

# Surrogate Motherhood Should Be Privatized

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## Letters

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To the Editor:

I would like to speak against legislative bills on surrogate motherhood.

First, legislation will only address problems legislators have heard about, resulting in highly artificial regulatory limitations that will need continual revision and litigation as new technology and evasive techniques are invented. For example, one proposed New York State bill (news story, Feb. 4) makes illegal all payment exceeding pregnancy costs; that would simply drive payments underground and make criminals out of all the consenting parties. Another New York bill would require medical evaluations and psychiatric counseling for all parties; this "Brave New World" approach would also lead to payoffs and conspiracies.

More important, the law has little business getting into these private, and often painful, family decisions. The law deals in words, not emotional reality; behind it stands the policeman with a nightstick and handcuffs, who should not be arresting surrogate mothers or childless fathers. We don't need more state regulation of privacy.

Not even the courts should get involved in these cases. A court seemingly has no choice when there is a lawsuit over a contract, as in the case of Baby M. But there is a choice for the judicial system: simply refuse to enforce surrogacy contracts (as illegal gambling contracts are not enforceable), while placing no obstacles in the way of legal adoption.

Private enterprise would then fill the gap. A father would go to an agency that is in the business of providing surrogate mothers. He would pay the going rate to the agency, which would hold the money in escrow. Then he would donate the sperm (or as technology permits, he and his wife would donate a fertilized ovum). It would be the agency's responsibility to find surrogate mothers who are reliable and who say they will give birth to a baby and turn the baby back to the agency.

If everything works out, the agency would turn the child over to the genetic parent or parents, who would formally adopt the child. But if the surrogate mother changes her mind — as in the Baby M case — she would keep the child and forgo payment from the agency, which would then return the escrowed money to the father.

If many surrogate mothers changed their minds, an agency would lose credibility. Thus it would have a strong financial incentive to find reliable surrogate mothers (and use whatever psychological screening seems appropriate — with the full consent of the applicants).

In those cases where the surrogate mother changes her mind, my no-contract proposal would protect the most vulnerable party: the surrogate mother. Having been through a pregnancy and maybe not having many more chances for future pregnancies, she has, I believe, the strongest interest in keeping the child.

The genetic parents, on the other hand, have only lost about a year's time and no money. Their loss is far less than the surrogate mother's. They can try again, perhaps with a different agency.

This approach would let people gravitate toward the best solutions, while keeping out the heavy hand of the state.

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