

# Commentary on Nicola Williams and Stephen Wilkinson: 'Should Uterus Transplants Be Publicly Funded?'

Mianna Lotz

Human reproduction is a profoundly social phenomenon, deeply embedded in complex social norms and aspirations. This is most apparent where it is mediated by technology and policy. As such, reproductive technology must be examined fully in light of its wider social impacts, as embodying and communicating significant values, and as occurring within a dynamic and reciprocal *communicative* relationship between state, society and individual. Williams and Wilkinson offer an extremely useful exploration of issues central to the question of whether uterus transplantation (UTx), once safe and reliable, could be a candidate for public health funding. Yet, in spite of considerable merits, I suggest that their analysis needs supplementation by greater attention to key social factors and impacts inextricably bound up with UTx provision.

One strength of Williams' and Wilkinson's analysis is their rejection of the claim that UTx funding is unjustified because infertility is not a 'disease' or medical condition, but rather a *social* and 'culturally determined' problem, arising only in the presence of certain desires. To this, Williams and Wilkinson persuasively respond by arguing both that '...the fact that the major harms associated with infertility are dependent on the desire to have children does not mean that infertility cannot be a pathological condition'; and (more compellingly) that '...there may be instances in which it is appropriate for the state to use its resources to address issues other than disease'. This highlights a critical point: decisions regarding public health funding ought not to treat social factors as automatic grounds for disqualification. So many of the harms of accepted 'diseases' and 'disabilities' turn out on closer analysis to arise in virtue of social factors, including desires, preferences and priorities, rather than purely medical ones. This is part of what it means to say that notions of health and well-being, and their counterparts illness,

disability and disease, are inherently normative and evaluative.<sup>1</sup>

This point connects with what I regard to be a core issue in the UTx debate, concerning the extent to which both the harm of infertility, and the alleged benefits of UTx, are inextricably bound up with fundamentally social factors and conditions, including attitudes, desires, biases and values. Consider first the weight to be given to the social dimensions of the harm of infertility. Williams and Wilkinson accept that the harm of infertility is to a significant extent socially caused, yet they nevertheless insist that what is distinctive about infertility (as compared with other discriminated-against conditions such as poverty) is that the desire for children would still exist even in non-discriminatory (ie, non-sexist and non-pronatalist) societies. Accordingly they say, '...although the harmful effects of infertility are made worse by pronatalism and sexism, discrimination is not the sole cause of that harm, nor is it the case that there would be no harm if it were not for the discrimination'. This is because deprivation of the option to become pregnant would persist '...even in a utopia without sexist and pronatalist attitudes'. Importantly, Williams and Wilkinson concede that the desire to parent may be 'encouraged and influenced by such attitudes and...may cause more women to want children and those who want them to want them more forcefully'. Yet they conclude that 'it is implausible to see such desires as solely caused by these ideologies' because the desire for children would persist.

While Williams and Wilkinson acknowledge that changed social attitudes would reduce the prevalence and intensity of reproductive desires (plus how badly people would feel about infertility), I believe they still do not give sufficient weight to the extent to which

socioreproductive conditions contribute to the perceived harms of infertility. Furthermore, their response regarding infertility in general is inadequate for the UTx argument. The mere persistence of a desire for children cannot tell us how society ought to respond to that desire, or whether its response should be publicly funded. Additionally, the description of the desire here is overly broad. To answer the UTx question, we will need to know not just that a desire to have children would persist in a changed socioreproductive context, but that *within that context* it would remain a sufficiently *serious and weighty* desire, such that its thwarting would amount to a *sufficiently serious and significant harm or injury*. Moreover, we need an argument that in changed social circumstances a sufficient number of people would still sufficiently seriously desire to *gestate and give birth to biologically related children*, in order to establish whether it would be warranted to publicly fund the allocation of substantial medical resources (for UTx will never be inexpensive) in order to satisfy *those* desires.

The impact of significantly altered socio-ideological conditions on the nature and strength of reproductive desires, and in particular on the extent to which biological relatedness is valorised, is of course difficult to estimate, but Williams and Wilkinson seem to underestimate just how strongly the distinctive content of the UTx desire—with its focus on achieving biogenetic parenthood—is socioculturally grounded. Notwithstanding epistemological limitations, a defence of the importance of deploying considerable resources to satisfy desires for the parenting of genetically related offspring, would at least need to be supported by evidence of the significant distinct goods of that form of parenthood—for example, that it is protective against abuse/neglect; that it is predictive of improved welfare outcomes via improved bonding/attachment or that the physical and/or psychological similarity that genetic ties may bring can plausibly be thought of as significant benefits (certainly similarity cannot be assured). Yet there is as yet no reliable evidence in support of such claims, and I think no reason to believe that such evidence will become available. Given the ineliminable resources and risks involved in UTx, the burden of proof surely lies with those who would defend the importance of fulfilling desires for biologically related offspring, even in potentially significantly altered socioreproductive conditions.

Indeed, the possibility of significantly altered socioreproductive conditions

<sup>1</sup>This recognition on their part is more compelling than their accompanying defence of infertility (especially absolute uterine factor infertility (AUI)) as after all a pathology and genuine medical condition or 'disorder' involving subnormal functioning or absence of a bodily part or process.

seems generally underestimated on Williams' and Wilkinson's account. This emerges also in their response to the objection that adequate alternatives exist for achieving the goods of UTx, in the form of surrogacy and adoption. Here, their analysis seems both to overestimate the extent to which current sociolegal conditions of surrogacy and adoption are immutable; and to underestimate the impact that refusal of public provision of UTx would have on altering reproductive aspirations and overcoming existing deficiencies and barriers related to the alternatives.

Importantly, Williams and Wilkinson accept that the primary goal of UTx is to fulfil the desire for *social* parenting, and thus that surrogacy and adoption do offer alternative means by which to achieve that.<sup>ii</sup> But they suggest additional benefits of UTx, secondary reproductive goals that they claim are non-trivial. Specifically these are genetically related offspring, the opportunity to raise a child from birth, the experience of gestation and (they suggest) experience of the 'journey to parenthood'.<sup>iii</sup> In the present context, none of these goals can be achieved via adoption (though sometimes children *are* available for adoption soon after birth). Surrogacy cannot offer fulfilment of the desire to experience gestation, but can potentially provide fulfilment of the other two secondary goals. Thus, Williams and Wilkinson propose surrogacy to be the only genuine candidate, but ultimately argue that *existing problems* make it an insufficient alternative in the *present sociolegal context*. On those grounds, they conclude that 'the case for ruling out state funding of UTx is weak'. Nevertheless, they note that this does not entail that it should be provided immediately, as it must first be shown to be 'effective, safe and cost-effective'; and moreover, that if surrogacy law were reformed to mitigate or remove concerns

about exploitation, the case for funding UTx would be 'significantly weakened'.

I suggest, however, that further considerations weaken the case for funding UTx, which are unacknowledged in Williams' and Wilkinson's analysis and should supplement future analyses. These include the prospect of *adoption* law reform as well as surrogacy reform; but they include also policy and educative efforts to break down existing bureaucratic and ideological obstacles currently undermining adoption and surrogacy.<sup>iv</sup> Most fundamentally, they include transformation of socioideological conditions in which reproduction occurs. In particular, a deep alteration of attitudes regarding the importance of genetic relatedness would significantly reduce demand for all forms of assisted reproductive technology (ART) but most substantially for those that are and will continue to be most resource-intensive and risk-intensive, in particular UTx.<sup>v</sup> Within a socioreproductive context that places substantially less emphasis on genetically related offspring, the demand for UTx would be *dramatically* reduced, even if became safe and effective. Williams and Wilkinson seem to discount this, accepting the present problems bedevilling the alternatives as reasons for openness to public provision of UTx.

More crucially, however, Williams and Wilkinson disregard the role that UTx provision—and especially its state sanctioning via public health funding—will itself play in consolidating the very desires that fuel demand for and development of UTx. This is evident where—having again acknowledged the desire for genetic and gestational parenthood as 'at least partly a result of cultural and social sexist and pro-natalist bias, which results in the unwarranted inflation of the significance of such desires'—they nevertheless say that 'the fact remains that until such time as this bias is eliminated (and, most likely after) the inability to have one's own genetic

and gestational children will have significant and enduring negative effects on the welfare of many people'. There is no acknowledgement of the very significant ways in which ARTs—and especially resource and risk-intensive ARTs like UTx—articulates with reproductive biases, influencing the content and prevalence of those. There is an implication that somehow, the removal of genetic and gestational bias could and would take place disconnected from provision (and public funding) of technologies that facilitate those forms of parenthood. That would be a profoundly mistaken assumption. Apart from the diversion of public resources away from (inter alia) avenues for social parenting, provision and—especially—public funding of UTx would fail to do anything to *counter* such bias, and would play a very considerable role in *consolidating* and *reinforcing* it.

For what must be recognised is that whatever its endorsed goals and priorities are, and however we construe its principal obligations, the state's provision and designation of a 'treatment' as publicly fund-worthy communicates a powerful venerating message regarding its importance. The more resource-intensive and risk-intensive that treatment is, the louder is the validation that the condition to be 'treated' is weighty, serious and regrettable, and that the proposed treatment benefits are real, significant and valuable. If a case for public funding of UTx is to remain open, all such evaluative judgements had better be fully defensible. I remain deeply sceptical as to that prospect.

**Competing interests** None declared.

**Provenance and peer review** Commissioned; internally peer reviewed.



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**To cite** Lotz M. *J Med Ethics* 2016;42:570–571.

Received 1 February 2016

Accepted 8 February 2016

Published Online First 9 March 2016



► <http://dx.doi.org/10.1136/medethics-2015-102999>

*J Med Ethics* 2016;42:570–571.

doi:10.1136/medethics-2015-103230

<sup>ii</sup>It is surely implausible that the State could have an obligation to enable individuals to fulfil an alleged interest in "found[ing] a family in the way they desire", as seems to be entertained by Williams and Wilkinson at one point.

<sup>iii</sup>I disregard the last option, however, as it cannot be defensibly claimed that only genetic and gestational parenthood offer a 'journey to parenthood' and so I find Williams and Wilkinson confusing on this point.

<sup>iv</sup>I acknowledge that of course not all of these barriers can be removed.

<sup>v</sup>Adoption will never be sufficient to provide *all* would-be parents with a child to raise, and for that reason, some ART such as in vitro fertilisation will remain available, and potentially also surrogacy (albeit with changed laws and other exploitation-minimising conditions that I do not have space to review here).