

Surrogacy falsely in the dock

A single case of surrogate motherhood seems about to stampede the British government into hasty legislation on human embryology. It should think again.

EVERYBODY is rightly concerned at the wider application of new techniques in human embryology. In most places, there is a need for legislation of some kind. In Britain, for more than the past two years, the government has been planning with creditable care to do something about the problem. Early in 1983, it appointed the Warnock Committee to suggest what might be done, and had a set of detailed if arguable recommendations (see *Nature* 312,389; 1984). But although the committee's chairman, Dame Mary Warnock, has now been appointed to the House of Lords, nothing much else has happened. The government is supposed to have been busy consulting interested parties, but the beginning of this parliamentary session brought no promise that legislation would surface before the summer recess (if ever).

The danger in this delay has always been that the government's capacity to act deliberately would be preempted by the parliamentary device of a private member's bill, the procedure by means of which members of the British House of Commons can advertise their attachment to peripheral causes (the abolition of fox-hunting), canvass opinion on others (capital punishment) and, sometimes, secure legislation on matters so laden with political hazard that governments fight shy of them (whence British legislation on abortion and, last year, the censorship of home video-films). Already such a bill has been introduced to outlaw the scientific investigation of human embryos, although it is too soon to know whether that will muster the support needed to survive. But now, mystifyingly, the government seems to be encouraging just such a piecemeal approach to legislation dealing with just one aspect of the Warnock proposals, the recommendation that surrogate motherhood should be forbidden by law.

The circumstances are curious. Since before the publication of the Warnock report, a private agency in the south of England has been advertising its readiness to provide a surrogacy service on commercial terms, offering to find (and reward) women willing to carry children for childless couples after insemination with sperm from the presumably fertile male partner. The first such case has received a good deal of publicity in the past few months, with a pregnant woman explaining to newspaper and television reporters why she had taken part in the procedure. But when her child was born last weekend, mild public curiosity gave way to zealous public indignation. The local authority in the London suburb where the maternity hospital is situated applied for and won temporary care of the infant (and may be given permanent rights at a court hearing due this Friday), the London police announced that they were investigating whether the birth had been attended by "illegal circumstances", various public dignitaries announced that surrogacy is "just like prostitution", the mother allowed herself to be swept off by a popular newspaper to which she is said to have "sold her story" and the Minister of Health, Mr Kenneth Clarke, promised a "fair wind" for any private member's bill that would ban surrogate motherhood. Then he thought again, and said he would take action off his own bat. Mr Clarke, like most of those concerned, should think yet again.

Surrogacy (Warnock's term), in the sense that led to last weekend's birth, is neither novel nor, in principle, different from the widely practised and condoned technique of artificial insemination with the use of donor sperm (AID). There is plenty of anecdotal evidence of women who grow children for their infecund sisters. As after AID, the child of such a gestation is only

half the genetic product of the parents who claim it as their own, and thus is technically illegitimate. Ironically, the Warnock Committee recommended that AID children should automatically be legitimized as the offspring of their half-unnatural parents while (with the dissent of a tiny minority) inconsistently recommending that surrogacy should be made a criminal offence. But why should a remedy for childlessness which is open to couples in which the male is infertile be denied to those in which the female is infertile? Mr Clarke had better watch out, or he will have the whole women's movement on his doorstep.

Old-fashioned surrogacy does of course entail more taxing problems than AID. What happens, for example, if a surrogate mother wishes to break her contract? Nine months is a long time, while human gestation is physiologically if for no other reason an emotional business. The majority of the Warnock Committee took the view that the emotional risks to surrogate mothers would be greater than the social benefits to others, but was also offended (as British public dignitaries have been these past few days) that money would change hands. The plain truth, last summer as now, is that it makes no sense to ban practices that make people feel uncomfortable by laws that cannot be enforced (as Britain has discovered to be the case for prostitution, homosexuality and abortion). The only prudent course to follow with surrogacy is to ensure that the practice is regulated properly. And the same principle should apply to the other items on the Warnock agenda.

On surrogacy, the steps that need to be taken are obvious enough. First, agencies (which may sometimes be individual physicians) offering to provide these services should be appropriately registered, partly for legal reasons (to establish parentage, for example) and partly so as to ensure that agreements between a surrogate mother and her child's potential parents are equitable. (Everybody worries about what should be done if the mother changes her mind, but what if the prospective parents choose to pull out, perhaps because of congenital malformation?) Far from requiring that money should not change hands, prudent regulation would ensure that potential surrogate mothers and their dependants are financially protected from the still not negligible risks of childbirth. Dark hints from the London police of illegality were in part a reference to the sensible requirement of British adoption law that children for adoption cannot be put up for sale, a difficulty that could be avoided by giving properly registered surrogacy contracts a legal status from the outset (from which it follows that surrogacy agencies should be registered as if they were adoption agencies).

The danger in the situation that has developed is that Mr Clarke will be diverted by the present fuss from paying proper attention to the urgent need for action on the other questions Warnock has dumped on his desk. Surrogacy of the second kind, an embryo formed from gametes of the intended parents gestated in a rented womb, should depend on medical evidence of necessity (as with abortion). Legitimizing AID children is a crying need, especially as many are now falsely registered at birth, but there is a greater need than Warnock allowed that donors should be registered (and that genetic data about them should be retrievable if need be). The same principle should apply to *in vitro* fertilization. The British government's guiding principle, well illustrated by last weekend's fuss and what may yet flow from it, is that the general opinion jumps most readily to prohibition when it is taken by surprise. □