacy: Are common regulatory principles possible?

# Workshop Speakers

## SANDRA BATEMAN



Sandra Bateman is a fertility counsellor working in midland fertility clinics with patients, donors and surrogacy providing implications, support and therapeutic counselling. She is an accredited counsellor with the BACP and BICA.

Sandra is an Executive Committee Member of the British Infertility Counselling Association (BICA) and also sits on the board for fertility fairness.

## ALAN BROWN



Alan Brown is a Doctoral Researcher at the University of Strathclyde. His thesis is titled, 'What is The Family of Law? – The Influence of the Nuclear Family Model'. Alan's wider research explores the legal construction and understanding of parenthood, with particular focus upon the contexts of assisted reproduction and surrogacy, as well as parenthood within non-traditional families.

## PHILIP BREMNER



Philip joined Sussex Law School in September 2014. His research interests include socio-legal and empirical perspectives on cross-border and comparative family law. Philip is also interested in exploring areas where tort law, family law and medical law overlap, particularly with relation to children.

## DR MARILYN CRAWSHAW



Dr Marilyn Crawshaw is an Honorary Fellow at the University of York with a long-standing interest in the impact of using fertility treatments or other routes to family life. Marilyn has a wealth of experience and knowledge having previously run a hospital counselling service for people facing fertility difficulties, worked as an Inspector and External Adviser for the HFEA, was National Adviser to UK DonorLink, and chairs the group currently developing the SIBLINK UK voluntary register. Marilyn chairs the UK PROGAR group of organisations whose focus is the lifelong implications of donor conception and surrogacy matters.

## JULIA FEAST OBE



Julia Feast OBE is the Policy, Research and Development Consultant, CoramBAAF. She is an experienced social worker and researcher. She has particular interest in the identity and information rights and needs of adopted people, adult care leavers and donor conceived people.

## DR CLAIRE FENTON-GLYNN



Claire is a University Lecturer in Law at the University of Cambridge. She specialises in human rights and the protection of children, in particular focusing on issues such as intercountry adoption, international surrogacy, and cross-border child protection, as well as children's rights under the European Court of Human Rights. Her first book, "Children's Rights in Intercountry Adoption" was awarded the Inner Temple Book Prize for New Authors.

## DR KIRSTY HORSEY



Dr Kirsty Horsey is a senior lecturer at Kent Law School, University of Kent. She has been interested in and actively researching surrogacy law – and advocating reform – since beginning her PhD research on legal parenthood following the use of surrogacy and other forms of assisted conception. She has written a number of articles and book chapters on surrogacy in the UK.

## JAMES NETTO



James Netto is a Solicitor Advocate with Dawson Cornwell, a renowned family law firm in London specialising in international cases. He is based in the Children Department, regularly assisting Carolina Marín Pedreño and Anne-Marie Hutchinson OBE.

James practices all aspects of child law, particularly international children law and child abduction. Most of his cases have an international element involving close collaboration with foreign lawyers.

## CRAIG LIND



Craig is a Senior Lecturer in Law at the University of Sussex. He is a member of the Local Sussex Family Justice Board, the Society of Legal Scholars, and the International Society of Family Law.

Craig's research looks at issues of (domestic, international and comparative) family law. His general interest is in exploring the relationship between the responsibility people take for 'family' members and the legal allocation of responsibility.

## DR ARIANNE SHAHVISI



Arianne Shahvisi's research interests are broad and cross-disciplinary. They are united by their application of rigorous philosophical methods of analysis to real-world issues of moral concern. Her work is strongly defined by issues relating to gender, race, class, science, and globalisation, and the power differentials present in all. She has written for the *New Statesman*, *Jacobin*, *Open Democracy*, and *Truthout*, and was awarded the Kamal Salibi Award for services to academic freedom in 2015. Arianne serves as an editorial board member of *Kohl: Journal for Feminist Research on Gender and the Body in the MENA Region*.

## DEBORAH SLOAN



Deborah Sloan is a psychodynamic therapeutic counsellor specialising in fertility. She runs her private practice in Brighton and Hove where she works alongside the Agora Gynaecology and Fertility clinic. She sees clients at all stages of the fertility process, helping clients explore the myriad and complex feelings associated with being unable to conceive and create a family in the way they had wished. Deborah is a qualified creative writing facilitator and runs regular creative writing workshops for people who are living with dementia, recovering from addiction and who are facing fertility issues.



### MAYA UNNITHAN



Maya Unnithan is Professor of Social and Medical Anthropology and Director of the Centre for Cultures of Reproduction, Technologies and Health (CORTH) at the University of Sussex. Her research interests include caste, gender and body politics; reproductive agency in the context of infertility, childbirth and maternal health inequalities, procreative technologies, female selective abortion, sexual reproductive health rights, surrogacy. She has thirty years of field based research experience in Northwest India. She is currently Chair of the Medical Anthropology Committee of the Royal Anthropological Institute.

### PROFESSOR OLGA VAN DEN AKKER



Olga B.A. van den Akker BSc PhD is Professor of Health Psychology at Middlesex University in London. She is an Associate Fellow of the British Psychological Society, a Chartered Psychologist, and member of the Health & Care Professions Council. Her advisory and editorial activities include HFEA advisor to the 'One at a Time' taskforce; Editor of the Journal of Reproductive & Infant Psychology and membership of the executive committees of the British Infertility Counseling Association, the British Fertility Society and the Society for Reproductive & Infant Psychology. Her research focuses on reproductive health psychology.

### ALAN WATT

Alan Watt is a member of Surrogacy UK and an intended parent. The ethos of Surrogacy UK is "surrogacy through friendship" and he and his partner have developed a strong and close friendship with a surrogate and her partner. Together they are currently in the process of trying to create a family.



## CHRISTINA WEIS



Christina Weis is a cultural anthropologist with an interest in medical anthropology, gender, social aspects of in/fertility, reproductive technologies, reproductive rights and post-socialism. She is a member of the Reproduction Research Group at De Montfort University and currently undertaking her PhD research on commercial gestational surrogacy in Russia. She has previously conducted ethnographic research on female labour migration and transnational motherhood in the Republic of Moldova, and recently assists Dr Michal Nahman in a study on non-Spanish egg-donors in Spain.

## DEBRA WILSON



Debra Wilson is a Senior Lecturer in Law at the University of Canterbury, New Zealand. Her PhD thesis, arguing in favour of human cloning from a legal standpoint, won the Mollie Holman Doctoral Medal for the best thesis submitted that year.

Debbie's main research interests reflect her teaching in Law and Medicine (focusing on issues relating to artificial reproduction like cloning, surrogacy, posthumous conception and also on genetics), Competition Law (primarily cartel conduct), and Intellectual Property (particularly online copyright).

# Workshop Papers

## **International Surrogacy Arrangements the Potential for International Recognition and a Multinational Convention**

James Netto

## **Surrogacy 2.0: What can the law learn from lived experience?**

Dr Kirsty Horsey

Many things are right about the way surrogacy operates and is regulated in the UK, particularly when compared to some other countries where there are extremes, ranging from outright bans to free markets and everything in between. However, some aspects of our surrogacy laws are outdated or just plain wrong. Cracks in the system are truly showing and reform is now needed more than ever, to ensure the welfare of children and families. This paper, which draws on the results of a survey of people with lived experience of surrogacy, seeks to highlight these issues and spark debate on what a new surrogacy law should look like.

## **Children at the centre of surrogacy – a human rights & social work perspective within a lifespan approach**

Dr Marilyn Crawshaw

In this talk, Dr Crawshaw will explore what might be the key principles informing surrogacy arrangements if children's rights were made paramount and considered in terms of potential relevant consequences over their lifetime. It will include discussing the responsibilities of all the adults, agencies and states involved; the need to minimise the risk of exploitation; the meaning of the 'human right to identity' and the 'human right to nationality' in this context; and the importance of informed consent. The challenges of identifying such principles when the voice of surrogate-born offspring is largely absent will also be discussed.

### **Accepting 'difference' thereby allowing for accurate genetic and gestational (birth) information for all**

Professor Olga van den Akker

Universally normative beliefs about reproduction remain conservative and many traditional and non-traditional families using third party reproduction emphasize the importance of genetic or biological kinship. There is sufficient evidence that some users, donors/ surrogates and offspring of third party assisted reproduction demonstrate cognitive conflict or dissonance about the consequences of third party conception to build families. These conflicts are not sufficiently addressed in research, policy and practice. Psychological research contextualizing third party assisted reproduction generally fails to predict how people cope with both, the lifestyle changes bringing about the need for some third party conception and third party assisted reproduction itself. Policy and legal frameworks conflict with the reality of some current practices. The social and lifestyle changes coupled with technological and economic developments creating 'differences' in family building through third party reproduction, needs to be re-evaluated and re-contextualised.

### **Birth Registration Reform- A time for change**

Julia Feast OBE

There is an urgent need for the current birth registration system to be overhauled and modernised to reflect the diverse family forms that now exist in modern day Britain. Birth registration should reflect the fundamental right of all children and adults to know their genetic origins as well as their legal parentage, thereby enabling them to make fully informed life decisions, including in relation to their health and well-being. This paper will explore why birth registration reform is now urgent and how a system could be put in place that does not compromise a person's privacy or that of his or her family, but nevertheless enables individuals to access information about his or her genetic origins.

## **The cherished gene: gestational surrogacy and the genetic imperative**

Dr Arianne Shahvisi

In many cases, the motivating for seeking a gestational surrogate mother is that the child be genetically related to her parents without requiring that the genetic mother bear the child. The acceptability and growing popularity of this process derive from the strongly-held belief that it is important that parents are genetically-related to the children they raise. I call this the “genetic imperative” and argue that it is a problematic assumption which is likely to become more so under the new technological advances which permit greater control over the genes of future children. The genetic imperative is scientifically overplayed, contributes to racist and sexist discourses, desocialises the process of raising children, and delegitimises non-biological parent-child relationships. I argue that supporting gestational surrogacy (a) legitimises the notion that genes are sufficiently determinative of relationships that it is morally acceptable to outsource pregnancy, (b) contributes to the devaluing of reproductive labour, and (c) plays into broader discourses that favour genetic material and genetic potentialities over human relationships more broadly, and the emotional labour required to maintain them.

## **“Two means two, but must does not mean must”: recent decisions on the conditions for parental orders in surrogacy**

Alan Brown

This paper will consider the approach taken by the High Court towards the conditions required for the granting of ‘parental orders’ in cases of surrogacy. The paper will focus on the decisions in *Re Z (Surrogate Father: Parental Order)* [2015] 1 WLR 4993 and *Re X (Parental Order: Time Limit)* [2015] 1 FLR 349 and examine the seemingly contrasting approaches taken to different conditions within s.54 Human Fertilisation and Embryology Act 2008.

In *Re Z (Surrogate Father: Parental Order)*, a parental order was denied to a single man, on the basis that the wording of s.54 (1) refers only to applications made by ‘two people’ and thus the court held that parental orders are not available to one applicant. However, the paper will suggest that the strict approach to the interpretation of this provision contrasts with the approach taken by the court in previous cases concerning the six month time limit for applications in s.54 (3). In *Re X (Parental Order: Time Limit)*, the court was prepared to hold that the time limit was not an absolute requirement, in spite of the statutory language, and consequently granted a parental order 2 ½ years after the birth of the child. Subsequently in *Re A (A Child)* [2015] Fam Law 1052, an application was allowed over 8 years after birth.

The paper will explore the reasoning employed in these judgments; noting that considerations relating to the ‘welfare of the child’ prevailed over the express statutory language in regard to the time limit, but similar welfare considerations were seemingly not considered applicable in regards to the requirement that parental orders are only available to two people.

## **Making the Relationship Work: Ethnographic Accounts of Surrogacy Relationships in St Petersburg, Russia**

Christina Weis

Empirical research has shown that different cultural contexts shape the understanding of surrogacy in different countries. The popular surrogacy-narratives in the Euro-American and Israeli context frame surrogacy arrangements as 'labour of love' and 'ultimate gifts'. The framing of surrogacy in Russia and other former Soviet Union countries on the other hand is that of an economic exchange. In this presentation, which is based on a total of 15 months of ethnographic research with surrogacy workers, client parents, medical staff and surrogacy agency staff in St Petersburg, I explore how the understanding of surrogacy as an economic exchange impacts the relationships between surrogacy workers and client parents. Surrogacy workers perceive themselves as employees and see the relationship as part of their work, as part of the service their offer to their customers, the client parents.

Based on this different understanding of surrogacy and the nature and meaning of relationships with the client parents, I ask: Does our current terminology reflect the complexity of surrogacy in other cultural context?

## **Regulating International Surrogacy: European Developments**

Dr Claire Fenton-Glynn

Over the past fifteen years, international surrogacy has grown from a niche practice catering only to a few adventurous couples, to a convenient response to infertility for those who would otherwise be hindered by restrictive national regimes. While the Hague Conference on Private International Law continues to debate the desirability, and indeed viability, of an international convention in this area, governments and courts around the world have been confronted by the difficult question of whether to recognise an agreement that takes place legally in another jurisdiction, but which is contrary to their own laws.

This paper will consider developments across Europe in regulating foreign surrogacy arrangements, in particular focusing on the recent decisions of the European Court of Human Rights of *Mennesson and Labassee v France* and *Paradiso and Campanelli v Italy*, and their potential impact on national approaches. The paper will argue that in light of these decisions, where the Court found a refusal to recognise parenthood in violation of Article 8 ECHR, the ability of domestic authorities to regulate international surrogacy effectively is undermined. In addition, the Court held that public policy considerations on surrogacy must yield to the best interests of the child, potentially marking an end to regimes that restrict surrogacy on the grounds of exploitation or commodification.



# FRAMING INTERNATIONAL SURROGACY

Organised by:

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&

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The logo consists of the letters 'U' and 'S' in a large, bold, serif font. The 'U' and 'S' are connected at the top, with the 'U' having a slightly open top and the 'S' having a slightly open bottom, creating a unified monogram.

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