

# **The Limits of Expressivist Arguments against State Support for Uterine Transplantation**

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**Abstract:** State support for uterus transplantation (UTx), whether in terms of funding or supporting provision more broadly, has been criticised on expressivist grounds. This chapter explores these criticisms and their focus on the ‘message’ that may (consciously or otherwise) be sent or received through state support for UTx, as well as the broader social harms to which this may contribute. Beginning with an exploration of expressivist critiques and their key features, the chapter then provides an in-depth account of the expressivist argument against public funding for UTx forwarded by Mianna Lotz. This is followed by an exploration of the limits of expressivist arguments given the inevitable opacity of human communication and the concept of reasonable interpretation. The chapter then concludes with a discussion of how it may be possible to satisfy the reproductive preferences of women with Absolute Uterine Factor Infertility (AUI) while simultaneously remaining sensitive to the inevitable opacity in the meanings that individual and group actions express, thereby reducing the potential for state funding of UTx to cause expressive harm.

**Key words:** expressive harm, expressivist arguments, public funding, priority setting, reproductive autonomy

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## I. INTRODUCTION

State support for uterus transplantation (UTx), whether in terms of funding or supporting provision more broadly, has been criticised by scholars concerned with the ‘message’ that such funding or provision may be perceived to send or express. Such criticisms have focussed on the cost- and risk-intensive nature of UTx and the extent to which state support of the procedure may therefore be seen to endorse or entrench socio-cultural norms and values which are problematic or harmful.

For example, in papers critiquing our previous work on state funding for UTx,<sup>1</sup> Mianna Lotz notes that state support for UTx could endorse or entrench so-called ‘PEG’ norms, shorthand

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<sup>1</sup> Stephen Wilkinson and Nicola Jane Williams, ‘Should Uterus Transplants be publicly funded?’ (2016) 42 *Journal of Medical Ethics* 559; Mianna Lotz, ‘Commentary on Nicola Williams and Stephen Wilkinson: ‘Should Uterus

for *pro-natalist, essentialist, and geneticist* norms regarding reproduction and parenthood. Such norms attract criticism on numerous grounds. These include the pressure they exert on individuals to become parents (and to become parents in particular prescribed ways that privilege genetic relatedness and gestational ties); their perceived incompatibility with feminist goals of securing equality and liberation for women; and the extent to which they dismiss and place disvalue on alternative modes of family formation and parenthood (as well as the harms thereby experienced by those who do not or cannot meet the social expectations that the acceptance of such norms generates). As Lotz states:

In a context in which reproductive preferences are already significantly shaped by PEG norms, and especially where biological and genetic procreation are the most highly valued forms of procreation, state sanctioned and state funded practices aimed at fulfilling procreative preferences supported by these norms will inevitably evoke these norms, lend legitimacy to them, and therefore contribute – intentionally or not – to their entrenchment.<sup>2</sup>

This chapter explores these criticisms and their focus on the ‘message’ that may (consciously or otherwise) be sent or received through state support for UTx and the broader harms to which this may contribute. In section II, we introduce expressivist critiques and arguments, noting several key features, using examples from applied ethics. In section III, we provide an in-depth account of the expressivist argument against public funding for UTx that Lotz defends. In section IV, we explore the limits of expressivist arguments with respect state-support of UTx, considering the inevitable opacity of human communication and the nature of reasonable interpretation. In section V, we provide some concluding thoughts on how it may be possible for the state to support UTx for women with Absolute Uterine Factor Infertility (AUF) while simultaneously reducing the potential for state funding of UTx to cause expressive harm.

## II. EXPRESSIVIST CRITIQUES AND ARGUMENTS

‘Expression’ is generally understood as referring to the ways in which individual or group actions, practices, or statements (or other vehicles of expression such as gestures, tones of voice, postures etc.) embody or manifest (or could be reasonably considered to manifest or embody) states of mind such as beliefs, ideas, attitudes, moods, desires, or intentions and allow for their recognition by others. Within applied ethics, expressivist critiques focus on individual or group actions which express (or are perceived to express) discriminatory, morally objectionable, or otherwise harmful/wrongful attitudes or beliefs. They focus on the ways in which particular

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Transplants be Publicly Funded?’ (2016) 42 *Journal of Medical Ethics* 570; Stephen Wilkinson and Nicola Jane Williams, ‘Public Funding, Social Change, and Uterus Transplants: A response to commentaries’ (2016) 42 *Journal of Medical Ethics* 572; Mianna Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (2021) 35(7) *Bioethics* 664

<sup>2</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 668

actions, practices, or statements express, embody, or manifest (or are perceived to express, embody or manifest) particular, and morally problematic attitudes or beliefs.<sup>3</sup>

In the context of debates in applied ethics regarding selection against disability via pre-natal screening technology, expressivist critiques claim, for example, that such selection either explicitly or implicitly expresses the view, or sends the message that, the lives of people with disabilities are less valuable than those of people without a disability.<sup>4</sup> Such criticisms are often directed at the state or organisations which allow or promote such selection but can also be levelled against individuals who make such selection choices. Similar critiques have also been made in the context of assisted dying and voluntary euthanasia. Here, it has been suggested that permitting such practices sends a message of disrespect to individuals with chronic or terminal diseases,<sup>5</sup> and could reasonably be interpreted by those with conditions for which assisted dying is permitted as signalling “directly or indirectly, not only that they *may* seek an earlier death but that they *should*.”<sup>6</sup> Outside the medical arena, expressivist arguments have also been used to critique the practice of selling arms to oppressive or violent political regimes, despite claims from sellers that if they didn’t sell someone else would on grounds that arms selling constitutes an implicit condonement or expression of support for such regimes and, in so doing, shows a “disrespectfully small degree of significance ascribed by sellers to the interests of their victims”.<sup>7</sup>

These examples show that one key feature of expressivist arguments is their focus on the extent to which actions, statements, or policies may *express or be perceived to express a negative or otherwise morally problematic attitude or belief regarding, individuals who fall into a particular (often vulnerable) group*. For the most part, such problematic attitudes and beliefs are identified as based in *disrespect*. ‘Disrespect’ is understood here as signifying an individual or group actor’s failure to appropriately identify and respond to the moral status/value of those who may be affected by their actions. In the context of selection against disability, for example, the expressivist critique focusses on the extent to which certain clinical practices, policies, and individual choices do not ascribe equal value to the lives of *all persons* regardless of their disabilities. Similarly, in the context of arms selling, the expressivist critique concentrates on the extent to which such sales manifest (or could be perceived to manifest) attitudes and beliefs that fail adequately to respect the interests of those who live under or whose lives may be affected by violent or oppressive political regimes by inappropriately balancing such interests against the sellers own (often economic) interests in sale.

A second key feature of expressivist arguments is that they *focus on the message sent through* an agent’s action or policy, rather than just the message that the sender *intends* to transmit. For example, in the context of selection against disability, the focus need not be on the *actual attitudes or beliefs* held by an individual who seeks to select against disability regarding the value of

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<sup>3</sup> Elizabeth S. Anderson and Richard H. Pildes, ‘Expressive theories of law: A general restatement’ (2000) 148 University of Pennsylvania Law Review 1503, 1506-1508

<sup>4</sup> Erik Parens and Adrienne Asch, ‘The disability rights critique of prenatal genetic testing: reflections and recommendations’ (1999) 29 The Hastings Centre Report S1, S2-S3. Stephen Wilkinson, *Choosing Tomorrow’s Children*, OUP 2010 (Chapter 6). Jonathan Glover, *Choosing Children*, Oxford: Clarendon Press, 2006

<sup>5</sup> Philip Reed, ‘Expressivism at the beginning and end of life’ (2020) 46 Journal of Medical Ethics 538, 539.

<sup>6</sup> Emily Jackson and John Keown, *Debating Euthanasia* (Bloomsbury Publishing, 2011), 96

<sup>7</sup> James Christensen, ‘Selling Arms and Expressing Harm’ (2022) 39 Journal of Applied Philosophy 6, 21

individuals with disability, nor upon the message that they intend to send through their actions (if any). Of concern instead is the message that such an action may be *perceived* to embody or send to those who experience disability, or to society more broadly. Similarly, for expressivist critiques of arms sale, the focus is on the message that may be transmitted or received through the action of arms sale, regardless of whether a seller holds the belief or intends to send the message transmitted. Thus, the expressivist argument may apply even in cases where an individual does not hold or intend to transmit the message that their action or policy is perceived to express.

Given the opacity of human communication, and the impossibility of knowing with certainty the intentions, principles, or beliefs lying behind others' actions, as well as the possibilities of hypersensitivity and wilful misinterpretation, a key characteristic of any successful expressivist critique, will have to involve *reasonableness*. As noted by Blackburn, without this requirement, any act at all could stand condemned on expressivist grounds: "My drinking coffee at eleven o'clock accords with the principle of either drinking coffee or hurling racial abuse at eleven o'clock."<sup>8</sup> That is, for an expressivist critique of an action, practice, or statement to prove convincing, it must be demonstrated that the message received by an individual or a group is one that the action or policy in question could *reasonably* be seen as sending. Thus, the success of an expressivist critique in the context of selection against disability, for example, rests on whether it is *reasonable* for those who live with disabilities to claim that provision or use of pre-natal screening and selection technologies expresses an attitude of disrespect towards people with disabilities, through a failure to ascribe equal value to the lives of people with disabilities.<sup>9</sup> While there is no simple way to specify what may count as a reasonable interpretation, we suggest that it typically involves consideration of contextual factors: of the meaning of actions and words in other contexts, of the intentions (where known) and utterances of key actors, and of the perspectives of those affected by the actions and policies in question.

### III. THE EXPRESSIVIST CRITIQUE OF UTERUS TRANSPLANTATION

In her paper, 'Public Funding of Uterus Transplantation: deepening the socio-moral critique', Mianna Lotz discusses four distinct arguments against publicly funding UTx.<sup>10</sup>

The first, which is the most relevant to this chapter, invokes the idea of norm legitimation and thereby the extent to which public policy can lend credibility to or support (or conversely challenge) various social, ethical, and political attitudes and norms. In the context of UTx, Lotz tells us that the "norm-legitimation question centres on whether public funding for UTx could be regarded as legitimating and even endorsing certain problematic sociocultural attitudes and norms relating to reproduction"<sup>11</sup> – with the key norms being those that she classes as PEG norms. She characterises these in the following way.

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<sup>8</sup> Simon Blackburn, 'Group Minds and Expressive Harm' (2001) 60 (3) Maryland Law Review 467, 476

<sup>9</sup> For similar discussions see: Jamie Lindeman Nelson. 'Prenatal Diagnosis, Personal Identity, and Disability' (2000) 10(3) Kennedy Institute of Ethics Journal, 213, 213; Wilkinson, *Choosing Tomorrow's Children* (n 4) 170-185

<sup>10</sup> Lotz, 'Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique' (n 1) 664

<sup>11</sup> Lotz, 'Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique' (n 1) 664

- *Pronatalist norms*, “valorise having children as preferable to remaining childfree, and depict childbearing and rearing as always a good, central, and even necessary element of a flourishing life.”<sup>12</sup>
- *Essentialist norms* (gender essentialist norms) “tie womanhood, femininity, and notions of what is ‘truly’ female to conceiving, gestating, birthing, and mothering a child.”<sup>13</sup>; while,
- *Geneticist norms* “accord significant importance to a person’s genetic constitution, and that value genetically related families as preferable to socially constituted families, depicting genetic offspring as ‘ideal’, preferable and ‘more truly one’s own’ than” the alternatives.”<sup>14</sup>

These PEG norms can be problematic two distinct ways. First, they can cause harm: for example, by discouraging people from adopting children who need adopting. Second, they can be non-instrumentally bad or wrong principally because the content of the norms themselves is unjustified or false.<sup>15</sup> This latter issue (of whether PEG norms contain false content) is not one we engage with substantively in what follows, and this is not required for our argument. Rather we allow (in line with Lotz’s position) that *at least for the sake of argument* there *is* something problematic about the content of these PEG norms. This is plausible given the way Lotz sets them up. For example, as quoted above, surely “childbearing and rearing” are not *always* goods or *necessary* elements of the good life. But this is not an assumption we require since we are critiquing her argument here as opposed to relying on it. Furthermore, we note that there are possibly versions of pronatalism, essentialism, and geneticism that are more benign than the ones she sketches. For example, one can imagine certain contexts (e.g. population decline) in which a ‘soft’ form of pronatalism (thinking that there is something valuable about reproducing) was justified.

Turning specifically to UTx, Lotz is clear that there is no *a priori* link between state support for this and PEG norms. She notes, for example, that the state *could* support UTx using donor gametes without linking UTx and geneticism. Alternatively (and this is our example, not hers) one can imagine a scenario in which funding for UTx happened alongside proactive public information campaigns encouraging people to see child-free living (especially for women) in a positive light, thus neutralising worries about that state funding for UTx necessarily presupposed essentialism and pronatalism.

But perhaps UTx funding is different because it does not entirely parallel donor gamete funding. In the case of UTx specifically (as opposed to ARTs in general) high costs and risks are involved, especially as a novel transplant type. Lotz draws on an earlier analysis as to make that point:

the state’s provision and designation of a ‘treatment’ as publicly fund worthy communicates a powerful venerating message regarding its importance. The more

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<sup>12</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 666

<sup>13</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 666

<sup>14</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 666

<sup>15</sup> We would like to thank Timothy Murphy for raising this point in an earlier peer review.

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.<sup>16</sup>

The argument here is that that state (or indeed any relevant actor) would only spend money on  $x$  if it regarded  $x$  as important and valuable – and so (in cases like UT $x$ ) if the state is willing to expend vast amounts of resource on  $x$  it must also regard  $x$  as *particularly important* and valuable. The form of this argument seems sound but there is a question to ask namely: *what is* the important and valuable  $x$  in question and how do we decide what  $x$  is? The answers may not be entirely straightforward.

In the case of UT $x$ , the valuable  $x$  in question could be any of the following:

- Treating physical disorders of the reproductive system, whatever they are
- Preventing psychological harm to the involuntarily childless
- Creating more future people
- Facilitating reproductive choice
- Facilitating or encouraging genetic and/or gestational motherhood (and promoting this as a ‘better’ option than the alternatives)

There are plenty of other options besides these. Yet only some of these candidates for  $x$  are directly related to PEG norms (the last one in particular – and the third one is of course explicitly pronatalist) whereas some of these (facilitating reproductive choice) would not embody PEG norms, especially if consistently applied across other policy areas (for example, if allied with investments in adoption and surrogacy services and in supporting alternatives to parenthood).

So how are we to decide which  $x$  is really in play in UT $x$ ? There are several potential approaches to determine this, and it may be that a number of these are legitimate in different ways. One way involves looking at the actual motivations of relevant actors, which could include both individual people and institutions, such as governments or parts of government. If, for example, the state funded UT $x$  as part of a suite of government policies aimed at increasing the birth rate (alongside publicity campaigns, childcare, and tax breaks for those with numerous children) and if ministers declared that they were going to invest in reproductive healthcare in order to boost the birth rate, then it would be reasonable to assume that the government was acting on the maxim (to borrow Kantian language) that we ought to take steps to create more babies. Against that background, the accusation that funding UT $x$  is an expression of pronatalism would be justified.

In cases like this, however, it is worth noting that the ‘expressive’ dimension of the objection is in a way only secondary. The primary wrong (assuming that it is a wrong) is the government’s acting on a problematic maxim, not the communicative aspects of this – although that primary wrong could be *made worse* by then also endorsing and encouraging others to hold pronatalist

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<sup>16</sup> Lotz, ‘Commentary on Nicola Williams and Stephen Wilkinson’ (n 1) 571

views. To illustrate this, consider a very different case: one in which a prominent athlete carries out a sexual assault. Such actions are of course intrinsically wrong (with or without a communicative dimension), but it is often claimed that they are *made worse* by the fact that such people are powerful role models and, in behaving so badly in public, they also do a secondary wrong, which is to perpetuate misogynistic values and attitudes. Structurally, funding UTx to further pronatalist ends looks similar. It would be wrong (assuming that pronatalism, or at least excessive pronatalism, is wrong) with or without sending any sort of message - but the communicative dimension of the policy makes it worse.

While the government explicitly and intentionally acting to advance pronatalism would be a clear example of valorising PEG norms in policy, not all cases are so straightforward. As noted in the preceding section, it is not necessary for the relevant actors to act on PEG norms consciously or knowingly for these to be expressed or valorised in their actions. Indeed, it is even possible for actions to express such norms in cases where the actors themselves do not subscribe to them. Furthermore, the clear case just described is not perhaps so much an example of an expressive or expressivist wrong, but merely an instance of someone acting on a defective principle (assuming that that's what PEG norms are) – although in so doing they could also be expressing values or norms (as in the sportsman example).

A more *purely* expressivist argument then would focus on the ways in which individuals' or institutions' actions could be *interpreted* (to some extent) regardless of their actual beliefs and intentions. Lotz makes the point as follows.

... to correctly understand the expressivist critique, we must recognize the limited control that an individual has over the interpretation of her acts (speech acts or other) by those who are its audience, and especially by those who possess the characteristic or property construed as non-ideal. We need to understand the expressivist position as being about the meaning that is evoked by a practice or attitude, rather than being about any communicative intention behind it.<sup>17</sup>

Lotz offers the example of 'black facing' (a form of makeup where non-black people portray a certain caricature of black people). She notes:

Those who engage in 'black facing' need not themselves consciously seek to express or communicate racist beliefs or intentions in doing so. But the history and historical currency of these practices— namely as symbolic of black oppression during the slave era— and the way in which these practices are perceived and experienced by their audiences in the light of that history establish their evoked meaning, and, irrespective of intentionality, in their effect they re-inscribe historical race relations between blacks and whites.<sup>18</sup>

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<sup>17</sup> Lotz, 'Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique' (n 1) 667

<sup>18</sup> Lotz, 'Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique' (n 1) 668

A similar example would be using Nazi symbolism, which could evoke its established historical meaning, even if this is inadvertent and unintended. Lotz is clearly right then that there is a sense, and a relevant sense, in which ‘expression’ can take place without intention. It is to such cases that we now turn.

#### IV. EXPRESSION AND REASONABLE INTERPRETATION

As well as our standard obligations not to act on errant principles (defective maxims) we may also have communicative obligations not to be *seen* to do so; merely not doing so is not always enough. This still, however, leaves open the question of *what meanings are evoked by what acts* and, in practice, the question of whether expressivist critiques are successful will always depend on questions of this kind.

Lotz favourably alludes to Quine’s and Davidson’s accounts of expression “as being at least in part a matter of what it would be reasonable for others to interpret them as meaning, based on existing and historical context, as well as on observable behaviour”.<sup>19</sup> We agree. To avoid an implausibly subjectivist account of expression (as noted in section II) reasonableness must play an important role. As with the idea of offence and our obligations in some cases to avoid causing unnecessary offence to others, we aren’t normally obliged to pander to people’s unreasonable or unforeseeable interpretations of our potential actions; rather (in this case) the obligation will be not to give the impression – to a hypothetical, well-informed, and reasonable person – that through provision or funding of UTx we are endorsing or advocating PEG norms.<sup>20</sup>

In the case of a particular example like UTx we must therefore ask what inferences it would be reasonable to draw from public funding. Specifically in relation to Lotz’ expressivist critique: *would it be reasonable to infer that, through its funding of UTx, the public health system endorses (albeit perhaps without any intention to do so) PEG norms?* This will depend on the answers to key questions such as:

- What exactly is being funded, for whom, and at what cost?
- What other options are being funded, for whom, and at what cost?
- What communications have taken place linked to funding UTx (and comparable reproductive options)?
- What other contextual factors affect the meaning of UTx funding?

Consequently, we concede with Lotz that there *could* be situations in which the provision or public funding of UTx would reasonably be seen as an endorsement of PEG norms. But this is a minor concession given that there are possible scenarios in which almost *anything* could reasonably be seen as an endorsement of *anything*, as in Blackburn’s coffee drinking example in

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<sup>19</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 667

<sup>20</sup> Stephen Wilkinson, ‘Eugenics Talk’ and the language of bioethics’ (2008) 34 Journal of Medical Ethics, 467, 468-469

section II<sup>21</sup>. Conversely, there are clearly scenarios in which funding UTx could *not* reasonably be seen as an endorsement of PEG norms. Here are some of the circumstances that may make that possible.

- (1) If UTx were treated as on a par with other ARTs, or more generally with other medical treatments, and not afforded preferential treatment. For example, if it were subject to the same safety, effectiveness, and cost-effectiveness criteria.
- (2) If other routes to founding a family were supported and funded alongside UTx (e.g. adoption, gamete donation, surrogacy) and to an equal extent.
- (3) If childlessness were supported as a valid option for all, especially for women.
- (4) If UTx-related communications stressed that gestating one's own fetus is only one option, that there are many ways of founding a family, all of which are equally legitimate; that not all families involve biological relatedness; and that not all families involve children.

These measures should all be supported in our view as part of the ethical implementation of publicly funded UTx and which are explored in our previous work.<sup>22</sup> There is not space here to go over the justifications of these in detail but, in brief, some of the relevant considerations are as follows.

First, as we flag in an earlier paper, there is no reason (or at least not beyond a very short early research phase) to preferentially treat UTx in relation to safety, efficacy, and value-for-money questions. In our earlier paper in support of public funding we make it clear that it's assumed that the following conditions must be in place for public funding in countries such as the UK to be justified in the first place –

...UTx becomes a safe and effective treatment for AUFU and that, as time passes, its cost is reduced such that it meets the normal cost-effectiveness threshold laid down by institutions such as the UK's National Institute for Health and Care Excellence (NICE) of £20,000 - £30,000 per year ...<sup>23</sup>

Lotz is keen to point out that UTx is an “expensive, complicated, and high-risk”<sup>24</sup> endeavour and this is a big part of the reason why funding it looks like a strong endorsement of PEG norms, encouraging observers to think – *surely gestating one's own biological child must be supremely important given how much they're willing to spend on it - not to mention the risks that are permitted*. But this criticism is somewhat off target since we explicitly state that UTx funding needs to be in alignment with the standard norms for efficacy, safety, and cost-effectiveness (whatever those are). Thus, the version of publicly funded UTx that we condone is not susceptible to this argument.

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<sup>21</sup> Blackburn, ‘Group Minds and Expressive Harm’ (n 8) 476

<sup>22</sup> Wilkinson and Williams, ‘Should Uterus Transplants be publicly funded?’ (n 1) 559; Wilkinson and Williams, ‘Public Funding, Social Change, and Uterus Transplants’ (n 1) 572

<sup>23</sup> Wilkinson and Williams, ‘Should Uterus Transplants be publicly funded?’ (n 1) 559

<sup>24</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 669

Regarding points (2), (3), & (4) – perhaps this is somewhat idealistic – but our view is that, considered as a whole, the state’s provision of reproductive and other family-building services could (and arguably should) remain neutral with respect to different routes to parenthood and similarly neutral with respect to the choice between building families with children, families without children, or indeed no family at all.<sup>25</sup> Thus – again provided that the relevant general standards for efficacy, safety, and cost-effectiveness are all met – if UTx is supported then so too should other medical and social services (adoption, gamete donation, surrogacy, etc.). With this neutrality in place, it would be hard to see how funding UTx could reasonably be seen as supporting PEG norms. Of course, (as in (4)) there is also a communicative dimension to this. It would be important that the neutrality were effectively communicated across the whole suite of policies and services. Thus, any state involvement in UTx should make clear that there are other options in regard to having children or not, and that UTx is not for everyone, which is the same kind of involvement the state should have in regard to all choices about children, such as publicly funded gamete donation, surrogacy, and even adoption services.

V. Are neutrality and provision compatible *and* desirable in the context of UTx?

The position that we outline above boils down to this: If UTx were given preferential treatment compared to other modes of family making and took place in a communications vacuum, then the ‘expressivist’ argument would have some traction. A reasonable person could in such circumstances see funding for UTx as an expression of the state assigning a higher value to routes to parenthood which involve gestational and genetic ties than those which do not. However, if UTx were not given preferential treatment and if the communications were clear that the state is neutral on these matters and merely supports all routes to parenthood (and indeed non-parenthood) to an equal extent, then it would *not* be reasonable to ‘read’ a State’s provision of UTx as expressing or endorsing PEG norms.

Some may meet this view, however, with a degree of scepticism. For example, Lotz asks whether it may be pragmatically and ideologically incoherent for the state to offer UTx while at the same time actively challenging PEG norms. This criticism is expressed with specific reference to a suggestion we made justifying state provision of UTx alongside educative efforts to challenge and undermine PEG norms. With respect to that suggestion Lotz claims:

... there is something both pragmatically and ideologically contrary and countervailing about the state pursuing two such commitments simultaneously. That is because while one commitment involves resisting and opposing problematic norms, the other involves providing the very thing that is valorised by those problematic norms. These thus seem to be mutually discordant commitments. Of course, there is no logical or practical contradiction involved in reform being pursued alongside treatment provision; both can occur simultaneously ... Yet this does not alter the countervailing nature of these commitments; indeed, it only serves to illustrate it. There remains a genuine question to be asked about the compatibility of an alleged commitment to undermining problematic

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<sup>25</sup> There could be some exceptions to this in certain circumstances: for example, if the state were to have legitimate interest in dealing with over- or under-population.

norms with an intention to provide treatments to fulfil the very desires that those norms shape and support.<sup>26</sup>

This account, however, seems to mischaracterise our policy position. The idea is that to be and to be seen as neutral, the state could support equally a variety of options regarding parenthood. In addition, compensatory communicative acts may offset the apparent endorsement of PEG norms implied by funding ARTs in general and UTx in particular. These could include the “educative efforts to change societal attitudes” discussed in our earlier paper. The form of the state’s overall communication would roughly be of the form: *we are funding UTx because it meets standard funding criteria and because gestation is highly valued by some people, but please remember that there are other equally valid choices about coming to have children or not, and we do not support the view that alternative routes to parenthood are less good.* Understood this way, there need be no contradiction or tension involved. Rather, the aim is to provide a *balanced* position overall by being equally positive about several different options and by the state going out of its way to neutralise any perception of bias in favour of PEG norms.

In one sense, state funding may involve tension with anti-PEG efforts. After-all, the desire to parent, and to be a parent in a particular way is often strongly influenced by the norms and values of the society in which one lives. It is thus to be expected that in a society where PEG norms are prevalent that many will internalise these values, seek to build their families through means that are in conformity with them, and experience significant harm if and when they find that they are unable to do so. In a liberal society the state ought to seek to reduce such harms through supporting a plurality of family building practices, amplifying alternative viewpoints regarding the value of different family forms, and challenging norms that significantly contribute to such harms through educational practice.

However, denying support for UTx and other technological family building options as part of a wider strategy to effect social change is also problematic. Denying support could be reasonably perceived as disregarding or dismissing as ‘inauthentic’ strongly and autonomously held individual beliefs and preferences regarding kinship and family, ones often intimately connected with some people’s sense of self and wellbeing. *Crucially*, such beliefs and preferences are not necessarily caused by uncritical subscription to PEG norms and, to disregard them, may look like the state presuming to know better than individuals what is ‘truly’ in their interests, and failing too to take seriously the heavy price that “those who are forced to live without treatment may end up paying as part of their (often involuntary) contribution to wider social change.”<sup>27</sup> We, of course, welcome socio-reproductive progress as part of a larger project to “secure the equality of all persons and to accept and embrace individual difference as diversity rather than deviance”.<sup>28</sup> We similarly acknowledge that many of the harms that (primarily) women who experience infertility suffer as a result of pressure to subscribe to PEG norms would be reduced in a society where such norms were not so prevalent. However, even in such a society:

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<sup>26</sup> Lotz, ‘Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique’ (n 1) 668

<sup>27</sup> Wilkinson and Williams, ‘Public Funding, Social Change, and Uterus Transplants’ (n 1) 573

<sup>28</sup> Wilkinson and Williams, ‘Public Funding, Social Change, and Uterus Transplants’ (n 1) 573

...people would still want children. Fewer perhaps would want them, maybe they would want them less forcefully, and crucially maybe those who couldn't have them would feel less bad about it. But it is implausible to suppose that a desire for parenthood is wholly down to pronatalism and sexism [and other PEG norms].<sup>29</sup>

Lotz uses the following example to illustrate her perspective:

If it is the case that skin-whitening treatments can prevent black people from experiencing the harms of racism, should we decide that until such a time as whiteness is no longer privileged in our cultures, we should provide publicly funded skin-whitening treatments alongside educative strategies aimed at undermining racist norms against blacks? I do not think we should. As in the UTx case, there is here an inherent tension between norm reform and state-funded treatment. The treatments in question are not just unlikely to assist in the eradication of problematic norms but may actually play a role in undermining that eradication by inadvertently legitimating and reinforcing the norms.<sup>30</sup>

If it were the case that the harms associated with infertility were *wholly* the result of discrimination then this case would be analogous to state support for UTx, and indeed other fertility treatments. In the example Lotz gives, the sole purpose of skin-whitening is to allow people to avoid some of the harms of racism or to conform to racialised beauty norms.<sup>31</sup> It is solely a response to discrimination. This, however, is not the case or, at least, is not obviously the case for infertility treatment.

There are two main reasons for this. First, the actual motives of prospective parents are many and varied. Some of these may well overlap with PEG norms, but many will not, and we cannot just assume that everyone's attitudes and beliefs are 'suspect' in this way. Second, people's motives and beliefs, and more generally their reproductive desires, may have a similarly wide range of socio-psychological causes, and there may well also be genetic or other biological causes in the background as well (which seems plausible given the prevalence of sexual reproduction in non-human animals – including ones without any capacity to endorse PEG norms, or indeed any norms). Consequently, it is too much of a 'leap' to assume that people's desires to have their own biological children are caused solely by PEG ideology. What we say here is not an attempt to vindicate such desires, nor do we accept a strongly biological essentialist view of reproductive desires. Rather, the point is that the desire to have one's own biological child may be less a matter of merely complying with PEG norms than is sometimes assumed. A better analogy for infertility treatments like UTx from our perspective then might be treatments which aim to increase hearing or vision in individuals who experience deafness or visual impairments. In much the same way that skin lightening treatments to combat racism are considered an inappropriate

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<sup>29</sup> Wilkinson and Williams, 'Should Uterus Transplants be publicly funded?' (n 1) 562

<sup>30</sup> Lotz, 'Public Funding of Uterus Transplantation: Deepening the Socio-Moral Critique' (n 1) 669

<sup>31</sup> It should be noted, however, that outside of Lotz' example there may well be cases where skin lightening and skin darkening treatments could prove medically beneficial to individuals such as, for example if it were possible to increase the number of melanocytes in the skin of some individuals in countries with high levels of solar radiation (in order, for example, to reduce risk of skin cancer), or decrease the number of melanocytes in the skin of some individuals in countries with very low levels of solar radiation (in order, for example, to increase uptake of vitamin D).

response to a social problem, treatments for deafness such as cochlear implants may be considered similarly inappropriate by those who subscribe to a purely social constructivist account of disability. On this account disability is caused, not by a person's inability (to see, hear, walk, etc.) but by the fact that our social, political, physical, and economic institutions were designed *by* and *for* those who have these abilities, and this constitutes a barrier to their active participation in these institutions. Thus, many suggest that what is needed is not a 'cure' for conditions such as deafness or for blindness, but for change of the institutions that make disabilities of inabilities. Yet, while it is certainly the case that our social institutions are not designed for the easy participation of those whose abilities differ from those possessed by the majority, and that many of the harms associated with disability would be ameliorated through widespread institutional redesign and reform with inclusivity in mind, there will likely still be cases where individuals still seek treatments. There will be cases in which regardless of how well society is set up to cater to these differences, some who experience them *will* consider them a negative feature of their lives.

In the case of deafness, for example, there will likely be some who desire to hear regardless of how well society is set up to cater to the requirements of those who are deaf. In a society where everyone knew sign language, where the physical infrastructure used visual as well as aural cues it may still be the case that those who become deaf later in life would suffer harm as a result of missing out on experiences that they used to find pleasurable, or being unable to communicate with others in the way that they are used to, and some who are born deaf or hard of hearing may yearn to be able to have full access to both the hearing and the Deaf world and the ability to hear as well as see, touch and smell their environments. This is a matter of individual difference.<sup>32</sup> What is good for some may not be good for others, what is an inconvenience for some may be unbearable for others. Regardless of how society is set up, deafness may constitute a positive or neutral trait for some, and a negative trait for others. Thus, while treatments for conditions such as deafness may well be taken by some to send out a negative message regarding the value of deafness or the richness of Deaf Culture, a state which takes the interests and preferences of its citizens seriously and seeks to support a plurality of conceptions of the good life ought, where it can, to both provide treatments to those who want them and work towards the creation of a more inclusive society whose institutions allow for the meaningful participation of all. Again, this is a balanced position, not an incoherent one, and is more closely analogous to the question of support for UTx than the skin lightening case.

## VI. CONCLUSION

This chapter has explored expressivist critiques of state support for UTx. Such critiques focus on the 'message' that funding or providing UTx may be perceived to send or express, particularly the worry that state support for UTx may be seen to endorse and thereby entrench so-called PEG norms, a shorthand for *pro-natalist, essentialist, and geneticist* norms regarding reproduction.

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<sup>32</sup> Rachel Cooper, 'Can it be a good thing to be deaf?' (2007) 32(6) *Journal of Medicine and Philosophy*, 563, 580

Given the cost-, resource-, and risk-intensive nature of UTx and other fertility treatments, and the social nature of many of the harms associated with infertility, the provision of UTx does have the potential to cause expressive harm. Yet, expressivist arguments against the provision of UTx are not wholly convincing. Given the opacity of human communication and the possibility for hypersensitivity and wilful or ignorant misinterpretation, a key characteristic of any successful expressivist critique is *reasonableness*. For an expressivist critique to prove successful, it is not enough that the actions or policies in question are *seen as* conveying a problematic message or view; that perception must also be a *reasonable* interpretation of the act. To determine reasonableness, careful consideration needs to be given to the context of the message such as the meanings of words in other contexts, the intentions (where known) and other actions and statements of key agents, and the perspectives of those who may be affected by the actions and policies in question.

Our analysis shows that while it may indeed be reasonable in some contexts to interpret a state's provision of UTx as an endorsement of morally problematic and harmful PEG norms, there is no necessary link between UTx provision and such norms. Provision, might, after all be grounded in other, and more benign, commitments such as goals to treat physical disorders, to prevent psychological harm to those who experience infertility, to support individuals to fulfil their family-building goals, or to facilitate individual and reproductive autonomy. In such cases, the state has obligations to protect against misinterpretations of the goals underpinning provision: for example, through clear and effective communication, and compensatory communicative acts which recognise the potential for misinterpretation of these goals. Provided the state acts on these other commitments and obligations, expressivist arguments against UTx do not succeed as objections to all state sponsorship of UTx.

While provision of UTx does not therefore necessarily fall prey to expressivist critiques, states should nonetheless play an active role in challenging and dismantling any harmful and oppressive social norms regarding parenthood that proponents of the expressivist critique, such as Lotz, invoke. In a liberal society, the state must recognise the impact that such norms have on preference formation regarding reproduction and actively seek to reduce the harms that they cause to those who experience infertility through, for example, supporting a plurality of family building practices, amplifying alternative viewpoints regarding the value of different family forms, and challenging norms that significantly contribute to such harms through educational practice.