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Assisted Gestative Technologies, or On Treating Unlike Cases Alike

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In the paper *Assisted Gestative Technologies*, Elizabeth Chloe Romanis advocates for the creation of a new category, which includes technological interventions that allow “persons who want to reproduce, potentially using their own genetic material, but are unable, or potentially unwilling, to undertake gestation”.^[1] Romanis conceptualises these technologies as a unified kind, a ‘genus’, and argues that they “collectively raise distinct ethical, legal and social issues from those related to assisted conception”.^[1] As I understand Romanis’ paper, her aims are twofold. The first is conceptual: Romanis construes assisted gestative technologies (AGTs) as a separate kind with shared attributes and purposes, which differ from those of technologies that enable conception. The second is normative: Romanis champions the distinction between AGTs and other technologies as a useful way to tease apart relevant “ethical, legal and social issues” that specifically concern AGTs. The reason for this, according to Romanis, is that gestation is “such a unique and demanding form of labour”.^[1]

I agree with Romanis: gestation is indeed a unique and demanding form of labour, one with associated biological, cultural and political specificities with distinctive moral significance. It is for this very same reason that I believe that AGTs should not conceptually be considered as a unified category and should not be morally appraised as such, for relevant political, and moral aspects of these technologies would be overlooked in the process. To clarify: Romanis’ use of genealogy to aid normative inquiry is a worthy endeavour. And I concur with the very convincing case she makes for the distinction between conception and gestation (and the technologies that enable these activities). My disagreement with Romanis rather concerns the conceptualisation of technologies such as gestational surrogacy, uterine transplantation (UTx) and artificial placentas as

a unified category, and the normative inquiry grounded in such a conceptualisation that follows on from it. Due to the uniqueness of the process of gestation—and associated cultural, political and moral meanings—my view is that the “ethical issues arising from the potential use of AGTs” [1] are heterogeneous and thus warrant distinct consideration.

In fairness to Romanis, the normative literature on UTx and, more recently, on artificial placentas often examines these technologies in terms of the relative costs and benefits of developing and accessing them vis-à-vis gestational surrogacy, and portrays these technologies as “comparable alternatives” [1] as she also notes. One of the reasons for these juxtapositions is that prior to the development of UTx,¹ the only option available to women with absolute uterine factor infertility (AUI) who wanted to have genetically related children was gestational surrogacy. Whilst casting a critical gaze towards the idea of ‘comparable alternatives’, Romanis seems to accept the view defended within the normative literature on these technologies: they enable women with AUI (and other women) to have genetically related children and are thus examined together in terms of their relative costs and benefits. But, as I have argued elsewhere,[2] gestational surrogacy, UTx and artificial placentas should be regarded as incommensurable. This is the case if one adopts a broader moral and political perspective, one that considers *both* the women who would be enabled to have genetically related children and the women who would donate their uteruses or gestate on behalf of someone else.

Pregnancy is special

In her paper, Romanis successfully shows that there are relevant distinctions between the process of gestation and that of conception, *and* that the process of gestation entails a unique form of labour, due to the biological, political and cultural dimensions associated with it. From this, she concludes that gestational surrogacy, UTx and artificial placentas ought to be considered as a unified category, and examined separately from technologies that enable conception.

But these very same technologies entail substantially different degrees of bodily and emotional labour, and such labour is performed for very different reasons by very different women. In gestational surrogacy, a woman carries a pregnancy on behalf of someone else. This means that all the biological and social processes associated with pregnancy and childbirth are performed by the woman who act as the gestational surrogate, not by the woman who will presumably be the genetic and social mother of the future child. This also means that all the risks and burdens associated with pregnancy and childbirth; all the monitoring and checks that the woman acting as a gestational surrogate will be subjected to; all the lifestyle changes that she will

¹ And prior to discussions on the possibility of artificial placentas.

submit to will last for the timespan of the pregnancy and birth, but will not result in the birth of an ‘own’ child,² as in the case of women accessing technologies such as UTx or artificial placentas. Moreover, the gestation of a foetus following UTx will be very different from the gestation of a foetus that will be transferred in an artificial environment. A pregnancy following UTx will begin, for the future mother, with a rather substantial surgical procedure. It will also require a woman acting as a, often live, donor who will also have to submit to a surgical procedure. Artificial placentas require no other woman performing such degrees of bodily and emotional labour. The bulk of such labour will fall on the prospective mother as the foetus will be first gestated by her and then extracted from her.

If one, like Romanis, considers pregnancy as a unique form of labour, these differences should be of conceptual substance. Moreover, and as I have argued elsewhere, the processes that these technologies entail should be regarded as biologically incommensurable due to the radically different degrees of embodiment (including its absence) that they require.[2] But they should also be regarded as incommensurable from a political and cultural perspective due to the meanings and norms associated with gestation and birth; with gestation on behalf of third parties; with biological parenthood; and due to the gendered nature of these activities. These biological and politico-cultural saliences seem to me to at least *prima facie* defeat any claim of conceptual unity, especially under the perspective on conception and gestation advanced by Romanis.

Morally salient differences and consistency

Relatedly, these differences should be of moral substance within normative appraisals of gestational surrogacy, UTx and artificial placentas. In the second part of her paper, Romanis sets out to discuss “some of the unique ethical issues arising from the potential use of AGTs”.[1] Her appraisal of each of these issues begins with the current legal position on AGTs. Whilst Romanis convincingly argues that the law is a good place to begin such an appraisal, my worry is that it also unjustifiably constrains its scope. This is apparent in the discussion that Romanis carries out of the “ethico-legal issues” raised by AGTs, which bundles together rights and principles that apply differently to the different technologies. My view is that whilst these technologies might raise similar questions with respect to whether they should be (made) available and to whom, the answers to these questions and the reasons that can be levelled in favour of or against limiting, granting or enabling access will be very different, and will depend on the specific characteristics of

² On the moral and political significance of these forms of labour, and their gendered nature in the context of UTx, gestational surrogacy and what I refer to as “ectogestation”, see: [3]

each technology, on the users involved and on the motivations that they might have to access them.

A related worry that I have is that constraining normative appraisals of these technologies to questions that are relevant to all of them risks overlooking morally relevant issue that may be raised by one technology and not the others. For instance, the involvement that each of these technologies requires from third parties should have a bearing on the answers that one gives to questions of access. These technologies enable women and couples to have genetically related children (or partially genetically related children), but it should matter if one evaluates whether these women and couples ought to have access to them the degree of involvement that these technologies require and entail; the nature of such an involvement; and the biological, social and cultural contexts in which it takes place.

It is for these reasons that I do not think it true that consistency requires “conclusions about rights to undertake or to forego gestation in the case of any one form of AGT” to necessarily affect “conclusions about access to other AGTs”.[1] Only alike cases ought to be treated alike. I do not think that AGTs meet the criteria to require such standards of consistency within normative appraisals. Reasons to enable access to these technologies *should* be at odds due to the conceptually and morally significant heterogeneities characterising these technologies.

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