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Letter to the Editor, BJOG Exchange

Author's reply re: Uterine Transplantation in Transgender Women: Medical, Legal and Ethical Considerations

Dear Editor,

I thank you for the opportunity to respond to the letter submitted in response to my mini-commentary on uterine transplantation in transgender women.^{1,2} I agree with Jones, Alghrani and Smith that current legislation is not well equipped to govern the rapidly developing field of uterus transplantation (UTx). UTx straddles transplant and reproductive medicine, law, and ethics, with current legislation brought into force before UTx was contemplated as a reproductive possibility in the UK. The UK has a history of statutorily regulating both transplantation and reproductive medicine, and informed debate is needed to consider the shape of any new legislation in this area.

The authors highlight section 3(2) of the Human Fertilisation and Embryology Act, noting that it is not specified here that the woman receiving the embryo must have been born female. However, when the legislation was amended, section 3ZA(6) introduced the definition that “woman” and “man” include respectively a girl and a boy (from birth).’

In the limited time available, I have been unable to locate a reason for the introduction of section 3ZA(6). This definition first appeared in the 2007 draft Bill and it appears was introduced without controversy, with the debate in Parliament centred around the issues of hybrid embryos, reproductive cloning, and mitochondrial donation.³ Without access to any meaningful and informed debate as to the inclusion of this definition it is not possible to conclude definitively on the reasoning behind it.

I agree with Jones, Alghrani, and Smith that this section may conflict with the Gender Recognition Act 2004 and be subject to legal challenges on the basis of human rights breaches. However, until a legal challenge is brought and clarification given, any medical practitioner who performs an embryo transfer to a transgender woman who has undergone UTx is at risk of being subject to the sanctions of the Human Fertilisation and Embryology Act (a fine and/or imprisonment up to 10 years). The Act is explicit in

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its definition, and anything other than a strict interpretation of this provision is hard to foresee.

I am not convinced of the arguments that there is a right to gestate for cisgender women, transgender women, or men;⁴ within the context of the evolving and rapid progress being made in UTx the right to gestate requires further examination. There may well be persuasive reasons for limiting a right to gestate to cisgender women. Indeed, should a human rights challenge be brought the establishment of a right to gestate will be influential. The European Court of Human Rights may find that the right to gestate falls within the margin of appreciation and that if a legitimate aim can be shown for interfering with that right, no breach will be found. This is speculative and as such I look forward to the discussion, debate, and development of medicine, law and ethics in this area.

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