



**Griffith Journal**  
of Law & Human Dignity

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GRIFFITH JOURNAL OF  
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## **RIGHT-OF-REPLY TO 'SURROGACY AND DIGNITY: RIGHTS AND RELATIONSHIPS'**

RACHEL KUNDE\*

After reading Galloway's article 'Surrogacy and Dignity: Rights and Relationships', I deduce that Galloway does not understand the truly complex nature of surrogacy in Australia.

Galloway's article suggests that surrogacy is not encouraged, nor explicitly accepted as part of Australian law, which is far from the truth. Galloway fails to acknowledge that every Australian state has current legislation that supports altruistic surrogacy, with some states even extending to condone the use of overseas commercial surrogacy. This legislation was founded on clearly pro-surrogacy rationale which Galloway suggests does not exist.

Furthermore, she fails to acknowledge the government's commitment to the solidity of Australia's surrogacy landscape, evident in a recent parliamentary inquiry into surrogacy chaired by MP George Christensen. The tabled report recommends that a model national law should be created that upholds four key principles - the best interests of the child, the surrogate's ability to make free and informed decisions, ensuring the surrogate is protected from exploitation, and legal clarity for resulting parent-child relationships. In my opinion, honouring these principles allows for the protection of the dignity of all parties that are involved with — or may result from a surrogacy arrangement.

Galloway's article suggests that people do not have a right to reproduce, and in doing so I feel that she has disregarded the emerging global change that is currently occurring, seeing more countries legalising surrogacy either in its commercial or altruistic form. This suggests a phenomenological shift whereby people's lived experiences of infertility

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\*Rachel Kunde is a wife and mother of three children who has been involved with the infertility community for 10 years. When surrogacy laws in Queensland came under review in 2009 Rachel entered a submission to the Parliamentary Investigation Committee and spoke at the Committee Hearing in favour of surrogacy. Since then, she has been an advocate for all forms of surrogacy within Australia and is now pursuing her third experience as a traditional altruistic surrogate. Rachel is also a full-time midwife. This commentary is an un-refereed right-of-reply to Kate Galloway's manuscript titled 'Surrogacy and Dignity: Rights and Relationships', which was written as a response-piece to Rachel's original narrative 'Australian Altruistic Surrogacy: Still a way to go,' published in Volume 3 Issue 2 of the *Griffith Journal of Law and Human Dignity* in 2015.

are being translated into laws that govern the right to reproduce through surrogacy, disregarding Galloway's suggestion that surrogacy occupies negative legal space.

Throughout her article, Galloway cites the Gammy and Baby M cases as examples that challenge assumptions of reproductive freedom. It cannot be ignored that, while Galloway purports to focus only on arguments regarding compensated surrogacy, both of these cases were commercial surrogacy arrangements. In these arrangements, a surrogate's autonomy is threatened as a result of contracts and laws that promote a power imbalance, particularly as intended parents are often given stronger legal rights than the surrogate mother. Australian surrogacy is vastly different, offering all parties a more balanced approach, something which Galloway has hinted at in her paper by not specifically opposing surrogacy in Australia, however admitting that horizons need to be broadened.

Due to surrogacy in Australia being relatively new, I believe it is important for academics to familiarise themselves sensitively to lived experiences in order to give insightful comments on the practice. Australian surrogacy is like no other surrogacy in the world, with the possible exception of Canada. Australian surrogates are not motivated by incentives, and are given autonomy over conception, pregnancy and birth. Although contracts are involved, they are not enforceable, which is completely unique in the world of global surrogacy. Until longitudinal studies are available which assess the impact that surrogacy has on children born through the practice, and the effect it has on society as a whole, all current studies on surrogacy are effectively redundant as they all surround the concept of commercial surrogacy and what some advocates against surrogacy call "baby trafficking". Clearly this does not realistically translate to the altruistic nature of surrogacy in Australia, which is a point that Galloway has conveniently avoided throughout her paper.

When it comes to sensitive topics like surrogacy, there will always be polarising views. I accept that there are people who do not agree with my will to carry babies for others; however, there is great value in giving weight to the commentary of those closest to the heart of surrogacy in Australia, as lived experience clearly extends beyond what academia comprehends. We live in a growing, diverse world where society's norms are ever-changing.

My experience is that there is a general acceptance of surrogacy by the Australian public. As I work within the infertility community running various support networks for Australians undergoing surrogacy, I witness first-hand the overwhelming support that we all receive from our families and extended community. I certainly would not have decided to become a surrogate for a third time, helping a new family become parents this October, if I was not greatly supported by those around me.

I feel as though academics such as Galloway conveniently turn a blind eye to the lived experience of surrogacy in Australia, and thus are unable to commentate with any great weight. Academia would be wise to listen intently to, and collaborate with, those with first-hand surrogacy experience. Surrogacy is a highly emotive topic, and cannot easily be translated into mere theoretical concepts.