

## **SCOTLAND, THE CHURCH AND SURROGATE MOTHERHOOD**

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### **INTRODUCTION**

Public policy measures concerning surrogate motherhood and, in particular, commercial surrogate motherhood have been suggested recently by the Brazier Report (1998) and by a Study Group of the Church of Scotland (1996). We shall discuss them and their suggested rationale. It is our intention to draw attention to this debate and to suggest that the issues have as yet been insufficiently debated; our aim is not to give an exhaustive, definitive or convincingly conclusive account of it. The debate remains an open one.

The continuation of this debate would be interesting and important, we suggest, under any circumstances, but particularly so given the existence of the Scottish Parliament and the swelling appearance of a Scottish political identity. Not only is there now a locus in Scotland for customised discussions of and decisions about such a social and moral issue as surrogate motherhood but the contributions from Scotland to UK-wide (and wider) political debates - about, for instance, surrogate motherhood - might have an even more distinctive Scottish flavour and focus than they have had hitherto.

We shall focus in this paper particularly - but not exclusively - on what is called 'gestational surrogate motherhood', what might be thought of as the 'purest' sort of surrogate motherhood. This is where a couple are the genetic parents of a child which, say, through a deformity of the womb, the woman is unable to carry and bear for herself and another women - a substitute mother

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or, to use the synonym which is invariably employed, a 'surrogate' mother - carries it in her stead<sup>1</sup>.

Here is the position from which we approach the issue. We are not antagonistic to the Church of Scotland: indeed, one of us is a member of it. We are not enthusiasts for commercial surrogate motherhood nor for surrogate motherhood. We do not think that the world would necessarily be a better place for more rather than less of it. We have no interest in promoting it nor desire to promote it. However, we take the view that surrogate motherhood and commercial surrogate motherhood and commercial surrogate motherhood agencies - just like any other activities - should be legal unless their illegality can be justified. The onus is on those who would ban to justify any suggested ban. We are not in any sense uncritical 'free-marketeers'. (See McLachlan 1994.) Not everything should be legally available for sale on a market. Markets should (and always do) operate within a context of legal regulation. Legal restrictions can, of course, be justified. They should be justified, we suggest, or removed.

Father Tom Connelly, the Roman Catholic Church's Press Officer in Scotland is quoted, in **The Herald**, as challenging views on commercial surrogate motherhood which we expressed (or were thought to express) in a conference paper<sup>2</sup>. He says: 'first of all a child is not a product, and while everyone has sympathy for childless couples, nobody has a right to a child' (Smith 1998, p.10). We agree with this entirely. Some people, when they defend surrogate motherhood, might do so on the suggested grounds that people have a 'right' to be parents: we do not. When people are conceived and born, they are not conceived and born of right but of supreme good fortune. Similarly those by whom they are conceived do not conceive them of right. It does not follow from this that surrogate motherhood is wrong nor that it should be illegal.

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<sup>1</sup> *From the evidence of the limited sample considered by Brazier (1998), it would appear that around a quarter (24%) of surrogate mothers are gestational surrogate mothers.*

<sup>2</sup> *The conference was the Scottish Economic Society's Annual Conference, held at Glasgow Caledonian University, 7-8th April 1998. The paper we gave was entitled: 'Babies, Child Bearers and Commodities: The Political Economy of Commercial Surrogate Motherhood'. See Smith (1998) and Stewart (1998).*

## **SURROGATE MOTHERHOOD: THE CURRENT LEGAL POSITION**

The relevant legislation concerning surrogate motherhood in the UK is the Surrogacy Arrangements Act 1985 and section 30 of the Human Fertilisation and Embryology Act 1990.

It is not a criminal offence for a commissioning couple to pay a surrogate mother for carrying a child: however, such agreements - along with all surrogate motherhood agreements, whether commercial or not - are not legally enforceable. Moreover, when a commissioning couple make an application to the courts to be recognised as the legal parents of the child in question (either through adoption or by the granting of a parental order) their application could be refused if they have made, unless authorised by the court to do so, payment in excess of reasonable expenses to a surrogate mother. Nonetheless, in practice, the courts have tended not to deny legal parenthood on this basis: rather, they have retrospectively authorised the payments at whatever level they have happened to be.

It can be a crime to act in an entrepreneurial capacity in relation to surrogate motherhood. As Brazier et al note: 'section 2 of the Surrogacy Arrangements Act 1985 prohibited any person from assisting in the making of a surrogacy arrangement on a commercial basis, thus preventing commercial "agencies" from operating to assist in the creation of surrogacy arrangements' (1998, p 24). It is not clear - or, at least, it is not clear to us - whether the objection of the law makers is to the assisting in - whether for payment or not - a commercial arrangement between a commissioning couple and a surrogate mother or to the paid assisting in a surrogate arrangement, whether or not it is a commercial one. Notice that various people, for instance, doctors, lawyers and counsellors, will receive fees - and fees well in excess of expenses reasonably incurred - from commissioning couples in return for services provided for them in relation to surrogate motherhood. As Brazier et al say: 'several professionals may be involved in the consequences of surrogacy arrangements. All are likely to be paid by the commissioning couple and may perceive their primary interest as being to that couple' (p.24). Whether or not such activities are, technically, crimes, the law is not interested in pursuing them. Instead, it is the actions of those agents (and agencies) who (and which), for a fee, help commissioning parents and surrogate mothers who want to meet to meet which run foul of the law and to which it is not likely to be blind.

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Notice that the commissioning couple might pay a surrogate mother for the carrying of a child and not receive the child. The couple would be unable to sue in a court for the return of the money. Similarly, a surrogate mother might, in return for promised money, carry a child, give it to the commissioning parents and fail to receive the money. She too would have no legal redress. However, if the parents or surrogate mother refused to pay a doctor, lawyer or counsellor for services rendered in connection with these deals which were reneged on, one suspects that they could and would be sued - and rightly so - by the professional people in question.

It is against the law to advertise either the services of or the desire for the services of a carrying mother. Notwithstanding, there are at least two non-commercial surrogate motherhood agencies in Britain and they operate quite openly and legally. They are Childlessness Overcome Through Surrogacy and the Surrogate Parenting Centre.

### **THE BRAZIER REPORT**

In June 1997, partly, at least, because there was in some minds disquiet about the existence of 'commercial' surrogate motherhood and of payments to surrogate mothers in excess of 'reasonable expenses', the UK Health Ministers asked Professor Brazier, Professor Campbell and Professor Golombok to review certain aspects of the current law and practice concerning surrogate motherhood. (This trio is, respectively, a lawyer, an ethicist and a psychologist.)

The remit of the Brazier Review Team was to consider the possibility and desirability of regulating surrogate motherhood arrangements and in particular to consider whether payments of any sort to the surrogate mother should be legal. It was a specification of the remit 'that surrogacy should not be commercialised and that any woman who has a baby as part of a surrogacy arrangement should not be compelled to give it up if she changes her mind' (p.1).

The Brazier Report (1998) recommended that surrogate mothers should be paid, by commissioning parents, only in regard to actual expenses caused by the pregnancy. It recommended the continuation of section 1A of the 1985 Surrogacy Act whereby the non-enforceability of surrogate motherhood contracts (and not merely commercial ones) was iterated. It recommended that only 'non-profit making' surrogate motherhood agencies should be legally allowed and that they should be registered with the UK Departments of Health.

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In the report, it is written:

We recommend the enactment of a new Surrogacy Act to ban payments other than expenses, to require the registration of surrogacy agencies and to give statutory force to a Code of Practice. Contraventions of the ban on payments to the surrogate [mother] other than expenses would result in ineligibility for a parental order. It would become a criminal offence to operate an unregistered surrogacy agency.  
(Brazier et al 1998, p. ii)

With regard to the reasons for these recommendations, the report says:

We find that payments to surrogate mothers, other than in recompense for genuine expenses, give rise to the following concerns. (1) Payments create a danger that women will give less than free and fully informed consent to act as a surrogate [mother]. (2) Payments risk the commodification of the child to be born. (3) Payments contravene the social norms of our society that, just as bodily parts cannot be sold, nor can such intimate services.  
(Brazier et al 1998, p. i)

We shall return to (2) when we consider the claims made in the Report of the Church of Scotland Study Group. Prior to that, we shall comment briefly on arguments (1) and (3).

Brazier and her colleagues were concerned, in relation to (1), that, typically, surrogate mothers are poorer and less educated than the commissioning parents with whom they deal and that, consequently, commercial surrogate arrangements are likely to be exploitative of the surrogate mothers. If this is a warranted concern, then it might be thought to be even more relevant in the Scottish context than in that of the UK in general given that the per capita income in Scotland is lower than in the UK: there might be the worry that, typically, English commissioning parents will exploit Scottish surrogate mothers<sup>3</sup>. However, it is far from clear first of all that commercial surrogate

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<sup>3</sup> Note that Brazier gives no evidence to suggest that, typically, surrogate mothers are poorer and less well educated than are commissioning parents. Perhaps the assumption is false. According to a study which we came across on the Internet: 'In contrast to the stereotype of a heartless, misguided impoverished woman primarily motivated by money, surrogate [mother]s emerge here as average mothers, often trying to further the goals of their children and families' (Aigen 1996).

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motherhood is exploitative and secondly that, if it is, the Brazier recommendations are justified.

Perhaps it is unfair that some people are poorer and less educated than others but it does not follow that any transaction with them is necessarily unfair or exploitative. There is a difference between driving someone to the wall and transacting - perhaps fairly and non-exploitatively - with someone who is already at the wall (Wertheimer 1996). There is a distinction too between saying that something is exploitative and showing that, because it is exploitative, it should be illegal or otherwise discouraged by public policies. For instance, Marxists, after all, think that, within capitalism, the relationship between employers and employees is 'exploitative' but not necessarily that employment, within capitalism, should be illegal nor be discouraged by public policy. There are worse things than being 'exploited': being saved from 'exploitation' can sometimes be one of them.

Paternalistic intervention, which is what argument (1) calls for, is sometimes justified but it is justified, when it is, only if the paternalists actually do know better than the people who are being treated paternalistically what the best interests of the latter are. There seems no reason to assume that this condition is met in this case. If potential surrogate mothers - whether or not they are wealthy and well educated - want to be surrogate mothers, are willing to run the risks involved and want to accept money for the services they provide and they disagree with Brazier and her colleagues when the latter say that such actions are not in their best interests then, to say the least, it is far from clear on what basis one could say that Brazier and her colleagues are more likely than the potential surrogate mothers to be right.

Argument (3) is related to the notion that it is good to donate body parts and services but bad to sell them, and that gift relationships are invariably better than commercial ones. Perhaps, if it is true as is often supposed that Scottish people in general are more 'left wing' and less pro-capitalist than are people in general in the UK, then the 'social norms' which Brazier and her colleagues talk about might be particularly powerful in Scotland. However, this would only mean that (3) might be a popular argument in Scotland, not that it would be a sound one.

Furthermore, it is not clear that (3) is actually an argument at all rather than the mere assertion that a particular point of view is commonly held. What is wrong with selling bodily parts and services? What is the argument against it? In any event, it is not the case that the selling of all bodily parts is illegal. Human sperm, for instance, can, legally, be bought and sold. It is not clear

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that this state of affairs causes any general feeling - whether appropriate or not - of outrage. It might be argued that services which are just as 'intimate' as the services of a carrying mother can be and commonly are legally bought and sold. There will be different views about what counts as 'intimacy' - what about the services of, say, a dentist, a chiropodist, a gynaecologist, a geriatric nurse or an artist's model? What a carrying mother does for the carried baby might be an 'intimate' service. That which she does for the commissioning parents, some might think, is not.

## **THE CHURCH OF SCOTLAND**

**Pre-Conceived Ideas: A Christian Perspective of IVF and Embryology** (Church of Scotland 1996) is the Report of the Study Group on Human Fertilisation and Embryology, which was produced by the Board of Social Responsibility of the Church of Scotland. The Study Group is very opposed to surrogate motherhood, particularly, but not only, commercial surrogate motherhood. Its public policy recommendations are not as fully specified as those of the Brazier report but it is clear that they are as restrictive as, and perhaps even more restrictive than, those of the latter (and later) publication. Summarising the position taken by the Church of Scotland (and, apparently, still held) and expressed previously in Reports in 1982 and 1985, they say: 'surrogacy should be made illegal' (Church of Scotland 1996, p.5). However, they do not further specify what form this illegality should take nor what should be its consequences.

Writing in 1996 and talking about the then current situation, they say: 'the Study Group is aware that the law in the UK is designed to discourage surrogacy without criminalising the families directly involved. It would not want to see the law liberalised' (Church of Scotland 1996, p. 78). Would the Church of Scotland want the law - in Scotland?; in the UK?; in both?; everywhere? - to be less liberal than that proposed by the Brazier Report? Would it agree entirely with the Brazier Report's recommendations? It would be fascinating to know. Our hunch is that the Brazier recommendations would be 'too liberal' for the Church of Scotland or, more specifically, for its Study Group.

The opposition to surrogate motherhood of the Study Group is said by them to be based on the following reasons:

- '... it is an intrusion into the marriage relationship and undermines the divinely ordained bond of husband, wife, and child within the family' (Church of Scotland 1996, p.78).

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- '... it requires of the surrogate mother a detachment which in other circumstances one would not look for in a mother. A willingness to give up her child, which in an ordinary mother would be seen as a fault, becomes a virtue in a surrogate mother. The physical, psychological and spiritual bonding between mother and child which is an important part of pregnancy is denied' (Church of Scotland 1996, pp.78-79).
- '... where surrogacy is a commercial arrangement, the dignity of the child is violated through its becoming an object of barter' (Church of Scotland 1996, p.79).

Let us consider each of these arguments of the Church of Scotland in turn.

#### ***Incompatibility with the Christian Concept of Marriage***

It is useful to couple the first objection of the Church of Scotland to surrogate motherhood with the claim of theirs that surrogacy is '... incompatible with the Christian concept of marriage' (p.5). Now, there are two general replies which we would make in response to this objection. First of all, that something is not ordained by God or is not in accordance with the Christian concept of, say, marriage, is in itself no good reason for making it a crime. (Did God ordain that those actions which were not in accordance with His will should be crimes? If so, where and how did He make this ordinance manifest?) Secondly, it is far from clear that surrogate motherhood is against the will of God or at variance with the concept (or concepts?) of Christian marriage. Where, for instance, can Christ be cited as having spoken against surrogate motherhood?

The Church of Scotland accepts the Ten Commandments and believes that it is ordained by God that people should, for instance, honour God, honour their father and mother, remember the Sabbath day to keep it holy, and refrain from committing adultery. It would be alarming to hear, particularly given the existence of the Scottish Parliament, that it is the view of the Church of Scotland that such breaches of the Commandments should be made into crimes.

Often, even when particular actions are in themselves immoral, it is wise not to make them crimes. Whether something is morally wrong (or sinful) and whether it would be a good idea to make it illegal are quite distinct questions. Adultery, for instance, is or can be a wrong and highly immoral action. Many religious people, including members of the Church of Scotland, would consider it to be sinful. In some countries adultery is a crime. In Scotland,

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adultery was once a crime. Indeed, it was once a capital offence (McLachlan and Swales 1993). It does not follow that if adultery is immoral or a sin it should be made criminal. Does the Church of Scotland want adultery in Scotland to be again a crime on the grounds that it is incompatible with Christian marriage and: '... is an intrusion into the marriage relationship and undermines the divinely ordained bond of husband, wife, and child within the family'? (p.78). One assumes that it does not, even although adultery, manifestly, causes more problems and unhappiness than the less widespread practice of surrogate motherhood is every likely to do.

It would seem to be immoral and highly un-Christian for Christians to accuse other people of un-Christian behaviour unless they have extremely strong grounds for claiming that the behaviour in question is un-Christian. A problem here is that no Biblical sources are quoted by the Study Group in support of their view that surrogate motherhood is un-Christian. In Genesis, Chapter 16, a situation is narrated which is, or is like, surrogate motherhood<sup>4</sup>. Sarai, the wife of Abram, is barren and, at her suggestion, he fathers a child - who was called Ishmael - of Hagar, her handmaid. The arrangement is not condemned in the Bible. No reference is made to this portion of the Scriptures nor to any other one.

A corollary of the doctrine of the virgin birth is that Joseph, the husband of Mary and the social father of Jesus was not His biological father. Given this, it is not easy to see how it can be justifiably argued that there is one and only one acceptable form of Christian family unit. Even if one were to ignore the doctrine of the virgin birth, it is difficult to see how one could justifiably argue that there is one and only one acceptable form of Christian family unit. What could be the theological objection to, say, fostering or adoption? Should they, on theological grounds, be made criminal?

It is unconvincing to say that a gestational surrogate mother 'undermines the divinely ordained bond of husband, wife, and child within the family' since, in the sort of cases we are talking about, without her, there could be no bond between the child and the husband and wife since the child is dependent upon the surrogate mother for the chance of existence. The child would not be born were it not for the help of the surrogate mother.

If a husband and wife need and seek the assistance of, say, a sex psychotherapist, a gynaecologist, and a midwife in order to assist them to have a

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<sup>4</sup> We are grateful to Lynne Craig, a 4th Year Social Sciences student at Glasgow Caledonian University, for drawing this passage to our attention.

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baby, would one say that such people are an intrusion into their marriage? It would be strange to do so. Similarly, if it is the case that a husband and wife can have what is genetically their own baby only if a surrogate mother carries the embryo, fetus and baby for them and if they request someone to perform that service for them, it is very odd to condemn the service or the person providing it as necessarily being an 'intrusion' into the marriage.

#### ***Surrogate Motherhood is Different***

The second objection of the Church of Scotland might be true. However, it does not seem to be relevant. Three points are being made here and with the first two of them we agree without reservation. About the third one we are sceptical. However, these points (even if true) do not serve to show that surrogacy is wrong, merely that it is different and that, in fact, surrogate motherhood is surrogate motherhood. A description of surrogate motherhood is not in itself a criticism of it far less a reason for making it illegal.

It is true that surrogate mothers are expected to act in ways which would be condemnable in normal mothers but surrogate mothers are not normal mothers. Consider, for instance, foster parents. They too are expected to act, in some circumstances, in ways in which one would not expect nor want normal parents to act. Foster parents, for instance, are sometimes required to sever links with children whom they have grown to love and who have grown to love and depend on them. What would be a fault in a normal mother or father can be a virtue in a foster parent. Foster mothers, like surrogate mothers are not normal mothers but neither surrogate motherhood nor fostering are condemnable merely on that account.

Surrogate motherhood is not ideal; it is resorted to only because the ideal is not available to the couple concerned. It would be bizarre to say that children should not be born at all - and surrogate motherhood is, we are assuming, the only possible basis for the birth of these particular children - if the children cannot be bonded with their parents in the normal way. Such children, the Church of Scotland seems here to suggest, should be denied everything, should not be allowed to live, because their genetic mothers are incapable of providing them with a normal pregnancy.

More thought should be given by the Study Group to their argument here. Perhaps they mean something other than what they are or seem to be saying.

***Commercial Surrogate Motherhood and the Dignity of the Child***

This is very similar to the contention of Brazier et al that: 'payments risk the commodification of the child to be born'. It is similar too to a claim made in response to our views on surrogate motherhood by Father Tom Connelly that: 'it is wrong even when money doesn't enter into it. And when it does, then we have trafficking in human life' (Smith 1998, p. 10).

Now, even if this objection of the Church of Scotland were true, it would not be a devastating criticism of surrogate and commercial surrogate motherhood. After all, it is surely better to be born with one's dignity violated than not to be born at all. If the only way that a particular person could be born is through becoming an object of barter then no obvious favour is being done to that person by failing to allow him to become an object of barter.

However, it is not true that, with commercial surrogate motherhood, children are objects of 'barter': neither are children 'commodities' nor, necessarily, thereby treated as 'commodities' nor as mere objects. Notice the inappropriate, emotive and loaded use of the word 'barter' here. 'Barter' is the wrong word to use. Barter, which is typically a form of economic exchange, involves trading objects and commodities for objects and commodities rather than for money. Commercial surrogate motherhood usually involves a monetary exchange. Similarly, the word 'traffic', used by Father Connelly, is a gratuitously pejorative one, connoting a trade in that which should not be traded.

Commercial surrogate motherhood is not the buying nor selling of babies. Babies are not owned by anyone. They are not possible objects of purchase or sale (under, Scottish, English and all other legal systems of which we are aware). Similarly, the legal rights of parenthood, which, in a sense, is what commissioning parents in a surrogacy arrangement want to have, are not purchasable either. Neither the gestational mother nor the genetic mother owns the baby nor the child. The question of one or other of them buying or selling it does not arise. The gestational mother, under English and Scots law, would normally be assumed to be the legal mother of the child. The commissioning couple, the genetic mother and father of the child in this case, could apply to the courts for a parental rights order and they would hope that the gestational mother would not pursue - that she would waive - her legal rights concerning the child. It is wrong to say that commercial surrogate motherhood involves buying a baby. If you buy, say, a house or a motor car, then you have legal rights and duties concerning that motor car which others do not have. If you 'buy' a baby, what rights and duties do you have which

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differ from those which parents have towards their children who were born in the normal way? None. Children acquired as a result of commercial surrogate motherhood do not become nor are they necessarily treated as 'objects' or 'commodities'.

What is bought and sold with commercial surrogate motherhood is the services of the carrying mother (and, sometimes the entrepreneurial and related services of commercial surrogate motherhood agencies and agents). One could say too that the payment might induce the carrying mother to promise not to pursue her legal rights of parenthood concerning the child. This is not quite the same as saying that she sells her legal rights nor that the commissioning parent purchases legal rights. As in any transaction, what people actually buy; what they think they are buying; what they expect to receive; and what they will receive can be four separate matters. This is one of the reasons why, in general, laws and legal processes are useful and why, in particular, there is a strong case for making commercial surrogate motherhood contracts legal and legally enforceable.

If you pay a taxi driver to convey your body and your baby's body from one place to another or, as you might do in some cultures and circumstances, if you pay a porter to carry you or your baby from one place to another, you are not thereby involved in some sort of immoral action. You are not treating the taxi driver nor the porter nor your own body nor your baby's body as a mere object nor a mere commodity. Similarly, if a couple give a fertilised egg of theirs to a surrogate mother and pay her for carrying it, delivering it as a baby and returning to them in that form, they do not seem to be treating the baby as a mere commodity. They do not seem, in any way which is wrong, to be 'trafficking in human life'. They do not seem to be violating the dignity of the child concerned: rather, what they are doing in the context represents an appropriate manifestation of love and respect towards the child. They are certainly not buying a baby - their own biological baby - from the surrogate mother. After all, and the analogy is incomplete, if you pay a haulier to carry a trunk for you from, say, Glasgow to Leeds, and, at the handing over of money in Leeds, the trunk is returned to you, you would not consider that you were buying the trunk from the haulier.

If this particular objection, relating to 'dignity' and 'barter' of the Study Group to commercial surrogate motherhood has any relevant force, then some work is required by them to show what it is.

## **CONCLUSION**

In the case of both the Brazier Report and the Report of the Church of Scotland, there is a gulf between their recommendations and the arguments which they put forward to support them.

The recommendations concerning the illegalisation of commercial surrogate motherhood agencies are, in our view, particularly unconvincing. The hostility of Brazier and her colleagues to them is inexplicable. Organisations such as, for instance, universities, churches and matrimonial agencies - whether or not they are all 'commercial' or 'profit-making' (whatever, precisely such terms mean or signify) - are allowed to advertise their services; they are allowed to charge fees; people such as Professor Brazier and us and ministers and priests can, legally, make a living from working for them. Even in terms of the rationale of the Brazier report, it is unclear why commercial surrogate motherhood agencies should be treated so differently from them. It is unclear too why surrogate motherhood agencies should be registered with ministries of health. The particular services which they provide are no more, in themselves, health services than are, say, the services provided by matrimonial agencies or singles bars. The particular services which they provide are hardly likely to be more efficiently provided by virtue of such registration. Why, too, should commissioning couples not be allowed, at the very least, to pay to such agencies and agents 'reasonable expenses'?

It is not clear why nor that it would be unwise to allow such agencies to operate as straight-forward 'profit-making' and 'commercial' ones. In the Brazier Report, it is said of the organisation Childlessness Overcome Through Surrogacy that: 'their preferred solution is a regulated commercial market' (Brazier et al 1998, p. 25). We would say that this is the solution which should be adopted unless a justification can be given for deviating from it. Childlessness Overcome Through Surrogacy are not required to prove to people who disagree with them that commercial surrogate motherhood should be legal. Rather, the onus of proof is on those who advocate the illegality of commercial surrogate motherhood - a burden which the writers of neither of the reports we have looked at have, so far, managed to discharge.

If a gestational surrogate mother does not want to return a child which she has carried to the genetic parents, what should be done? This might well be a very difficult legal and moral question. It is not obvious that the wishes of the carrying mother should always trump those of the genetic parents if she

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wants to go back on her word. There is, perhaps, more of a dilemma here than a problem with a solution or a question with an answer. However, it is far from clear that the difficulties will be lessened, far less removed, by the non-enforceability of surrogate motherhood contracts. 'Enforceability', after all, might be limited to the granting of compensation for breaches of contract. 'Enforceability' need not mean the forced removal of a child from a surrogate mother. Whether, on some occasions at least, it should mean that is another issue, which the non-enforceability of surrogate motherhood contracts evades rather than solves.

Perhaps the recommendations which Brazier and the Church of Scotland Study Group make could be sustained by arguments other than those which they put forward. Perhaps the acceptance of alternative recommendations concerning surrogate motherhood and commercial surrogate motherhood would be preferable. In either case, the debate concerning surrogate motherhood requires continuation. We should say, perhaps, that the debates require continuation since the Scottish Parliament and the UK Parliament might, in the end, settle on different policy measures and different legislation concerning surrogate motherhood with all the interesting complications which that might produce.

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