DE-GENDERING GESTATION: THE FINAL IMPETUS FOR DECRIMINALISING ABORTION

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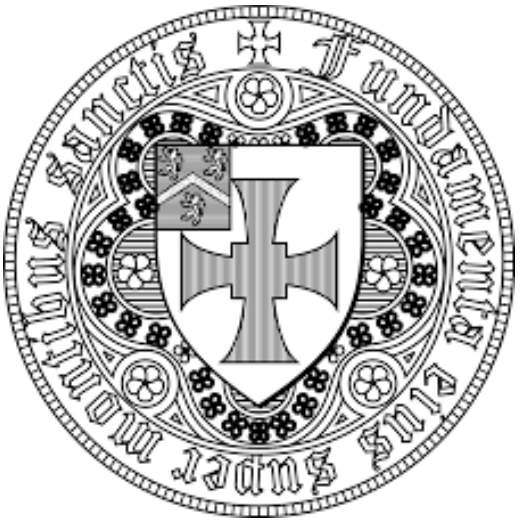

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ABSTRACT

This thesis considers the development of two assisted gestative technologies, artificial wombs and uterine transplants, and their potential impact on abortion regulation. In light of the recent increase in abortion prosecutions in 2023, an inquiry into how abortion law could be reformed is beneficial. It is presented throughout this thesis that arguments for reform, specifically decriminalisation, could be bolstered by the advent of artificial wombs and uterine transplants.

This thesis explores how artificial wombs and uterine transplants will alter the gestational process. It presents the practical impact of gestation no longer being attached to assigned biological sex and considers how this may inform social perceptions of gestation as a gendered process. Ultimately, it suggests that artificial wombs and uterine transplants have the capacity to detach gestation in practice from those assigned female at birth, and in social consciousness from women.

After acknowledging the impact of sex and gender norms on existing legal structures, this thesis goes on to explore the extent to which gestation detached from sex and gender may impact on abortion regulation. It considers not only pre-existing arguments for reform, but also presents that artificial wombs and uterine transplants, by detaching gestation from sex and gender, may bolster calls for the decriminalisation of abortion in England and Wales.

Ultimately, this thesis finds that artificial wombs and uterine transplants will impact on the gestative sphere in a manner that renders current abortion regulation inadequate. Reform is necessary, and this thesis presents how the advent of novel assisted gestative technologies may support calls for decriminalisation.

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Finally, I owe my greatest thanks to my wonderful family, friends, and partner, for your unconditional emotional support, and occasional proof reading. Thank you.

STATEMENT OF COPYRIGHT

LIST OF ABBREVIATIONS

AA 1967 – Abortion Act 1967

AAPT – Artificial Amnion and Placenta Technology

AFAB – Assigned Female at Birth

AMAB – Assigned Male at Birth

AUFI – Absolute Uterine Factor Infertility

BMA – British Medical Association

BPAS – British Pregnancy Advisory Service

CHOP – The Children's Hospital of Philadelphia

EMA – Early Medical Abortion

EXTEND – Extra-uterine Environment for Newborn Development

EVE – Ex-Vivo Uterine Environment

GRA 2004 – Gender Recognition Act 2004

HFEA 1990 – Human Fertilisation and Embryology Act 1990

HFEA 2008 - Human Fertilisation and Embryology Act 2008

ICB – Integrated Care Boards

ILPA 1929 – Infant Life (Preservation) Act 1929

IVF – In vitro Fertilisation

MRKH - Mayer-Rokitansky-Kuster-Hauser

NHS – National Health Service

NICE - National Institute for Health and Care Excellence

OAPA 1861 - Offences Against the Person Act 1861

QALY – Quality Adjusted Life Year

RCM – Royal College of Midwives

RCOG – Royal College of Obstetricians and Gynaecologists

RCGP – Royal College of General Practitioners

UK – United Kingdom

UTx – Uterine Transplantation

WHO – World Health Organisation

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Turkey
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Chapter I

Introduction

The landscape of gestation is being rapidly propelled into unchartered territory. Medical advancements have revolutionised assisted gestation, with the boundaries of reproductive medicine being pushed year on year. In 2023 alone significant milestones in assisted gestation have been reached, with the United Kingdom (UK) performing its first uterine transplant (UTx) successfully,[1] and Artificial Amnion Placenta Technology (AAPT)[2] reaching clinical trial stage and currently awaiting regulatory approval in the United States.[3] UTx is a novel organ transplant procedure that allows those born without a functioning uterus the opportunity to become pregnant.[4] AAPT is a medical device that, in an attempt to replicate one function of the human womb, facilitates gestation ex utero.[5] Both have liberalising potential, with their capacity to address reproductive health inequalities[6] by providing new avenues to reproduce and achieve biological parenthood. However, the reproductive sphere is not only witnessing progressive change and developments, as it remains shackled to antiquated abortion legislation[7] dating back to the 1800s.[8] This year, four pregnant people have faced prosecution for procuring an abortion in England and Wales,[9] highlighting abortion as a stigmatised criminal activity, not a common healthcare process.[10]

This thesis explores both of these recent developments within the reproductive sphere, drawing them together by considering how the introduction of assisted gestative technologies may impact on the criminalisation of abortion care. Namely, it seeks to demonstrate that AAPT

[1] Oxford University Hospitals, 'First Womb Transplant Performed in the UK' (*Oxford University Hospitals NHS*, 23rd Aug 2023) https://www.ouh.nhs.uk/news/article.aspx?id=1975 accessed 27 December 2023
[2] E Kingma and S Finn, 'Neonatal Incubator or Artificial Womb? Distinguishing Ectogestation and Ectogenesis using the Metaphysics of Pregnancy' (2020) 34 Bioethics 354, 355.
[3] Max Kozlov, 'Human Trials of Artificial Wombs Could Start Soon. Here's What you Need to Know' (*Nature*, 14 Sept 2023) <https://www.nature.com/articles/d41586-023-02901-1> accessed 26 September 2023
[4] Mats Brännström and others, 'First Clinical Uterus Transplantation Trial: A Six-month Report' (2014) 1010 Fertility and Sterility 1288-1236.
[5] E Kingma and S Finn, 'Neonatal Incubator or Artificial Womb?' (n 2).
[6] EC Romanis, 'The Equality-Enhancing Potential of Novel Forms of Assisted Gestation: Perspectives of Reproductive Rights Advocates' (2023) 37 Bioethics 637-646.
[7] EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK: The Case for Reform' (2022) 20 Medical Law Review 4-32.
[8] See, OAPA 1861.
[9] Hannah Al-Othman, 'Fourth Abortion Charge in Eight Months – After Only Three Trials in the Past 160 Years' *The Times* (13 August 2023) <https://www.thetimes.co.uk/article/fourth-abortion-charge-in-eight-months-after-only-three-trials-in-the-past-160-years-vxmksngc3> 'accessed 15 December 2023'
[10] EC Romanis, '*R v Foster:* Exemplifying the urgency of the decriminalisation of abortion' [2023] Medical Law Review 1.

and UTx have the capacity to detach the gestative process from sex and gender, and it presents how this could advance calls for the decriminalisation of abortion in England and Wales.

The focus of this thesis concerns the capacity for assisted gestative technologies to reform ideals surrounding gender and gestation, and how this shift might increase pressure on legislators to reform abortion legislation. AAPT and UTx are the two technologies considered in this thesis as they will detach the gestational process from assigned biological sex.[11] It is for this reason that discussing AAPT and UTx alongside each other provides for conceptual clarity,[12] despite the fact that the manner in which they assist gestation differs vastly. AAPT concerns the development of a closed fluid circuit which can sustain a human subject (termed a 'gestateling')[13] by mimicking the in-utero gestative environment, ex utero.[14] On the other hand, UTx is an organ transplantation procedure to treat infertility, where a functioning uterus would be transplanted into an individual born without a functioning uterus, with the purpose of facilitating a pregnancy.[15]

Both technologies are at or nearing the cusp of clinical reality.[16] In 2023, Philadelphia researchers working on the project for developing and testing AAPT, named the Extra-uterine Environment for Newborn Development (EXTEND) ,[17] secured funding for clinical trials[18] and are awaiting ethical approval by US regulators for such trials to go ahead.[19] Furthermore, the incidence of UTx procedures is increasing, with the first clinical trial in Sweden occurring in 2014,[20] and the first transplant in England being successfully completed in the summer of 2023.[21] In order to engage with these emerging technologies fully, and provide extensive

[11] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (Oxford University Press (forthcoming))
[12] EC Romanis, 'Assisted Gestative Technologies' (2022) 48 Journal of Medical Ethics 439-446.
[13] Term for a fetus gestating in AAPT coined by Romanis. EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction: Conceptual Differences and Potential Implications' (2018) 44 Journal of Medical Ethics 751.
[14] Partridge and others, 'An Extra-Uterine System to Physiologically Support the Extreme Premature Lamb' (2017) 8 Nature Communications 1.
[15] Mats Brännström and others, 'First Clinical Uterus Transplantation Trial' (n 4).
[16] ibid; Max Kozlov (n 3).
[17] The EXTEND project is one of many groups developing artificial wombs. The EXTEND project is carried out by a team at the Children's Hospital of Philadelphia (CHOP). This project is closest to human trials, and therefore when referring to AAPT this thesis will be referring to the EXTEND prototype unless otherwise mentioned.
[18] J George, 'Vitara Biomedical raises $25M to Advance its Artificial Womb Technology for Premature Babies' (*Philadelphia Business Journal*, 2022) https://www.bizjournals.com/philadelphia/news/2022/08/09/vitara-biomedical-philadelphia-artificial-womb.html> accessed 14 October 2022; Max Kozlov (n 3).
[19] Max Kozlov (n 3).
[20] Mats Brännström and others, 'First Clinical Uterus Transplantation Trial' (n 4).
[21] Maya Oppenheim, 'First Womb Transplant Takes Place in UK After Sister Donates Uterus' *Independent* (23 August 2023) https://www.independent.co.uk/news/uk/home-news/womb-transplant-first-uk-sister-b2397460.html# accessed 27 December 2023

analysis regarding their potential impact, particularly on the law, this thesis is written assuming that both AAPT and UTx shall become accessible clinical realities. Regarding AAPT, this thesis makes reference to both partial and complete ectogestation. Partial ectogestation would involve gestation beginning in the pregnant person's womb and then the human entity in development being transferred to AAPT part way through the gestational period. Prototypes currently being developed on the EXTEND programme would support the process of partial ectogestation.[22] Consequently, partial ectogestation will be referenced throughout this thesis as a clinical reality. This thesis also refers to complete ectogestation, a process which concerns an embryo being created by IVF and then gestated entirely by AAPT.[23] The use of complete ectogestation is currently a 'remote possibility'[24] given clinical obstacles, and therefore arguments presented regarding complete ectogestation are made with caution. Despite this, they are still pertinent to this thesis, and it is acknowledged that complete ectogestation may become a workable reality at some point in the future. UTx is also assumed to be an accessible clinical procedure throughout this thesis, given the fact that the procedure has become widespread, with more than 70 transplants taking place,[25] and 30 babies born after UTx in the last 8 years.[26] Although the procedure is only currently available to people assigned female at birth (AFAB),[27] arguments have been made for extending UTx to individuals assigned male at birth (AMAB)[28] to ensure procreative liberty.[29] Despite current clinical obstacles to UTx in those AMAB,[30] this thesis reasons that such barriers are surmountable[31] and UTx in individuals AMAB will become a clinical reality. Therefore, the technology is discussed in such a manner. To discuss AAPT and UTx as accessible clinical realities brings clarity to this thesis, especially given the extensive engagement with the speculative impact of these technologies on societal perceptions and the law.

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[22] Max Kozlov (n 3).
[23] JH Schultz, 'Development of Ectogenesis: How will Artificial Wombs affect the Legal Status of a Fetus or Embryo? (2010) 84 Chicago Kent Law Review 877.
[24] EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction' (n 13) 751.
[25] N Hammond-Browning, 'Uterus Transplantation: Five Years on from the World's First Birth' (Nov 2019) Bionews 1022 https://www.bionews.org.uk/page_145998 accessed 27 December 2023
[26] Kisu and others, 'Comment on "Birth of a Healthy Baby 9 years after a Surgically Successful Deceased Donor Uterus Transplant"' (2022) 3 Annals of Surgery Open 172.
[27] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (2019) 126 BJOG: An International Journal of Obstetrics & Gynaecology 1320-1326.
[28] See the comments of Dr Giuliano Testa, in Dina Fine Maron, 'How a Transgender Woman Could Get Pregnant' (*Scientific American*, 15 June 2016) https://www.scientificamerican.com/article/how-a-transgender-woman-could-get-pregnant/ accessed 2 Jan 2023
[29] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women: Revisiting Procreative Liberty in Light of Emerging Reproductive Technologies' (2018) 5 Journal of Law and the Biosciences 301-328.
[30] Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (2012) 25 Transplant International 439.
[31] Testa, as quoted in Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).

This thesis makes novel contributions to the growing legal literature on assisted gestative technologies, employing a feminist legal perspective to navigate the law surrounding reproduction and the future of gestation. It acknowledges the influence of the patriarchy and masculinist ideals on existing legal structures,[32] and contributes to considerations that AAPT and UTx, alongside consequent legal reform could enhance gestational equality.[33] This thesis engages with novel forms of assisted gestation, specifically AAPT and UTx, given their capacity to alter a fundamental aspect of human reproduction: the locus of gestation. The importance of discussing AAPT and UTx before they are regularly used cannot be underestimated, as engaging with speculative literature fosters progress and provides that the law can 'effectively maintain the march of science'.[34] This thesis provides more nuanced analysis to current academic discourse which considers that assisted gestation may 'de-gender' the process of reproduction.[35] It does not take the reductionist view that gender inequality is the result of the allocation of gestative labour and that these technologies will lead to gender equality. It instead considers how AAPT and UTx have 'equality-enhancing potential',[36] given their ability to influence social and legal change. Furthermore, the impact of gestation detached from gender on abortion regulation has not yet been considered in academic literature. This thesis presents that the capacity for AAPT and UTx to sever conceptual ties between gestation and gender may improve abortion access, by bolstering calls for the liberalisation and decriminalisation of abortion in England and Wales. A pertinent discussion, as 214,869 abortions were reported in England and Wales in 2021, the highest number reported since 1967.[37]

1.1 Beyond the Sex/Gender Binary when Discussing Gestation Throughout this Thesis

[32] Lynne Henderson, 'Law's Patriarchy' (1991) 25 Law & Society Review 411- 444.
[33] EC Romanis, 'The Equality-Enhancing Potential of Novel Forms of Assisted Gestation' (n 6).
[34] Amel Alghrani, 'The Legal and Ethical Ramifications of Ectogenesis' (2007) 2 Asian Journal of WTO and International Health Law and Policy 189, 190.
[35] See, E Jackson, 'Degendering Reproduction?' (2018) 16 Medical Law Review 346, 359; A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29); O'Donovan, 'Pushing the Boundaries: Uterine Transplantation and the Limits of Reproductive Autonomy' (2018) 32 Bioethics 489-498; Anna Smajdor, 'The Moral Imperative for Ectogenesis' (2007) 16 Cambridge Quarterly of Healthcare Ethics 336-345; A Smajdor, 'In Defense of Ectogenesis' (2012) 21 Cambridge Quarterly of Healthcare Ethics 90- 103; E Kendal, *Equal Opportunity and the Case for State-Sponsored Ectogenesis* (Basingstoke, Palgrave Macmillan 2015)
[36] EC Romanis, 'The Equality-Enhancing potential of Novel Forms of Assisted Gestation' (n 6).
[37] Office for Health, 'Abortion Statistics, England and Wales: 2021' (*Office for Health*, last updated 2 October 2023) https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2021/abortion-statistics-england-and-wales-2021 accessed 5 Oct 2023

Throughout this thesis a distinction will be drawn between sex and gender. Terms which although 'historically and popularly'[38] conflated, are in fact distinct. Sex is determined at birth and assigned on the basis of physical attributes of the body, 'specifically the external genitalia'.[39] The UK legally recognises that sex may be either male or female,[40] ascribing to the sex binary.[41] Conversely, gender describes 'personality attributes and socio-sexual roles'[42] that society associates with either men or women. The sex/gender binary assumes that biological sex determines gender,[43] however this conception has been challenged as biological science[44] and society draws away from the binary, recognising intersex individuals whose sexual anatomy does not fit the sex binary, and non-binary individuals whose gender identity does not conform to the gender binary.[45] This highlights that sex and gender are not mutually exclusive descriptors.

Both the distinction and interaction between sex and gender will be employed in this thesis regarding analysis of gestation, as it currently operates and how it may do so in the future. Currently, gestation is bound by biological sex, as it is only capable of being sustained by an individual born with female physiology.[46] However, gestation is not contingent on a specific gender identity, and can be carried out by individuals who are legally recognised as male or female,[47] and those who identify as non-binary or any other gender identity.[48] This thesis considers how biological essentialism and social constructionist views have resulted in the notion that gestation is bound to gender, specifically women.[49] The link between women and gestation has influenced the law and this thesis seeks to elucidate why this perception exists. In maintaining a distinction between sex and gender, this thesis explores AAPT and UTx as

[38] Francisco Vakdes, 'Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins' (1996) 8 Yale Journal of Law & the Humanities 161, 166.
[39] ibid 164.
[40] Note that individuals can be born 'intersex' with biological characteristics that vary from what is typically thought of as male or female. However, cannot be legally recognised as such. David Andrew Griffiths 'Shifting Syndromes: Sex Chromosome Variations and Intersex Classifications' (2018) 48 Social Studies of Science 125.
[41] Gender Recognition Act 2004, (GRA 2004).
[42] ibid
[43] Thekla Morgenroth and others, 'Defending the Sex/Gender Binary: The Role of Gender Identification and Need for Closure' (2021) 5 Social Psychological and Personality Science 731.
[44] Augustín Fuentes, 'Biological Science Rejects the Sex Binary, and That's Good for Humanity' (*Sapiens,* 2022) Sapiens https://www.sapiens.org/biology/biological-science-rejects-the-sex-binary-and-thats-good-for-humanity/ accessed 15 September 2023
[45] Melanie Blackless and others, 'How Sexually Dimorphic are we? Review and Synthesis' (2000) 12 American Journal of Human Biology 151, 159.
[46] E Jackson, 'Degendering Reproduction?' (n 35) 347.
[47] GRA 2004, s (2)(1).
[48] Christine Richards and others, 'Non-binary or Genderqueer Genders' (2016) 28 International Review of Psychiatry 95-102.
[49] See John P DeCecco and others, 'A Critique and Synthesis of Biological Essentialism and Social Constructionist Views of Sexuality and Gender' (1993) 24 Journal of Homosexuality 1-26.

tools to 'un-sex' the gestational process,[50] and subsequently assess how this may 'de-gender' gestation by altering the perception that gestation is solely carried out by women. Specifically, it explores how social perceptions may be altered, and the subsequent influence this may have on the construction of the law surrounding gestation.[51] Although scholars have noted the 'harm in the current account of "de-gendering" gestation',[52] this thesis diverges from previous academic literature by using the term 'de-gendering' as an analytical tool to determine the extent to which gestation will become detached from gender. It does not employ the term 'de-gendering' in a manner that 'renders invisible trans and non-binary reproduction'[53] but instead, highlights a future which may better accommodate diverse experiences of gestation.

This thesis, reasoning from a feminist perspective, embraces gender as a social category and contextualises the experiences of gestators who do not identify as women. Whilst acknowledging that some individuals may consider their sex as fundamental to their identity[54] and consider their gender as 'an important part of how they understand their reproduction',[55] to associate gestation with women permits the erasure of transmasculine and non-binary people in both society and the legal sphere. Accordingly, this thesis refers to 'pregnant people' throughout, to reinforce the detachment of gestation from gender and account for the experiences of those who gestate that do not identify as women.

1.2 Thesis Structure

It is important to note here that this thesis is a work of speculative literature, and therefore the chapters in this thesis cannot be considered in isolation. The findings of each chapter inform the analysis of those which follow on from it. Chapter Two concerns the domestic legal framework regarding abortion legislation in England and Wales, with reference to its construction to highlight the impact of gender on legislation. Chapter Three determines that AAPT and UTx will detach the gestative process from biological sex; Chapter Four builds on this by considering how gestation detached from biological sex will alter the intertwined understanding of sex, gender, and gestation. Chapter Five returns to consider the law and assisted gestation together. It utilises what has been learned from the analysis of the English

[50] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[51] Specifically, the Abortion Act 1967 (AA 1967).
[52] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[53] ibid
[54] As Chappell explains it, some individuals will identify more with being a certain sex rather than a gender (and some will identify with a gender more than a sex). Sophie Grace Chappell, 'Transgender: A Dialogue,' (*Aeon,* 15 Nov 2018) https://aeon.co/essays/transgender-identities-a-conversation-between-two-philosophers accessed 2 November 2022
[55] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

legal position on abortion, and the impact of AAPT and UTx on understandings of who can undertake gestation to recalibrate the discussion surrounding decriminalising abortion in England and Wales.

This thesis begins with a comprehensive account of how perceptions of gender have influenced the construction of abortion regulation and informed its criminal nature in Chapter Two. The formulation of abortion law is traced back to case law of the 14th century,[56] with legislation currently operating from 1861 with the Offences Against the Person Act 1861 (OAPA 1861) and 1967 in the form of the Abortion Act 1967 (AA 1967). Conducting a historical exploration into the development of abortion law reveals factors that influenced the law's construction. A gender-central lens was adopted when assessing the formulation of the law, highlighting the social perceptions surrounding women which can be considered to have impacted on resulting legislation.[57] The discussion then explores how abortion law perpetuates the inaccurate notion that gestation is bound by gender, reinforced by the use of language in the legislation solely referring to 'women'.[58] Contextualising the construction and function of abortion law as a product of gender stereotypes provides a conceptual thread throughout this thesis for determining whether dispelling the association between gestation and gender will trigger reform to abortion legislation.

Chapter Three evaluates the capacity for AAPT and UTx to radically alter the biological certainty, that gestation is only capable of being carried out by an individual AFAB with a functioning uterus.[59] A preliminary discussion gives background context to both AAPT and UTx and distinguishes them from other forms of assisted gestation. It is demonstrated that the gestational process will be physically altered with the advent of AAPT and UTx, as they will permit gestation that is not strictly limited to those with physiology AFAB.[60] AAPT will alter the gestational process by permitting gestation sustained by an artificial placenta ex utero,[61] allowing those AFAB to opt out of the gestational process.[62] UTx will permit gestation in those

[56] Anonymous, (1327) YB Mich 1 Edw 3, f 23, pl 18
[57] Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 92-3.
[58] See, Offences Against the Person Act 1861 (OAPA 1861) s 58, 59, 60; Infant Life Preservation Act 1929 (ILPA 1929) s 1(2); AA 1967 s 1, Human Fertilisation and Embryology Act 1990 (HFEA 1990) (as amended 2008), Health and Care Act 2022 (HCA 2022) s 178.
[59] Camille Sallée and others, 'Uterine Factor Infertility, a Systematic Review' (2022) 11 Journal of Clinical Medicine 1-17.
[60] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[61] E Partridge and others (n 14).
[62] Partial ectogestation – likely to be a significant period of gestation. Details of timings are given at a later stage. Complete ectogestation – would involve opting out of the whole period of gestation.

born without a functioning uterus with the possibility for this to include individuals AMAB.[63] This thesis argues that AAPT, in allowing those AFAB the possibility to gestate 'as men [meaning people AMAB] do',[64] and UTx providing the opportunity for individuals AMAB to gestate in a manner that is currently restricted to biological females,[65] will detach the process of gestation from sex.[66] Practically altering the gestational process in this manner opens up new opportunities regarding the allocation of gestational labour and alternative avenues into producing biological offspring, and discussion turns to whether these opportunities will effectively 'un-sex'[67] the gestational process. Ultimately, it is concluded that AAPT and UTx will both alter gestation in a manner that means gestational labour need no longer be carried out exclusively by individuals with assigned female physiology,[68] and this provides the opportunity for gestation to be biologically 'un-sexed' for the first time.

Chapter Four explores the consequences of gestation no longer being bound by assigned sex at birth on the societal perception that gestation is gendered and solely undertaken by 'women'.[69] In Part I current understandings of gestation, sex and gender are elucidated, exploiting the conflation of sex and gender which has resulted in inaccurate assumptions that gestation is a gendered process, as reinforced by the law.[70] An extensive discussion of transmasculine gestation serves to highlight that gestation is not in fact bound by gender, yet the increased quantification of trans pregnancies has not altered the perception that gestation remains a 'woman's job'.[71] This thesis presents that trans and non-binary gestation has not altered the perception that gestation is gendered, as it remains contingent on assigned biological sex and as previously established, sex and gender are too often conflated.[72] Therefore, AAPT and UTx have the capacity to alter the perception that gestation is gendered in a manner that has not been possible for trans and non-binary gestators, as they will decouple gestation from biological sex.[73]

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[63] Testa as quoted in Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).
[64] A Smajdor, 'The Moral Imperative for Ectogenesis' (n 35) 337.
[65] Testa, as quoted in Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).
[66] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[67] ibid
[68] ibid
[69] Julien Murphy, 'Is Pregnancy Necessary: Feminist Concerns about Ectogenesis' in Scott Gelfand and John Shook (eds), *Ectogenesis: Artificial Womb Technology and the Future of Human Reproduction* (Rodopi 2006) 27-46, 31; Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[70] OAPA 1861, s 58, 59, 60; ILPA 1929, s 1(2); AA 1967, s 1, HFEA 1990 (as amended 2008), s 3(2)(a) s 33(1), HCA 2022, s 178.
[71] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[72] Francisco Vakdes (n 38) 166.
[73] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

Chapter Four (Part II) then goes on to explore how AAPT and UTx may realise their potential to decouple gestation from gender in social consciousness and reform the notion that pregnancy is a 'woman's job'.[74] However, it is illustrated that the realisation of this potential in practice remains largely equivocal. Social perceptions are a complexly formed, maintained, and altered and it is undoubtable that an integral element for informing such perceptions will hinge on the accessibility and visibility of these novel technologies. Potential barriers to accessing AAPT and UTx are considered, including legal, economic, and social factors that may impede access. Despite this, the discussion concludes that AAPT and UTx still have the potential to alter social perceptions surrounding the gestational process in a manner that will decouple the association between gestation and women.

Previous chapters, in acknowledging both that abortion law has been influenced by perceptions of gender,[75] and that novel assisted gestative technologies have the capacity to dispel the association between gestation and women[76] provide scope to consider novel arguments for the reform of abortion law. Thus, Chapter Five examines the impact of 'de-gendered' gestation on abortion regulation. It presents two avenues for reform: the re-phrasing of current abortion legislation, and the decriminalisation of abortion. Assessment of the re-phrasing of the AA 1967 concerns the adoption of gender-neutral language in legislation, and details how AAPT and UTx will offer support to calls for more widespread use of the term 'pregnant people'. The chapter then considers how AAPT and UTx could have a more fundamental impact on abortion regulation by triggering a reconsideration of the criminal nature of abortion. It presents that the abortion debate concerns equality[77] and questions whether pre-existing calls for liberalisation and decriminalisation have been barred due to the continued gendered nature of abortion law. Despite critiques raised by scholars that the advent of novel forms of assisted gestation should make abortion care harder to access,[78] this thesis instead argues that by 'de-gendering' gestation, AAPT and UTx have the capacity to support and advance calls for decriminalisation.[79]

Ultimately, this thesis renders transparent the inadequacies of the law regulating gestation, specifically given the imminent reality of novel assisted gestative technologies.

[74] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[75] See, Chapter Two.
[76] See, Chapter Four.
[77] Neil Siegel and Reva Siegel, 'Equality Arguments for Abortion Rights' (2013) 60 UCLA Law Review Discourse 160-170.
[78] See, P Hendricks, 'There is No Right to the Death of the Fetus' (2018) 32 Bioethics 395; B Blackshaw and D Rodger, 'Ectogenesis and the Case Against the Right to the Death of the Foetus' (2019) 33 Bioethics 76; C Stratman, 'Ectogestation and the Problem of Abortion' (2020) 34 Philosophy and Technology 683.
[79] By infringing on their right to bodily autonomy and self-determination.

Abortion law is deeply rooted in gender stereotypes,[80] and whilst providing access to abortion care in certain circumstances,[81] such regulation neither adequately caters for the current nor future climate of gestation. AAPT and UTx, with their potential to transform how gender is associated with gestation will expose the deficiencies in the law, and likely support calls for reform.

[80] See, Paula Abrams, 'The Bad Mother: Stigma, Abortion and Surrogacy' (2015) 43 Journal of Law, Medicine & Ethics 179-191.
[81] AA 1967, s 1(a)-(d).

Chapter II

Abortion Law – Gendered Legislation

2.1 Introduction

The fact that gestation solely affects biological females has impacted abortion legislation. This chapter demonstrates that the conflation of sex and gender has resulted in abortion legislation which is inherently gendered. It sets out abortion law in this context, as this thesis goes on to consider how novel forms of assisted gestation could 'de-gender' the process of gestation,[82] and what impact this could have on abortion legislation.[83] Therefore, it is first necessary to establish how perceptions of gender have influenced the construction of abortion laws and informed the criminal nature of abortion.

This chapter will trace assumptions and prescriptive gender norms through history to determine how perceptions of gender influenced the construction of the OAPA 1861, ILPA 1929, and the AA 1967. It acknowledges that a number of competing factors have influenced the construction of abortion law resulting in the 1967 legislation, including but not limited to, sympathy for pregnant people[84] particularly those with complicated pregnancies,[85] health concerns following unsafe abortions,[86] and the interests of medical bodies involved.[87] However, the focus of this chapter concerns how these factors and the subsequent construction of the law were informed by perceptions of women, given that the abortion procedure only affects people AFAB. It builds on the conflation of sex and gender detailed in Chapter One, and the perception that those who gestate are 'women'[88] to inform analysis. Regardless of whether abortion legislation is viewed in a positive or negative light concerning women's rights,[89] this chapter will demonstrate that the legislation is undoubtedly gendered.

This chapter begins by briefly detailing the operation of abortion law in England and Wales. It then turns to explore the influence of gender on the law against the backdrop of

[82] See, Chapters Three and Four.
[83] See, Chapter Five.
[84] S Sheldon, *Beyond Control: Medical Power and Abortion Law'* (Pluto Press 1997)
[85] Consider the impact of thalidomide use during pregnancy between 1958 and 1961 in the UK. The Thalidomide Trust, 'History of Thalidomide' (*The Thalidomide Trust*) https://www.thalidomidetrust.org/about-us/history-of-thalidomide/ accessed 27 Dec 2023; Donald J Kenney, 'Thalidomide – A Catalyst to Abortion Reform' (1963) 5 Arizona Law Review 105.
[86] Stephen Brooke, '"A New World for Women"? Abortion Law Reform in Britain during the 1930s' (2001) 106 The American Historical Review 431, 435.
[87] S Sheldon, *Beyond Control* (n 84) 17.
[88] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[89] See, S Sheldon, 'The Abortion Act 1967: a Critical Perspective' in Ellie Lee (eds), *Abortion Law and Politics Today* (London, Palgrave Macmillan 1998) 43-58.

women in Victorian England.[90] Specifically, how perceptions regarding sex, morals, and motherhood informed the construction of the OAPA 1861 and the criminalisation of abortion.[91] Analysis of female resistance to the law is explored within the patriarchy of the 1920s alongside the introduction of the ILPA 1929. This thesis then turns to analyse women in the 1960s and the shifting focus of abortion regulation. By detailing actions of the feminist movement, the pathologisation of women[92] and the construction of women as either a victim or a minor by society,[93] it is evident that perceptions of women infiltrated the construction of the AA 1967. This chapter will also highlight how the law enforces gendered notions of reproduction given the use of gendered language in the legislation.[94] Ultimately, displaying that abortion law in England and Wales was both informed by gender stereotypes and continues to perpetuate gender stereotypes.

The chapter also considers recent changes to abortion law in England, Wales, and Northern Ireland, to highlight the changeable nature of abortion law, specifically in light of the potential for the association between sex, gender and gestation to be altered following the advent of AAPT and UTx.

Formulating Abortion Regulation in England and Wales

2.2 The Historical Development of Abortion Law

It is unclear whether archaic common law historically prohibited abortion.[95] In the 14th century, the common law dealt with the destruction of unborn life in anonymous cases coined by Means as the *The Twinslayer's Case*[96] (*Anonymous* 1327)[97] and *The Abortionist's Case*[98] (*Anonymous*

[90] Ben Griffin, *The Politics of Gender in Victorian Britain* (Cambridge University Press 2012)
[91] Carol Smart, *Feminism and the Power of Law* (n 57) 94; S Sheldon, 'Who is the Mother to Make the Judgement?': The constructions of woman in English abortion law' [1993] 1 Feminist Legal Studies 3-22; Emma Milne, 'Putting the Fetus First – Legal regulation, Motherhood and Pregnancy' (2020) 27 Michigan Journal of Gender & Law 149, 170.
[92] S Sheldon, *Beyond Control* (n 84) 31.
[93] S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91) 3.
[94] Reference to the 'pregnant woman' in the OAPA 1861 s 58, 59, 60; ILPA 1929 s 1(2); AA 1967 s 1, HFEA 1990 (as amended 2008), HCA 2022 s 178.
[95] J Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (Cambridge University Press 1988) 3.
[96] Cyril C Means Jr., 'The Phoenix of Abortional Freedom: Is Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty' (1971) 17 New York Law Forum 335, 337.
[97] Anonymous, (1327) YB Mich 1 Edw 3, f 23, pl. 18
[98] Cyril C Means Jr. (n 96) 339.

1348).[99] Neither case found that a felony had been committed due to 'problems of procedure and proof,'[100] leaving abortion as a vague legal uncertainty. The decline of ecclesiastical courts in the 17th century meant royal jurisdiction was exercised over abortion, alongside further clarity, as the royal courts highlighted abortion as a punishable offence in *R v Webb*.[101] The statutory restriction of abortion then followed with Lord Ellenborough's Act 1803,[102] which clarified the law and responded to what was understood to be the 'social problem' of abortion, in mandating that the offence of procuring a miscarriage be punishable by death.[103] This Act was repealed by the OAPA 1828, and then later replaced with the OAPA 1861 which continues to operate in England and Wales today.

Abortion is currently constructed as an offence in England and Wales in the OAPA 1861 through the offence of unlawfully procuring a miscarriage,[104] and in the Infant Life Preservation Act 1929 (ILPA 1929) s 1(1) under the offence of 'child destruction'.[105] These archaic pieces of legislation act together to wholly criminalise abortion. Today, abortion care is not a crime when the termination is carried out in line with the conditions of the AA 1967, as this amounts to a lawful miscarriage. If an abortion is not carried out in line with the AA 1967 the termination will constitute a criminal offence. This section is concerned with how these three separate pieces of legislation have been influenced by ideals of gender, specifically surrounding women, that permeated society when they were enacted, and consequently how the legislation continues to perpetuate gender stereotypes.

2.2.1 The Criminalisation of Abortion Prior to the Abortion Act 1967: The OAPA 1861 and the ILPA 1929

The OAPA 1861 continues to operate in England and Wales today to criminalise abortion care. Section 58 provides that any pregnant person who has intended to procure a miscarriage by administering poison or any other noxious thing, or using any instrument or other means whatsoever will be guilty of an offence.[106] Under s 58, pregnant people 'face the harshest

[99] Anonymous, Y.B. Mich., (1348) Reported in, A Fitzherbert, Grande Abridgement, tit. *Corone,* f. 268, pl.263 (1st edn, 1516) 5. 255, pl. 263 (3rd edn, 1565).
[100] J Keown, *Abortion, Doctors and the Law* (n 95) 4.
[101] *R v Webb* (Q.B. 1602) Calendar of Assize Records, Surrey Indictments, Eliz. I at 512 (no. 3146) (J.S. Cockburn ed. 1980)
[102] Lord Ellenborough's Act 1803, also referred to as the Malicious Shooting or Stabbing Act 1803.
[103] J Keown, *Abortion, Doctors and the Law* (n 95) 12.
[104] OAPA 1861, ss 58 and 59.
[105] Infant Life Preservation Act 1929 (ILPA 1929), s 1(1).
[106] OAPA 1861, s 58.

potential penalty for abortion foreseen in any European country',[107] to be kept in 'penal servitude for life'.[108] Furthermore, s 59 stipulates that anyone who supplies drugs or instruments in order to facilitate an abortion 'shall be guilty of a misdemeanour.. [and] liable… to be kept in penal servitude.'[109] The OAPA 1861 codified in statute the criminalisation of both pregnant people and abortion providers regarding the procurement of a miscarriage.

The enactment of the ILPA 1929 then arose in response to a legal loophole, whereby killing an infant while part of its body was still in the birth canal was not a criminal offence under the OAPA 1861.[110] Legislators were concerned that pregnant people were exploiting this legal lacuna by killing their child after spontaneous labour had begun, but before birth was completed.[111] Consequently, the offence of 'child destruction' was implemented, providing that 'any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother' will be guilty of child destruction.[112] The ILPA 1929 also introduced the rebuttable presumption in s 1(2) that at 28 weeks gestational age the fetus would be considered 'capable of being born alive.'[113] The ILPA 1929 serves to criminalise the killing of a fetus from 28 weeks gestational age until the fetus has been completely birthed, however a capacity to be born alive can be evidenced earlier in gestation.[114]

The statutory restrictions on abortion care, evidenced by the OAPA 1861 and the ILPA 1929, meant abortion care was difficult to access.[115] However, access was arguably not as restricted as the legislation may suggest.[116] In fact, abortion for therapeutic purposes was explicitly recognised by Grantham J in *R v Collins* (1898),[117] and was available in some circumstances to some people throughout the 18th century.[118] Examples of such include the

[107] Sally Sheldon and Kaye Wellings (eds), *Decriminalising Abortion in the UK: What Would It Mean?* (Policy Press 2020), citing K Nebel and S Hurka, 'Abortion: Finding the Impossible Compromise' in C Knill, C Adam and S Hurka (eds), *On the Road to Permissiveness? Change and Convergence of Moral Regulation in Europe* (Oxford University Press 2015)
[108] OAPA 1861, s 58.
[109] OAPA 1861, s 59.
[110] E Milne, *Criminal Justice Responses to Maternal Filicide: Judging the Failed Mother* (Emerald Publishing Limited 2021); DS Davies, 'Child-killing in English law' (1937) 1 Modern Law Review 203-223.
[111] DC Graves, '"…in a Frenzy While Ravin Mad": Physicians and Parliamentarians define Infanticide in Victorian England' in B H Bechtold and D C Grave (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide* (Lewiston, Edwin Mellen Press 2006) 111-136.
[112] ILPA 1929, s 1(1).
[113] ibid s 1(2).
[114] Andrew Grubb, *The New Law of Abortion: Clarification or Ambiguity?* (1991) Crim LR 659, 663.
[115] Madeleine Simms, 'Abortion Law and Medical Freedom' (1974) 14 The British Journal of Criminology 118-131.
[116] S Sheldon, *Beyond Control* (n 84) 15.
[117] *R v Collins* [1898] 2 British Medical Journal 122.
[118] J Keown, *Abortion, Doctors and the Law* (n 95) 78.

case of *R v Bourne* [1938], whereby Dr Bourne carried out an abortion on a 14 year-old girl who had been raped.[119] This case is considered a turning point in abortion discourse as Bourne actively sought his own prosecution, stating 'I want you to arrest me'[120] to a Chief Inspector. Bourne was acquitted in the Court of Criminal Appeal, and Macnaghten J provided clarity regarding the permissibility of therapeutic abortion care when the pregnant person's health is at risk.[121] Following *Bourne,*[122] *R v Bergmann and Ferguson*[123] and *R v Newton and Stungo*,[124] also highlighted that a doctor's opinion provided adequate grounds for a legal therapeutic abortion.

Despite this, abortion remained largely difficult to access and unsafe for pregnant people prior to 1967.[125] Access was limited to those who could afford to go to a doctor willing to provide abortion care,[126] and the majority of people could only afford unsafe clandestine abortions.[127] Consequently, by the 1960s, 'women's movements across Europe [had taken] to the streets to claim the abortion issue as their own.'[128]

2.2.2 The Case for Better Abortion Care: The Abortion Act 1967

The women's movement of the 1960s sought liberalised abortion regulation and was 'successful in setting the abortion issue on top of the public and political agenda.'[129] This resulted in Mr David Steel's Medical Termination of Pregnancy Bill, from which the AA 1967 would originate. The Medical Termination of Pregnancy Bill was approved for a second reading on 22nd July 1966, by 223 votes to 29, and 'this initiated one of the most bitter Parliamentary struggles of modern times.'[130] It is outside the scope of this thesis to address the arguments made in opposition to legal reform at the time,[131] and this section will instead consider how the construction of the law was influenced by those who supported legal reform.

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[119] *R v Bourne* [1938] 3 All ER 615.
[120] 'Charge of Procuring Abortion' [1938] 2 The British Medical Journal 199, 200.
[121] *R v Bourne* [1938] 3 All ER 615, [1939] 1 KB 687.
[122] ibid
[123] *R v Bergmann and Ferguson,* [1948] 1 British Medical Journal 1242.
[124] *R v Newton and Stungo* [1958] Crim LR 469.
[125] EC Romanis, 'Abortion Access and the Benefits and Limitations of Abortion-*Permissive* Legal Frameworks: Lessons from the United Kingdom' [2023] Cambridge Quarterly of Healthcare Ethics 1.
[126] J Keown, *Abortion, Doctors and the Law* (n 95) 88.
[127] S Sheldon, *Beyond Control* (n 84) 24.
[128] ibid 1.
[129] Mark Levels and others, 'A Review of Abortion Laws in Western-European Countries. A Cross-national Comparison of Legal Developments between 1960 and 2010' (2014) 118 Health Policy 95, 100.
[130] David Green, 'The Abortion Act 1967' (1968) 8 The British Journal of Criminology 82, 84.
[131] E.g. due to the idea that abortion was against the sanctity of life and had a negative impact on women. See, P Lowe, '(Re)imaging the 'backstreet': Anti-abortion Campaigning Against Decriminalisation in the UK' (2019) 24 Sociological Research Online 203; K Hindell and M Simms, *Abortion Law Reformed* (London, Peter Owen 1971)

Although sympathy for pregnant people seeking abortion care was steadily rising alongside the feminist movement, motivations for reform were not prefaced solely on 'women's rights'.[132] Instead, reform was also fuelled politically, by 'government interest in managing the social problem of abortion and bringing under control a situation of widespread illegality and *de facto* female resistance to the law.'[133] This translated to the need to 'bring women out of the backstreets and into contact with their GPs,'[134] in an attempt to reduce maternal mortality arising from abortion care, which was the leading cause of maternal deaths at the time.[135]

Furthermore, the interests of medical professionals shaped legislation; Romanis argues that '[t]he AA 1967 was written for medical professionals'.[136] Medical bodies[137] expressed concerns over the potential limitation of their 'professional discretion' and 'clinical freedom'[138] following reform. Steel explicitly acknowledged how these opinions influenced the construction of the AA 1967,[139] and 'the bulk of [their] recommendations were accepted.'[140] Consequently, the AA 1967 is a 'medical' piece of legislation, whereby s 1(1)(a) ultimately resigns abortion decision-making power to the doctor,[141] rather than to the abortion-seeker.

Despite its medical nature, the AA 1967 is effective in ensuring greater access to abortion care.[142] It sets out a number of conditions relating to the provision of abortion care that renders it a legal procedure.[143] The legal termination of a pregnancy can be carried out if two doctors in good faith are of the opinion that:[144]

> a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, or

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[132] Although there was growing sympathy for women. See, S Sheldon, *Beyond Control* (n 84).
[133] ibid 17.
[134] ibid
[135] 'Maternal deaths' (1966) 2 British Medical Journal 319-320.
[136] EC Romanis, 'Abortion Access and the Benefits and Limitations of Abortion-*Permissive* Legal Frameworks' (n 125) 4.
[137] Including, The British Medical Association, The Royal Medico-Psychological Association, The Royal College of Obstetricians and Gynaecologists.
[138] J Keown, *Abortion, Doctors and the Law* (n 95) 84-109.
[139] ibid 98.
[140] ibid 109.
[141] Discussion regarding abortion decision-making being in the hands of the doctor is outside the scope of this thesis. See, W Fyfe, 'Abortion Acts: 1803-1967' in S Franklin, C Lury and J Stacey (eds), *Off-centre: Feminism and Cultural Studies* (London Harper Collins Academic, 1991) 160, 165; M Berer, 'Whatever Happened to a Woman's Right to Choose?' (1988) 29 Feminist Review 24-37; L Clarke, 'Abortion: A Rights Issue?' in R Lee and D Morgan (eds), *Birthrights: Law and Ethics at the Beginning of Life* (London and New York, Routledge 1990) 155-170.
[142] EC Romanis, 'Abortion Access and the Benefits and Limitations of Abortion-*Permissive* Legal Frameworks' (n 125).
[143] AA 1967.
[144] AA 1967, s 1(1).

injury to the physical or mental health of the pregnant woman or any existing children of her family;[145] or

b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;[146] or

c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated;[147] or

d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.[148]

Section 1 (1) sets out the grounds for abortion, however the AA 1967 also stipulates other requirements (outside the scope of this thesis) that must be met for the abortion to be lawful, for example, where an abortion can be carried out.[149] Together, the OAPA 1861, the ILPA 1929, and the AA 1967 establish the current construction of abortion law in England and Wales. Whilst abortion remains a criminal offence, the construction of the AA 1967 renders 'every pregnancy lawfully terminable within the first 24 weeks'.[150] After 24 weeks abortion care can be lawfully carried out, but only under a more limited set of circumstances, as laid out above in sections 1(1)(b)-(d)[151]

This chapter will now consider how the construction of abortion regulation was influenced by gender, how the law itself interacts with gender, and how the language of the regulation reinforces gendered notions of reproduction.

Perceptions of Gender and the Law: Influencing the Law

2.3 The Influence of Gender on Domestic Law

The inextricable link between gender and the construction of the law is stark.

> Women's bodies have 'intersected' law because they are a site of biological reproduction and hence of legal dilemmas such as inheritance (of property and disease), illegitimacy, [and] adultery.[152]

[145] ibid s 1(1)(a).
[146] ibid s 1(1)(b).
[147] ibid s 1(1)(c).
[148] Ibid s 1(1)(d).
[149] Ibid., s 1(3)
[150] Emily Jackson, *Regulating Reproduction: Law, Technology and Autonomy* (Hart Publishing 2001)
[151] AA 1967 (as amended) s 1(1)(b) – (d)
[152] Carol Smart, *Feminism and the Power of Law* (n 57).

As a consequence of their biological function, 'women's bodies are sexualised, objectified, regulated and violated *by*[153] the institutions of patriarchal society'.[154] The law has illustrated this perception in a number of instances, 'regulating women's sexuality through the law of marriage and paternal rights and through the criminalisation of fornication, adultery, abortion and prostitution.'[155] People with assigned female physiology - assumed to be women - have been continually 'oppressed by laws that systematically and deliberately served the interests of men.'[156] Examples of such include rape cases, which sexualise, objectify and regulate the female body, as Smart posits that 'the law's definition of rape takes precedence over women's definitions'. [157] This narrative is also clear in Edwards' study, which highlighted how in the context of rape, courts often focus on women's culpability through false allegations and notions of seduction.[158] It appears that the law permits the determination of whether the complainant 'is the *kind* of woman who would justify recognition of her as a victim'.[159] A similar portrayal of women was adopted regarding sex workers in the Victorian period. Sex workers were considered a 'separate class of women, dislocating them from their working-class communities.'[160] This could be seen in relation to hospital admissions for venereal patients, as 'hospitals were more concerned about isolating female venereal patients, most of whom were assumed to be prostitutes, than their male counterparts.'[161] A hospital survey noted the difference in attitudes, in finding that 'if prostitutes are to be admitted in any large number, it is necessary to keep them under separate custody'.[162] Whereas, 'to isolate cases of male syphilis appears to be entirely superfluous.'[163] Furthermore, the Contagious Diseases Act 1864[164] 'allowed local magistrates courts to imprison working class women in lock hospitals and force punitive medical treatment upon them.'[165] This demonstrates not only gender inequality, but

[153] Emphasis added.
[154] J Bridgeman and S Millns, *Law & Body Politics Regulating the Female Body* (Dartmouth Publishing Co Ltd, 1955) pxix.
[155] Lynne Henderson (n 32).
[156] Ben Griffin (n 90).
[157] Carol Smart, *Feminism and the Power of Law* (n 57) 4.
[158] Susan M Edwards, Female Sexuality and the Law: A Study of Constructs of Female Sexuality as They Inform Statute and Legal Procedure (1982) 11 Contemporary Sociology 580-581.
[159] Victoria L Swigert, 'Review: [Untitled]' Reviewed Work: *Female Sexuality and the Law: A Study of Constructs of Female Sexuality as They Inform Statute and Legal Procedure* by Susan M Edwards (1982) 11 Contemporary Sociology 580-581.
[160] B Smart, *Michel Foucault* (London, Tavistock 1985)
[161] Judith R Walkowitz, *Prostitution and Victorian Society* (Cambridge University Press 1980) 58.
[162] Bristowe, "The Hospitals." In Judith R Walkowitz, *Prostitution and Victorian Society* (Cambridge University Press 1980) 58.
[163] ibid
[164] The Contagious Diseases Act 1864
[165] Carol Smart *Feminism and the Power of Law* (n 57) 94.

also 'how medical knowledge and legal discourse formed an alliance to regulate behaviours which were interpreted as injurious to public and individual health (moral and social).'[166] The regulation of women's bodies can also be seen regarding non-consensual caesarean sections and the sterilisation of women with learning difficulties.[167]

The exploration of these laws regulating the female body, specifically concerning rape and sex work has demonstrated the interaction between gender and the law and how women are treated differently to men, especially concerning their bodies. The regulation of the female body by the law is also seen in the context of abortion regulation.

2.3.1 Perceptions of Gender in the Construction of Abortion Law

The construction of the OAPA 1861 was influenced hugely by perceptions of gender at the time, specifically 'notions about women's bodies'.[168] Victorian domestic ideology runs through the legislation, with the assumption that women were irresponsible, destined for motherhood, and immoral if they sought an abortion.[169] Constructed by an all-male parliament seeking to uphold male authority,[170] the OAPA 1861 reflects 'the Victorian association of sex with disgust and guilt, and the maintenance of male military morale.'[171] This infiltrated the construction of the law which served to police female sexuality[172] and sought to '[conscript] all women into this maternal identity and role, the giving of birth to and the caring for children, and then treated women in accordance with it',[173] by rendering abortion a criminal offence.

The perceptions of women requiring abortion care also influenced the development of the AA 1967. Sheldon draws on parliamentary debates prior to the enactment of the AA 1967 to show that women were constructed as either a 'minor' or as a 'victim'.[174] Both presentations centre around the idea of maternity and women's destiny of motherhood. The construction of the woman as a minor in abortion discourse represents a woman who is immature 'with regard to matters of responsibility, morality and …femininity'.[175] Anti-abortionists adopted this

[166] ibid
[167] M Dass, 'Consent and caesarean section' (2005) 15 Current Obstetrics & Gynaecology 60-4; J Watson, 'Does the Mental Capacity Act 2005 Adequately Protect Persons with Learning Difficulties Against Needless Non-Consensual Sterilisation?' (2015) 7 Plymouth Law and Criminal Justice Review 167-94.
[168] Carol Smart, *Feminism and the Power of Law* (n 57) 94.
[169] See, S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91); Emma Milne, 'Putting the Fetus First – Legal regulation, Motherhood and Pregnancy' (2020) 27 Michigan Journal of Gender & Law 149, 170.
[170] Ben Griffin (n 90).
[171] Carol Smart, *Feminism and the Power of Law* (n 57) 94.
[172] Sally Sheldon and Jonathan Lord, 'Care not Criminalisation: Reform of British Abortion Law is Long Overdue' (2023) 49 Journal of Medical Ethics 523.
[173] J Erdman, 'The Gender Injustice of Abortion Laws' (2019) 27 Sexual and Reproductive Health Matters 4, 7.
[174] S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91) 3.
[175] ibid 6.

narrative to argue that pregnant people should not be able to access abortion care as they would be rejecting womanhood.[176] Conversely, those who supported reform constructed women as victims[177] of restricted choice,[178] potentially having too many children already, and not being able to care for another child.[179] Therefore, both pro- and anti-abortion camps present that 'maternal instinct' may drive pregnant people to seek abortion care.[180]

The following section will go on to consider how these perceptions of women as 'maternal', and 'irresponsible'[181] influenced the construction of the law.

2.3.2 Assessing the Gendered Regulation of the AA 1967

The regulation of gestation and abortion 'is one of the instances where law can be seen to posit a female legal subject.'[182] Consequently, its construction is based on perceptions of women.[183] Although a number of factors influenced calls for reform and the construction of abortion law, the previous section demonstrated the influence of gender on the law. This section now explores the impact of this by looking directly at abortion regulation.

The perception that women are destined for motherhood pervades legislation criminalising abortion[184] which 'subordinates women to a reproductive end.'[185] This notion of a woman's maternal role continued to infiltrate both anti- and pro- abortion reform discourse. Whilst anti-abortion campaigners argued abortion care rejects motherhood, reform advocates presented that abortion care was not at odds with the maternal role and rejected a singular pregnancy, rather than motherhood as a whole.[186] This discourse can be considered to have impacted the construction of the AA 1967. The AA 1967 permits abortion where continuing the pregnancy would negatively impact the physical or mental health of any existing children.[187] S 1(1)(a) can therefore be read as allowing a woman 'to reject pregnancy in order to fulfil her existing responsibility as a mother more effectively.'[188] Abortion is also permitted where there is a substantial risk that if the child were born it would suffer from physical or

[176] ibid 6-9.
[177] ibid 9.
[178] Carol Smart, *Feminism and the Power of Law* (n 57) 147.
[179] V Greenwood and J Young, *Abortion in Demand* (London, Pluto 1976) 81.
[180] ibid
[181] S Sheldon, 'Who is the Mother to make the Judgement?" (n 91) 3-22.
[182] ibid 4.
[183] Due to the association between having female reproductive capacity and being a woman. This association is considered further in Chapter Three.
[184] See, OAPA 1861 and ILPA 1929.
[185] B Hewson, 'Reproductive Autonomy and the Ethics of Abortion' (2001) 27 Journal of Medical Ethics ii11.
[186] S Sheldon, 'Who is the Mother to Make the Judgement?" (n 91) 6-13.
[187] AA 1967, s 1(1)(a).
[188] S Sheldon, 'Who is the Mother to Make the Judgement?" (n 91) 16.

mental abnormalities as to be seriously handicapped.'[189] Sheldon argues that rejecting this pregnancy does not mean rejecting motherhood, as the handicapped baby does not fit within the desirable maternal ideal.[190] The criminalisation of abortion under the OAPA 1861 and ILPA 1929 and the stipulations in the AA 1967 reflect the notion that a woman's role is that of a mother.

The perception of women as vulnerable,[191] irresponsible, and irrational[192] also influenced the construction of abortion regulation as a tool of control. The law has consistently demonstrated explicit control over the female body;[193] Bridgman and Millns highlight this by surmising that 'whilst the female body has emerged as a site of struggle and a focus of legal fascination, the legal system has at the same time played a role in silencing women and rendering our needs, if not our bodies, invisible'.[194] The OAPA 1861 and ILPA 1929 exercise reproductive coercion by criminalising those who choose to terminate a pregnancy, despite the fact that criminalisation is now considered to be incompatible with human rights law.[195] Whilst this was tempered by the introduction of the AA 1967, legalisation was ultimately favoured to permit pathologisation.[196] Permitting instances of lawful abortion care with the introduction of the AA 1967 functioned in a manner which lessened the exercise of direct state control over abortion, whilst simultaneously amplifying the extent of indirect (medical) control to be exerted over women.[197] Therefore, although deploying power and control indirectly in the form of medical provisions is more subtle,[198] it does not detract from the fact that the AA 1967 continues to deprive pregnant people of total bodily autonomy and the right to self-determination.[199]

The perception of pregnant people as vulnerable and irresponsible is also seen in the operation of the AA 1967, as two doctors must authorise the procedure.[200] Handing over decision-making power to medical professionals reflects assumptions that pregnant people are

[189] AA 1967, s 1(1)(d).
[190] S Sheldon, 'Who is the Mother to Make the Judgement?" (n 91) 16.
[191] Ruth Macklin, 'Bioethics, Vulnerability, and Protection' (2003) 17 Bioethics 472, 480.
[192] S Sheldon, 'Who is the Mother to Make the Judgement?" (n 91) 17-18.
[193] See, OAPA 1861, ILPA 1929, AA 1967.
[194] J Bridgeman and S Millns (n 154) xix.
[195] Fiona de Londras and others, 'The Impact of Criminalisation on Abortion-related Outcomes: A Synthesis of Legal and Health Evidence' (2022) 7 BMJ Global Health 1.
[196] S Sheldon, *Beyond Control* (n 84) 31.
[197] ibid 30.
[198] ibid
[199] Lynne Newhall, 'Women in Law – Bodily Autonomy "The Entombed Womb" Within the Realm of 'Body Politics' it could be argued that the Law Fails to Support and Protect Women's Bodily Autonomy' (2011) 43 Bracton Law Journal 59-71.
[200] AA 1967, s 1.

incapable of making the abortion decision themselves. However, it would be more fitting if the abortion decision was made by the pregnant person [201] in order to ensure patient autonomy is respected.

In the years following the introduction of the AA 1967, affording decision-making power to doctors proved problematic regarding access to abortion. A survey found that of 702 general practitioners, 75% of which were male, 18% categorised themselves as 'broadly antiabortion'.[202] Anti-abortion doctors may have made it more difficult for pregnant people to access abortion care, potentially by refusing to refer them to a hospital for termination, not informing them of their right to a second opinion, delaying the process prior to termination, or wrongly informing them that they were past the gestational age to access a termination.[203] This would be particularly concerning for younger and more vulnerable pregnant people. Furthermore, the doctor who must authorise abortion care has consistently been constructed as a man in abortion care discourse and legal literature.[204] This notion that male obstetricians-gynecologists are less likely to provide abortions[205] has fed into the gendered nature of abortion legislation, and the subjugation of women.

However, the provision of abortion in England and Wales currently sees abortion friendly doctors working for the main providers of abortion care, and individuals can self-refer[206] which largely avoids the issue of pregnant people being unable to access abortion due to the decision of a doctor. Ultimately, the discretion afforded to doctors under the AA 1967[207] permits them to respect patient autonomy regarding the abortion decision.[208] Although this means that pregnant people are not often deprived of abortion care in practice, the law, in not allowing pregnant people to make the abortion decision themselves, does not reflect modern

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[201] M Simms, 'Legal Abortion in Great Britain' in H Homans (ed), *The Sexual Politics of Reproduction* (Gower 1985) 94.
[202] Colin Francome and Edward Freeman, 'British General Practitioners' Attitudes Toward Abortion' (2002) 32 Family Planning Perspectives 189-190.
[203] Ibid 191.
[204] See, Deedes, H.C, Deb. Vol. 732, Col. 1092, 1966 (22 July); Knight, H.C. Deb. Vol. 749, Col. 931, 1967;
[205] US data which can be cautiously extrapolated to England and Wales, CS Weisman and others, 'Abortion Attitudes and Performance Among Male and Female Obstetrician-Gynecologists' (1986) 18 Family Planning Perspectives 67-73.
[206] Details on self-referring for an abortion available on the NHS website: 'you can self-refer by contacting an abortion provider directly – the British Pregnancy Advisory Service (BPAS), MSI Reproductive Choices UK, the National Unplanned Pregnancy Advisory Service (NUPAS), or your local NHS sexual health website can tell you about eligibility and services in your area.' NHS, 'Overview, Abortion' (nhs.uk, last reviewed 24 April 2020) <https://www.nhs.uk/conditions/abortion/#:~:text=you%20can%20self%2Drefer%20by,and%20services%20in%20your%20area> accessed 9 December 2023.
[207] Subjective nature of AA 1967 s 1(1).
[208] S Sheldon, 'The Decriminalisation of Abortion: An Argument for Modernisation' (2016) 36 Oxford Journal of Legal Studies 365.

medical practice.[209] It continues to infringe on pregnant people's ability to exercise total bodily autonomy and the right to self-determination,[210] by requiring two doctors to make the abortion decision.[211]

The fact that assumptions and prescriptive norms surrounding women were able to influence the construction of abortion regulation suggests that the law is only constructed in the manner that it is because the procedure solely affects people AFAB.[212] This thesis therefore seeks to unpack how this perception may change if gestation is no longer sexed female or associated solely with women. If gestation is reconceptualised regarding its interaction with gender following the introduction of AAPT and UTx detaching gestation from biological sex, this may influence opinions surrounding abortion legislation, which has been demonstrated to be gendered given the influence of Victorian gender stereotypes on its construction.

Perceptions of Gender and the Law: Perpetuating Gender Stereotypes

2.4 Abortion Law: The Use of Gendered Language

Legislation surrounding gestation, specifically abortion, is not only influenced by perceptions of gender, but it is also explicitly gendered in its formulation. The language used in these Acts[213] solely applies to women, by referring to a person gestating as the 'pregnant woman'.[214] It seems inconceivable that legislation prior to the Gender Recognition Act 2004 (GRA 2004) would not recognise an individual gestating as a pregnant *woman*, and the drafting of this legislation in such a manner is clearly product of its time. However, this section highlights that the regulation governing abortion and gestation remains gendered in its language despite a shift away from this perspective,[215] and this perpetuates the inaccurate perception that reproduction is gendered. Furthermore, this language has the potential to become less applicable following the introduction of AAPT and UTx, technologies which have capability to further distance the gestational process from 'women'.[216]

[209] Patricia A Lohr and others, 'How Would Decriminalisation Affect Women's Health?' in Sally Sheldon and Kaye Wellings (eds) *Decriminalising Abortion in the UK What Would it Mean?* (Policy Press 2020) 44.
[210] Lynne Newhall (n 199).
[211] AA 1967, s 1(1).
[212] Prefaced on the conflation of biological sex and gender. Francisco Vakdes (n 38) 166.
[213] See, OAPA 1861, ILPA 1929, AA 1967, HFEA 1990 (as amended 2008), HCA 2022.
[214] OAPA 1861 s 58, 59, 60; ILPA 1929 s 1(2); AA 1967 s 1, HFEA 1990 (as amended 2008), HCA 2022 s 178.
[215] Discussed more extensively in Chapter Three.
[216] Explored in Chapter Four.

The issue with the current gendered legislation is that it is ambiguous whether it would apply to a person carrying a pregnancy who was legally a man by virtue of the GRA 2004. In order to be granted with a gender recognition certificate in England and Wales a panel must be satisfied that the individual 'has or has had gender dysphoria',[217] 'has lived in the acquired gender throughout the period of two years ending with the date on which the application is made',[218] and 'intended to continue to live in the acquired gender until death'.[219] An individual can be legally recognised as a male, with female-assigned reproductive organs, and thus become pregnant, gestate and give birth. Determining whether the OAPA 1861 and AA 1967 apply to men carrying a pregnancy therefore becomes difficult, given the language employed by the legislation.

Exclusively based on the language of the legislation governing abortion concerning the 'pregnant woman',[220] it can be concluded that these provisions would not apply to legal men who are pregnant.[221] Fynes therefore highlights how it would be 'easier'[222] for a transgender man to access an abortion, as abortion care would not be unlawful under the OAPA 1861 and ILPA 1929,[223] considering that a man gestating would not be a 'pregnant woman'.[224] However, the court may want to bring a legal man who is gestating within the Act's remit, as 'the policy justification behind the illegality of abortion, namely the sanctity of life, applies with equal force regardless of whether a woman or man gives birth'.[225] Bringing legal men explicitly within the remit of the AA 1967 is unlikely to be due to a desire for prosecution under ss 58 and 59 OAPA 1861, as this is not common practice,[226] but instead so that they can access abortion care as regulated by the AA 1967.

The British Pregnancy Advisory Service (BPAS) highlights on their website that trans, non-binary and intersex people can access abortion care in the same way and following the

[217] GRA 2004, s (1)(a).
[218] GRA 2004, s (1)(b).
[219] GRA 2004, s (1)(c).
[220] AA 1967, ss 1((1)a)(b)(c), 1(2).
[221] Alison Fynes, 'A Comparative Approach to Transgender Legislation in the UK and Ireland' (2014) 4 King's Inns Student Law Review 31, 52.
[222] ibid
[223] OAPA 1861 s 58, 59; ILPA 1929 s 1(2).
[224] Note the paradox here. Lawful abortions are carried out in England and Wales under the AA 1967. An inability to access abortion for not fulfilling the requirements of being a 'pregnant woman' found in the AA 1967 could also make abortion care harder for transgender men to access.
[225] Alison Fynes (n 221).
[226] Prosecution under ss 58 and 59 OAPA 1861 is rare. See, *R v Smith* [1974] 1 All ER 376; However, also note recent prosecutions under the OAPA 1861 for example, *R v Foster* [2023] EWCA Crim 1196 https://www.judiciary.uk/judgments/r-v-carla-foster/ accessed 15 September 2023

same requirements that cis-gender females do.[227] The previous section demonstrated that the AA 1967 does not apply explicitly to legal men, so male gestators are treated by the law as 'pregnant women'. Although in the case of *R v Matthews,*[228] it was held that a post-operative transgender woman is to be treated by the law as a pregnant woman, it seems that a transgender man, who is recognised legally as a man,[229] is still treated by the law as a woman if he chooses to seek an abortion. The distinction here is made in relation to the biological functioning of the individual, highlighting the association between biological reproductive capacity and gender.

Whilst this treatment by the law can be viewed in a positive light regarding access, there are issues with this approach; namely, that recognising a gestating transgender man as a pregnant woman does not reflect their lived reality. Consequently, strong arguments can be made for more gender inclusive language in legislation on abortion.[230] The shift towards gender neutral terminology with regard to gestation is gaining traction in academic literature[231] and beyond, with a National Health Service (NHS) tweet in 2020 referring to pregnant people.[232] However, this shift is not reflected by the law in England and Wales, which continues to recognise trans-men and non-binary individuals who gestate as women,[233] and perpetuate the inaccurate gender stereotype that only 'women' gestate.

The current criminal abortion laws can be considered a form of sex discrimination.[234] This is as it 'not only renders women guilty of a criminal offence, it denies them access to a needed medical service.'[235] This chapter has already detailed the view that abortion regulation is a product of sexism and misogyny. Baker relies on this viewpoint to argue that employing gender-neutral language regarding reproduction would be detrimental as it would 'obscure' sex-based discrimination.[236] However, Baker seems to overlook the fact that trans, non-binary and intersex people are also affected by misogyny. It is possible to highlight the misogyny of

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[227] BPAS, 'Trans, Non-binary and Intersex People' (*BPAS)* https://www.bpas.org/abortion-care/considering-abortion/trans-non-binary-and-intersex-people/ accessed 10 May 2023
[228] *R v John Matthews* (CC, 28 October 1996).
[229] By virtue of the GRA 2004.
[230] Jessica Clarke, 'Pregnant People?' (2019) 119 Columbia Law Review 173, 176.
[231] ibid; EC Romanis, 'Partial ectogenesis: Freedom, Equality and Political Perspective' (2020) 46 Journal of Medical Ethics 89-90.
[232] 'NHS faces criticism for using the phrase "pregnant people"'(*The New Feminist,* 8 July 2021) https://www.thenewfeminist.co.uk/2021/07/nhs-faces-criticism-for-using-the-phrase-pregnant-people/ accessed 13 October 2023
[233] See use of term 'woman' in AA 1967 s 1.
[234] K Sekowska-Koxlowska, 'A Tough Job: Recognizing Access to Abortion as a Matter of Equality. A Commentary on the views of the UN Human Rights Committee in the cases of *Mellet v. Ireland* and *Whelan v. Ireland*. Reprod Health Matters.' (2018) 26 Taylor & Francis Online 25-31; J Erdman (n 173) 4-8.
[235] J Erdman (n 173) 6.
[236] Carrie N Baker and Carly Thomsen, 'The Importance of Talking About Women in the Fight Against Abortion Bans' (*Ms. Magazine*, 23rd June 2022) https://msmagazine.com/2022/06/23/women-abortion-bans-inclusive-language-pregnant-people/ accessed 13 October 2023

abortion laws and recognise that pregnancy is not a status that solely affects women. Furthermore, this thesis does not seek to suggest here that using gendered language to speak of pregnancy in a personal sense should be obsolete,[237] but that legislation on abortion which can affect individuals who do not identify as women, should be inclusive, and employ the term 'pregnant people'.[238]

The language used in abortion legislation is gendered, and this is at odds with the lived reality of some gestators, an issue which has the potential to be exacerbated with the advent of AAPT and UTx. This section has demonstrated how abortion regulation has been influenced by perceptions of gender and continues to reinforce the association that gestation is gendered and solely carried out by women.[239]

The Changing Landscape of Abortion Law

2.5 Recent Changes to Abortion Law

The potential for abortion regulation to change following the introduction of AAPT and UTx will undoubtedly be influenced by national attitudes towards abortion and current regulation. Perspectives on abortion can be described as a 'clash of feminist pro-choice [and] religious pro-life frames,'[240] and such beliefs are held so strongly as they tap into 'the most polarized and value-laden aspects of reproductive rights and policy'.[241] Despite this, jurisdictions have seen recent liberalisation of abortion rights. This section will focus on how England, Wales and Northern Ireland have sought to improve abortion access in recent years.

2.5.1 England and Wales

[237] Many cis pregnant people will identify with the gender marker 'woman' and want to be recognised in accordance with it.
[238] The term 'pregnant people' is being using increasingly in academic literature. For example, Jessica Clarke (n 230).
[239] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[240] Alison Brysk and Rujun Yang, 'Abortion Rights Attitudes in Europe: Pro-Choice, Pro-Life, or Pro-Nation?' (2023) 30 Social Politics: International Studies in Gender, State & Society 525; Amy Adamczyk and others, 'Examining public opinion about abortion: A mixed-methods systematic review of research over the last 15 years' (2020) 90 Sociological Inquiry 920-54; E Cook and others, *Between two absolutes: Public opinion and the politics of abortion* (Boulder CO, Westview 1992); K Luker, *Abortion and the politics of motherhood* (Berkley CA, University of California Press 1984)
[241] Alison Brysk and Rujun Yang (n 240) 2.

England and Wales saw 'a gradual widening of the grounds for legal abortion'[242] with the introduction of the AA 1967, and recent amendments to the act can be viewed as 'progressive' attempts to modernise,[243] by making abortion care more accessible. In particular, the recent amendment to the Abortion Act, s 1(3), following the introduction of the Health and Care Act 2022 (HCA 2022) has improved accessibility.[244] This amendment stemmed from temporary legislation implemented during the Covid-19 pandemic, whereby the Department of Health and Social Care and the Welsh government authorised remote abortion care for early medical abortions (telemedical early medical abortion).[245] At first introduction, these orders included a sunset clause, stating that the orders would expire. The English order would expire 'automatically on the 30th March 2022, or with the expiration of the *Coronavirus Act 2022* if that comes first.' (the Welsh order was the same, but the expiration date was one day later).[246] The temporary provision of this legislation was widely criticised,[247] as the largest UK study into abortion care collated evidence from 52,142 individuals to demonstrate that early telemedical abortions are 'effective, safe, acceptable and improve access to care.'[248]

In 2022, Parliament voted to make telemedical early abortion care permanent in England and Wales.[249] S 178 HCA 2022 amended s 1 AA 1967 to read that mifepristone and misoprostol (the medicine taken to induce an early medical abortion) 'may be self-administered by the pregnant woman' at home.[250] Providing for telemedical abortions increases access to abortion more broadly than just in the context of the Covid-19 pandemic. Parsons and Romanis detail a number of reasons why accessing a clinic may be difficult, including, 'living in a rural area, no access to public transport, limited financial resources, disability, inability to find suitable childcare, or fear of a domestic abuser.'[251] This amendment to regulation demonstrates how legislators can be receptive to changing circumstances regarding abortion care in England

[242] Madeleine Simms, 'Abortion Law and Medical Freedom' (n 115) 118.
[243] EC Romanis, 'Abortion Access and the Benefits and Limitations of Abortion-*Permissive* Legal Frameworks' (n 125) 1.
[244] AA1967, s 1(3D) as amended by the HCA 2022, s 178
[245] Jordan A Parsons and Elizabeth Chloe Romanis, '2020 Developments in the Provision of Early Medical Abortion by Telemedicine in the UK' (2021) 125 Health Policy 17-21.
[246] ibid 18.
[247] See, ibid; Z Tongue, 'Telemedical and Self-managed Abortion: A Human Rights Imperative? (2023) 30 European Journal of Health Law 158-181.
[248] ARA Aiken and others, 'Effectiveness, Safety and Acceptability of No-Test Medical Abortion (Termination of Pregnancy) provided via Telemedicine: A National Cohort Study' (2021) BJOG 1464.
[249] M Oppenheim, 'A Vote for Gender Equality': MPs Vote to Permanently Allow at Home Early Medical Abortions in England' *Independent* (March 2022) https://www.independent.co.uk/news/uk/home-news/abortions-telemedicine-vote-commons-b2047496.html accessed 27 December 2023
[250] Abortion Act 1967, s.1(3D) as amended by the Health and Care Act 2022, s.178(4)
[251] Jordan A Parsons and Elizabeth Chloe Romanis, '2020 Developments in the Provision of Early Medical Abortion by Telemedicine in the UK' (2021) (n 245) 6 referencing, JA Parsons and EC Romanis, *Early Medical Abortion, Equality of Access and the Telemedical Imperative* (Oxford University Press 2021) 31-56.

and Wales. Furthermore, the campaign for, and resulting decision to enact a permanent change to legislation demonstrates an acknowledgement of the importance of access to abortion care in England and Wales.

Furthermore, in England and Wales, calls for increased buffer zones around abortion clinics are set to become law this year (2023). The BPAS's 'Back-Off' Campaign,[252] achieved legal success on the 18th October 2022 when MPs passed amendment NC11 to the Public Order Bill.[253] The 'buffer zone' will mean anti-abortion campaigners must stand at least 150 meters away from clinics, and 'a person who is within a buffer zone and who interferes with any person's decision to access, provide, or facilitate the provision of abortion services in that buffer zone is guilty of an offence.'[254] The success of this campaign demonstrates a commitment to improved access regarding abortion care in England and Wales.

2.5.2 Northern Ireland

In Northern Ireland, the rights afforded to pregnant people increased in 2019 with the introduction of the Northern Ireland (Executive Formation etc) Act 2019, whereby s 9 repealed ss 58 and 59 OAPA 1861, to decriminalise[255] abortion.[256] In 2020, new legislation was introduced, permitting abortions up to 12 weeks gestation,[257] and up to 24 weeks gestation where there is a risk to the pregnant person's physical or mental health.[258] Terminations are also permitted with no gestational time limit where there is immediate necessity, [259] or the pregnancy poses risk to life or grave permanent injury of the pregnant person,[260] or it is likely that the fetus would be born with a severe fetal impairment or suffer a fatal fetal abnormality.[261] Despite the introduction of more liberal abortion legislation,[262] Rough notes that there remain

[252] BPAS, 'Back Off' https://bpas-campaigns.org/campaigns/backoff/ accessed 1 June 2023.
[253] Stella Creasy's amendment, Public Order Act 2023, Report Stage, NC11 <https://bills.parliament.uk/bills/3153/stages/16631/amendments/10002351> accessed 1 June 2023
[254] ibid
[255] I use the term 'decriminalised' here, as abortion care is entirely decriminalised up until 12 weeks, and a pregnant person cannot commit an abortion offence. However, note that if a third party terminates a pregnancy that is not in accordance with the Regulations, they will be guilty of an offence. Abortion (Northern Ireland) (No.2) Regulations 2020, Regulation 11.
[256] Clare Dyer, 'Abortion in Northern Ireland is Decriminalised' [2019] British Medical Journal 367; Abigail RA Aiken and Fiona Bloomer, 'Abortion Decriminalised in Norther Ireland' [2019] British Medical Journal 367.
[257] Abortion (Northern Ireland) (No.2) Regulations 2020, Regulation 3.
[258] ibid Regulation 4.
[259] ibid Regulation 5.
[260] ibid Regulation 6.
[261] ibid Regulation 7.
[262] For a more detailed exploration on the introduction of the new legislation see, A Mullally and others, 'Working in the Shadows, under the Spotlight – Reflections on Lessons Learnt in the Republic of Ireland after the first 18 months of more Liberal Abortion Care' (2020) 102 Contraception 305-307; P Horgan and others,

issues with the provision of abortion services in Northern Ireland;[263] no nationwide abortion services, and a lack of funding, means pregnant people in Northern Ireland may struggle to access abortion care.[264] Carroll has also drawn a distinction between the legal and practical provision of abortion services, stating that abortion services are 'almost non-existent'.[265] A judicial review case brought by the Northern Ireland Human Rights Committee to the High Court of Northern Ireland in 2021, found that the Secretary of State 'failed to ensure expeditiously that the State provide women with access to high quality abortion and post abortion care in all public health facilities in Northern Ireland.'[266] Consequently, Secretary of State for Northern Ireland Chris Heaton-Harris issued an update on the 24th October 2022, stating that the UK Government will ensure the commissioning of abortion services in Northern Ireland. [267] Northern Ireland has demonstrated that decriminalisation of abortion does not automatically ensure access, however the involvement of the UK Government should mean pregnant people will soon be able to access the full range of abortion healthcare to which they are lawfully entitled. The issue of practical changes not following positive legal change in Northern Ireland likely stem from the fact that, prior to decriminalisation in 2019 the country was infamous for its restrictive abortion framework.[268] Despite decriminalisation following decades of sustained campaigning to result in a legal position that better aligns with public opinion in Northern Ireland,[269] provision is patchwork and gaps in care remain due to 'complications in the health service due to the Covid-19 pandemic, political inaction and continued social and cultural stigma around the issue.'[270] This unique set of circumstances

'Termination of Pregnancy Services in Irish General Practice from January 2019 to June 2019' (2021) 104 Contraception 502-505; B Dempsey and others, 'Exploring Providers' Experience of Stigma following the Introduction of more Liberal Abortion Care in the Republic of Ireland' (2021) 104 Contraception 414-419

[263] Elizabeth Rough, 'Abortion in Northern Ireland: Recent Changes to the Legal Framework' (*House of Commons Library*, 6 Feb 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-8909/ accessed 6 May 2023.

[264] Ellen McVeigh, 'Abortions Are Legal in Northern Ireland, but That Doesn't Make Them Easy to Access' (*Novara Media*, 21 October 2022) https://novaramedia.com/2022/10/21/abortions-are-legal-in-northern-ireland-but-that-doesnt-make-them-easy-to-access/ accessed 14 March 2023

[265] Rory Carroll, 'Abortion Services in Northern Ireland almost Non-existent despite Legalisation' *The Guardian* (4 May 2022) https://www.theguardian.com/world/2022/may/04/abortion-services-in-northern-ireland-almost-nonexistent-despite-legalisation accessed 6 May 2023

[266] *Re an Application by the Northern Ireland Human Rights Commission for Judicial Review, and Re the Failure by the Secretary of State, Executive Committee and Minister of Health to Provide Women with Abortion Care in All Public Health Facilities in Northern Ireland* [2021] NIQB 91 para [115].

[267] Chris Heaton-Harris, 'Northern Ireland Update, Statement made on 24 October 2022, Statement UIN HCWS341' (2022) https://questions-statements.parliament.uk/written-statements/detail/2022-10-24/HCWS341 accessed 7 May 2023.

[268] Sally Sheldon and others, 'Too Much, too Indigestible, too Fast'? The Decades of Struggle for Abortion Law Reform in Norther Ireland (2020) 83 The Modern Law Review 761-96.

[269] ibid

[270] Ellen McVeigh (n 264).

specific to Northern Ireland suggests that the lack of necessary practical change would not be seen in other countries following decriminalisation. Furthermore, the UK Parliament's support and role in providing 'the final legal push'[271] to repeal criminal prohibitions against abortion in Northern Ireland, and the Government's ability to step in and commission abortion care in Northern Ireland[272] suggests such barriers would not impact on access to abortion care if decriminalisation were to arise in England and Wales.[273]

2.5.3 The Changeable Nature of Abortion Law

The changeable nature of abortion law can arguably be considered a product of polarised views on abortion within different societies.[274] These views can generally be categorised into two competing camps, pro-life and pro-choice.[275] In England and Wales, the AA 1967, which seeks to strike a balance between these two competing viewpoints, and the provision of strong abortion care infrastructure[276] makes it seem as though the provision of safe and legal abortion care is unlikely to be threatened. However, this likelihood cannot be taken for granted, especially in light of the potential for novel assisted gestative technologies to alter the reproductive landscape,[277] and consequently possible changes to abortion legislation must be discussed.

2.6 Conclusion

The gendered nature of abortion regulation is evident in two contexts. Firstly, given the influence of perceptions surrounding gender on the construction of abortion law as a tool to control the female body.[278] Victorian domestic ideology which viewed women as destined for motherhood[279] contributed to the construction of the OAPA 1861 to police female sexuality[280] and prevent them from rejecting motherhood by criminalising the procurement of a

[271] ibid
[272] Chris Heaton-Harris (n 267).
[273] Despite this, the fact that necessary practical changes do not always accompany positive legal reform will be considered in analysis throughout Chapter Five on the impact of decriminalising abortion in England and Wales.
[274] Alison Brysk and Rujun Yang (n 240).
[275] Amy Adamczyk and others (n 240).
[276] EC Romanis, 'Abortion and "Artificial Wombs": Would "Artificial Womb" Technology Legally Empower Non-Gestating Genetic Progenitors to Participate in Decisions about *How* to Terminate Pregnancy in England and Wales?' (2021) 8 Journal of Law and the Biosciences 1.
[277] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[278] S Sheldon, *Beyond Control* (n 84) 31; Lynne Newhall (n 199).
[279] J Erdman (n 173) 4-8.
[280] Sally Sheldon and Jonathan Lord, 'Care not Criminalisation' (n 172).

miscarriage.[281] The ILPA 1929 responded to the perception that women were resisting and exploiting the law when killing their babies during birth,[282] resulting in the offence of child destruction.[283] Finally, the AA 1967 remained largely influenced by perceptions of gender, demonstrated in the construction of those seeking an abortion as either a victim or a minor,[284] and not affording decision-making power to pregnant people.[285] Secondly, the language of the regulation[286] reinforces gender stereotypes specifically relating to the notion that gestation, and thus the need for abortion, is gender specific to women.

This assessment of the regulation as inherently gendered will inform analysis in Chapter Five, which considers the impact that 'de-gendered' gestation could have on abortion regulation. In demonstrating that the construction of abortion regulation has been influenced by perceptions of gender, it is consequently necessary to consider how such regulation could be impacted if gender no longer informs society's understanding and experiences of gestation in the manner that it does currently. In preparation for considering how ideals surrounding abortion may change, this chapter explored recent developments to abortion law in England and Wales, and Northern Ireland. It considered the polarised views on abortion and consequently changeable nature of abortion law, which will likely impact the extent to which 'de-gendered' gestation will impact on the inherently gendered law that regulates gestation.

[281] OAPA 1861 s 58, 59.
[282] E Milne, *Criminal Justice Responses to Maternal Filicide* (n 110).
[283] ILPA 1929 s 1(2).
[284] S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91) 3.
[285] AA 1967, s 1.
[286] Use of the term 'pregnant woman' in the OAPA 1861, ILPA 1929, AA 1967, HFEA 1990 (as amended 2008), HCA 2022.

Chapter III

AAPT, UTx and the Potential to 'Un-sex'–Altering the Gestational Process

3.1 Introduction

AAPT and UTx will challenge what is currently considered to be an 'immutable biological fact'[287] of reproduction, that gestation is only capable of being carried out by an individual with physiology AFAB. This chapter demonstrates how AAPT and UTx will practically alter the process of gestation by detaching it from sex assigned at birth,[288] providing for gestation no longer exclusively reliant on an individual with physiology assigned female.[289] Altering gestation in this manner is referred to as 'un-sexing' gestation.[290]

The potential for AAPT and UTx to 'subvert empirical facts of reproduction'[291] and detach gestation from sex[292] is explored throughout this chapter as gestation detached from sex may contribute towards detaching gestation from gender.[293] Determining the association between gestation and gender following the advent of both AAPT and UTx is integral to inform later analysis regarding how 'de-gendered' gestation may impact on abortion regulation. On the assumption that a pre-requisite for 'de-gendered' gestation is gestation detached from sex, this thesis begins by assessing the potential for gestation to be 'un-sexed'[294] with the advent of AAPT and UTX.

Biological Sex and Gestation

3.2 Currently Immutable Facts of Gestation

The capacity for gestation is currently contingent on biological sex assigned at birth.[295] Primary sex determination is chromosomal,[296] and this determines an individual's reproductive

[287] E Jackson, 'Degendering Reproduction?' (n 35), 347.
[288] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[289] ibid
[290] ibid
[291] ibid
[292] ibid
[293] Given the conflation of sex and gender. Francisco Vakdes (n 38) 166.
[294] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[295] Note: Those who have the capacity for gestation must be born with physiology assigned female at birth, however an individual can have female physiology but not have the ability to gestate due to infertility.
[296] Scott F Gilbert, *Developmental Biology* (6th edn, Sinauer Associates 2000)

capacity. Typically, assigned biological sex will be either female or male. The female gonads will develop if an individual has XX chromosomes, and the male gonads will develop if an individual has XY chromosomes.[297] Secondary sex characteristics then arise dependent on the hormones secreted from the gonads,[298] either oestrogen if the Y chromosome is absent, or testosterone if the Y chromosome is present.[299] These factors determine typical biological sex, which is largely based on 'the appearance of the external genitalia…[and is often] announced at or shortly after birth.'[300] However, individuals can be born with 'biological characteristics that vary from what is typically thought of as exclusively male or female', termed intersex.[301] The frequency of intersexuality has been at minimum estimated to occur in 1.728% of live births.[302] This suggests that the sex binary of being male or female is not in fact wholly accurate, and the 'belief in absolute sexual dimorphism is wrong.'[303] However, contesting the binary conception of sex does not detract from the 'immutable biological fact'[304] that gestation is only capable of being carried out by those with physiology AFAB. Notably, an intersex person can gestate if they have a functioning uterus.[305] Therefore, even if assigned sex is not dimorphic,[306] the current constraints of human reproductive biology mean that only an individual with physiology defined as female at birth, will be capable of undertaking the gestational process.

Novel Assisted Gestative Technologies

3.3 Introducing Novel Assisted Gestative Technologies

The previous section of this chapter considered how gestation is currently biologically bound by sex, as it is only capable of being carried out by those with physiology AFAB. However,

[297] ibid
[298] ibid
[299] ibid
[300] Ursula Kuhnle and Wolfgang Krahl, 'The Impact of Culture on Sex Assignment and Gender Development in Intersex Patients' (2002) 45 Perspectives in Biology and Medicine 85.
[301] David Andrew Griffiths (n 40).
[302] Melanie Blackless and others (n 45).
[303] ibid 163.
[304] E Jackson, 'Degendering Reproduction?' (n 35) 347.
[305] InterAct, 'What is Intersex?' (*InterAct Advocates*, last updated 26th Jan 2021) https://interactadvocates.org/faq/#fertility accessed 1 May 2023
[306] Melanie Blackless and others (n 45).

this section explores how the advent of novel assisted gestative technologies have the capacity to change this, by detaching the gestational process from assigned biological sex.[307]

3.3.1 Distinguishing Assisted Gestative Technologies (AAPT, UTx and Surrogacy)

AAPT and UTx must first be distinguished from surrogacy, an already established method of assisted gestation. Differentiating AAPT and UTx from surrogacy will highlight that AAPT and UTx are disruptive technologies, given their capacity to alter biological facts of gestation[308] and displace the gender order.

Surrogacy is defined by the Human Fertilisation and Embryology Authority as 'when a woman carries and gives birth to a baby for another person or couple.'[309] There are two types of surrogacy: gestational and genetic.[310] Gestational surrogacy allows for biological offspring as the eggs and sperm of the intended mother and father may be used, and there is no genetic connection between the surrogate and the baby.[311] Whereas genetic surrogacy 'involves artificial insemination using the intended father's/donor sperm and the surrogate's egg'.[312] Gestational surrogacy has become the most common form of surrogacy in England and Wales in the last 30 years.[313] A number of factors render surrogacy undesirable to some and somewhat difficult in England and Wales, which is why the advent AAPT and UTx may present a better alternative.

Firstly, it is necessary to consider that gestational surrogacy is simply 'non-ideal',[314] as the process of pregnancy and childbirth is laborious and can be dangerous.[315] It is for this reason that surrogates often seek reimbursement for their gestational labour. A desire to seek reimbursement for surrogacy can be complicated, as in some countries commercial surrogacy is illegal.[316] The UK operates an altruistic surrogacy framework, whereby commercial

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[307] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[308] ibid
[309] Human Fertilisation and Embryology Authority, ``Surrogacy' (*HFEA)* https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/ accessed 27 Dec 2023
[310] Traditional/genetic surrogacy can also be referred to as partial surrogacy. Gestational surrogacy can also be referred to as full surrogacy.
[311] C Burrell and H O'Connor, 'Surrogate Pregnancy: Challenging the Legal Definition of Motherhood' (2014) 121 BJOG: An International Journal of Obstetrics and Gynaecology 308.
[312] ibid
[313] TFP Fertility UK, 'What is Gestational Surrogacy?' (*TFP Fertility*, 25 April 2021) https://tfp-fertility.com/en-gb/blog/gestational-surrogacy accessed 27 Dec 2023
[314] Kathryn MacKay, 'The 'Tyranny of Reproduction': Could Ectogenesis Further Women's Liberation?' (2020) 34 Bioethics 346, 350.
[315] See, E Jackson, 'Degendering Reproduction?' (n 35); E Kendal (n 35); S Lewis, *Full Surrogacy Now: Feminism against Family* (London UK, Verso Books 2019); D Shapiro, 'Should Pregnancy be Considered a (Temporary) Disability?' (2018) 11 International Journal of Feminist Approaches to Bioethics 91-105.
[316] For example, Canada and Australia.

surrogacy is prohibited by the Surrogacy Arrangements Act 1985,[317] but surrogates can be reimbursed for what the court broadly defines as 'reasonable expenses'.[318] This approach balances outlawing paid surrogacy, which makes surrogacy less accessible due to a shortage of surrogates,[319] and allowing paid surrogacy. The issue with nations permitting commercial surrogacy is that they often become destinations for reproductive tourism, which can lead to the exploitation of vulnerable women.[320] Consequently, many countries have strong limitations on international and paid surrogacy arrangements in an attempt to protect those who are able to gestate.[321] Further to this, surrogacy can be viewed as an act that 'negatively affects motherhood [as it] inappropriately treats babies and surrogates as commodities',[322] reinforcing the pro-natalist norm that it is a woman's social role to bear children.[323] It is for these reasons that Mackay argues there is a 'moral imperative'[324] for assistive gestative technologies that can detach gestation from assigned biological sex.

Furthermore, the current surrogacy arrangements in England and Wales may also be considered undesirable as legal uncertainty can arise when determining parenthood. Currently, motherhood is always attributed to the individual who gestates and gives birth, [325] and in surrogacy this is the surrogate. In order to ascertain parenthood, it is necessary for the intended parents to apply to the court to transfer parenthood.[326] The laborious court process[327] can lead to problems if the surrogate wishes to keep the baby, or the intended parents do not assume responsibility for the baby.[328] However, the Law Commission's 2023 Final Report and Draft Bill on surrogacy recommended that 'on the live birth of the child the intended parents should

[317] The Surrogacy Arrangements Act 1985, s 2.
[318] See, *Re A, B and C (UK surrogacy expenses)* [2016] EWFC 33; *Re X & Y (Foreign Surrogacy)* [2011] EWHC 3147 (Fam) on 'reasonable expenses.'
[319] C Burrell and H O'Connor (n 311).
[320] Stephen Wilkinson, 'The Exploitation Argument Against Commercial Surrogacy' (2003) 17 Bioethics 169-197.
[321] E.g. India – Spatarshi Ray, 'India Band Commercial Surrogacy to Stop 'Rent a Womb' Exploitation of Vulnerable Women' *The Telegraph* (Delhi, 20 December 2018) https://www.telegraph.co.uk/news/2018/12/20/india-bans-commercial-surrogacy-stop-rent-womb-exploitation/ accessed 12 March 2023
[322] Lorenzo Del Savio and Giulia Cavaliere, 'The Problem with Commercial Surrogacy: A Reflection on Reproduction, Markets and Labour' (2016) 2 Biolaw Journal 73.
[323] C McLeod and J Ponese, 'Infertility and moral luck: The politics of women blaming themselves for infertility' (2008) 1 International Journal of Feminist Approaches to Bioethics 126, 135.
[324] Kathryn MacKay (n 314) 350.
[325] HFEA 2008, s 33.
[326] Gov.UK, 'Surrogacy: Legal Rights of Parents and Surrogates' (*Gov UK*) https://www.gov.uk/legal-rights-when-using-surrogates-and-donors/become-the-childs-legal-parent accessed 17 May 2023
[327] K Horsey and S Sheldon, 'Still Hazy After All These Years: The Law Regulating Surrogacy' (2012) 20 Medical Law Review 67-89.
[328] NGA Law, 'Surrogacy in the UK' (*NGA Law)* https://www.ngalaw.co.uk/knowledge-centre/uk-surrogacy-law/ accessed 21 December 2022

be the legal parents of the child.'[329] This proposed change seeks to bring the law in line with the generally intended wishes of the parties to the surrogacy agreement, and solve the conceptual issue with current surrogacy law: that it excessively genders gestation by terming surrogates as mothers.[330] Regardless of this, the involvement of a third party may continue to make surrogacy an undesirable option for those wishing to have genetic offspring and therefore AAPT and UTx may be more suitable.

Finally, surrogacy does not change perceptions surrounding gestation as a gendered process. It is a form of assisted reproduction that can be said to reinforce sexed notions of gestation, as the role of the surrogate is biologically limited to individuals AFAB. Anleu argues that laws prohibiting commercial surrogacy 'make certain assumptions about the nature and role of women in society.'[331] Specifically, in how surrogacy can be considered to support the notion that it 'is natural and appropriate for women to have children.'[332] Surrogacy, may therefore reinforce gender norms regarding gestation.

Overall, surrogacy must be distinguished specifically in the context of this thesis, as it does not make headway towards 'un-sexing reproduction,'[333] as gestational labour still has to take place within the body of a person AFAB. Therefore, it is AAPT and UTx that have the potential to move beyond biologically sexed gestation and allow those not AFAB the opportunity to gestate for themselves. AAPT and UTx have the capacity to detach gestation from sex, and consequently they will disrupt the gestative sphere in a manner that the advent of surrogacy does not, by altering biological facts of gestation.

Detaching Gestation from Biological Sex

3.4 AAPT and UT

[329] Law Commission, *Building Families Through Surrogacy: A New Law Volume II: Full Report* (Law Com No 411) 69 para 4.46
[330] Zaina Mahmoud and Elizabeth Chloe Romanis, 'On Gestation and Motherhood' (2022) 31 Medical Law Review 109-140.
[331] Sharyn L Roach Anleu, 'Reinforcing Gender Norms: Commercial and Altruistic Surrogacy' (1990) 33 Acta Sociologica 63, 71.
[332] ibid
[333] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

In assisting gestation, AAPT and UTx will detach the gestational process from assigned biological sex.[334] This section details how the technology of AAPT and UTx will operate to permit gestation which is no longer solely reliant on an individual AFAB.

3.4.1 AAPT

Gestation ex utero has not yet been possible, however the development of artificial placentas[335] means ectogestation is an ever-nearing reality. The development of prototypes to facilitate ex utero gestation was highlighted in 2017 by a team of fetal scientists and surgeons at the Children's Hospital of Philadelphia (CHOP), who developed a closed fluid circuit[336] able to facilitate gestation ex utero using a pumpless oxygenator circuit and cannulae acting as an umbilical cord: 'the biobag'.[337] The biobag was able to sustain 'five 106–113 day GA [gestational age] lambs for 13 - 26 days.'[338] This means that lamb fetuses were sustained for up to 4 weeks, from approximately 15/16 weeks gestational age to 17 - 20 weeks gestational age. Fetal lambs were used in this study due to their developmental equivalence to extremely premature human babies.[339] Furthermore, gestational age similarities mean that sustaining lamb fetuses between 15- and 20- weeks gestational age could translate to somewhere between 21- and 23-weeks gestational age when considering a human fetus,[340] meaning that lamb fetuses have been sustained ex utero 'on the current viability threshold.'[341]

It is not just researchers in Philadelphia developing artificial placenta prototypes. Similar results have been seen by researchers in Australia and Japan, who developed an Ex-vivo uterine environment (EVE).[342] The EVE platform has successfully supported lamb fetuses for 120 hours.[343] Following successful animal testing, scientists hope this technology will soon be ready for use on pre-term infants.[344] Horn optimistically noted in 2020 that partial

[334] See, Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[335] Referred to as AAPT, or sometimes also as an artificial womb (AW).
[336] See, JH Schultz (n 23) 877.
[337] E Partridge and others (n 14). Now referred to as EXTEND. See, Max Kozlov (n 3).
[338] E Partridge and others (n 14) 2.
[339] ibid
[340] Kemp in, J Kleeman, *Sex Robots & Vegan Meat: Adventures at The Frontier of Birth, Food, Sex & Death* (Picador 2019)
[341] EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction' (n 13) 751.
[342] H Usuda and others, 'Successful Use of an Artificial Placenta to Support Extremely Preterm Ovine Fetuses at the Border of Viability' (2019) 221 American Journal of Obstetrics and Gynecology 69.
[343] ibid
[344] E Partridge and others (n 14); H Usuda and others, 'Successful Maintenance of Key Physiological Parameters in Preterm Lambs Treated with Ex Vivo Uterine Environment Therapy for a period of 1 week' (2017) 217 American Journal of Obstetrics and Gynecology 457; H Usuda and others, 'Successful Use of an Artificial Placenta to Support Extremely Preterm Ovine Fetuses at the Border of Viability' (n 342); C Horn,

ectogestation was anticipated to be workable for human subjects in the next 5 years,[345] and in 2017, Flake one of the scientists working on the now termed EXTEND project at CHOP estimated that within 10 years AAPT could be routinely used on premature infants.[346] Despite this, clinical trials involving humans have not yet begun, and Kemp believes they are still something of the distant future.[347] However, significant progress has been made towards ensuring the feasibility of clinical trials and securing approval. Philadelphia's Vitara Biomedical have secured funding of $25 million to advance their 'biobag' technology, with the aim of beginning human clinical trials,[348] and the FDA met in September 2023 to discuss ethical considerations surrounding first in human trials.[349] If clinical trials are permitted to go ahead and are successful, the new technology offers 'the potential for improved outcomes for those infants who are already being routinely resuscitated and cared for in neonatal intensive care units.'[350]

Supporting pre-term neonates using AAPT is a process of partial ectogestation, as gestation would take place initially in the womb, and then would be continued through the process of AAPT.[351] This is the manner of ectogestation that current researchers are seeking to facilitate, as AAPT prototypes have been developed only to support fetuses at a later gestational age.[352] By contrast, complete ectogestation refers to gestation occurring completely outside of the human body, whereby an embryo would be created through the process of IVF and then gestated entirely in AAPT.[353] Romanis denotes the use of complete ectogestation as a 'remote possibility.'[354] This is not least due to significant developments required in the technology itself to be able to sustain an embryo from the point of fertilisation,[355] but complete ectogenesis is

'Artificial Womb Development Raises Hope for Premature Babies' *The Financial Times* (25 April 2017) https://www.ft.com/content/7407d008-28ef-11e7-bc4b-5528796fe35c accessed 21 March 2023

[345] C Horn, 'Ectogenesis at Home? Artificial Wombs and Access to Care' (*Medical Humanities Blog*, 2020) <https://blogs.bmj.com/medical-humanities/2020/03/03/ectogenesis-at-home-artificial-wombs-and-access-to-care/> accessed 21 Feb 2022

[346] C Cookson, 'Artificial Womb Development Raises Hope for Premature Babies' *The Financial Times* (25 April 2017) https://www.ft.com/content/7407d008-28ef-11e7-bc4b-5528796fe35c accessed 21 March 2023

[347] Kemp in, J Kleeman (n 340).

[348] J George (n 18).

[349] FDA, '24 Hour Summary of the Pediatric Advisory Committee, Artificial Womb Technology' (*FDA*, 19 Sept 2023) https://www.fda.gov/media/172441/download?attachment accessed 10 December 2023

[350] ibid

[351] E Kingma and S Finn, 'Neonatal Incubator or Artificial Womb?' (n 2) 356.

[352] E Partridge and others (n 14); H Usuda and others, 'Successful Maintenance of Key Physiological Parameters in Preterm Lambs Treated with Ex Vivo Uterine Environment Therapy for a Period of 1 Week,' (n 344) 457; H Usuda and others, 'Successful Use of an Artificial Placenta to Support Extremely Preterm Ovine Fetuses at the Border of Viability' (n 342) 69.

[353] JH Schultz (n 23) 877.

[354] EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction' (n 13) 751.

[355] E Partridge and others (n 14) 1.

also not legally possible due to the construction of the Human Fertilisation and Embryology Act 1990 (as amended) (HFEA 1990), which limits the use of embryos in vitro to 14 days.[356] It is beyond the scope of this thesis to discuss whether the 14-day rule should be amended,[357] but in order to effectively realise the potential of novel reproductive technologies, it is imperative that the 14-day rule be either removed or significantly amended.[358]

Although partial ectogestation seems to be nearing clinical trials,[359] AAPT is still not yet a workable reality and complete ectogestation may not be for the foreseeable future.[360] Despite this, it is assumed that AAPT will at some stage become a clinical reality, and it is necessary to discuss both partial and complete ectogestation, and the impact that AAPT will have on the process of gestation to ensure its advent is met with appropriate and effective legislation for healthcare professionals and pregnant people.

3.4.2 UTx

UTx combines 'solid organ transplantation with assisted reproductive technology,'[361] giving it a unique purpose in the realm of organ transplants: not to save the recipient's life, but to foster new life. It is quickly advancing to a clinical reality, and trials are occurring worldwide.[362] Such developments in UTx technology are transformative for people who wish to reproduce but are biologically unable to gestate, as UTx can allow them such an experience.[363] Following the first live birth after UTx in Sweden in 2014,[364] the use of UTx has proliferated, with more than 70 transplants taking place,[365] and 30 babies born after UTx in the last 8 years.[366] Success rates

[356] HFEA 1990 as amended (2008), s 4A(3)(b); A Alghrani, *Regulating Assisted Reproductive Technologies: New Horizons,* (Cambridge University Press 2018); EC Romanis and C Horn, 'Artificial Wombs and the Ectogenesis Conversation: A Misplaced Focus? Technology, Abortion and Reproductive Freedom' (2020) 13 International Journal of Feminist Approaches to Bioethics 174-194.
[357] See, S McCully, 'The Time has Come to Extend the 14-Day Limit' (2021) 47 Journal of Medical Ethics; BP Blackshaw and D Rodger 'Why We Should Not Extend the 14-Day Rule' (2021) 47 Journal of Medical Ethics 712-714; G Cavaliere, 'A 14-Day Limit for Bioethics: the Debate over Human Embryo Research' (2017) 18 BMC Medical Ethics 1-12.
[358] JB Appleby and AL Bredenoord, 'Should the 14-Day Rule for Embryo Research Become the 28-Day Rule?' (2018) 10 EMBO Molecular Medicine.
[359] J George (n 18).
[360] EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction' (n 13) 751.
[361] S Vali and others, 'Uterine Transplantation: Legal and Regulatory Implication in England' (2021) 129 BJOG: An International Journal of Obstetrics & Gynaecology 590.
[362] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (2022) 48 Journal of Medical Ethics 810-815.
[363] Mats Brännström and others, 'First Clinical Uterus Transplantation Trial' (n 4).
[364] Reuters, 'Swedish Woman World's First to Give Birth After Womb Transplant' (*Reuters Healthcare & Pharmaceuticals,* 2014) https://www.reuters.com/article/us-sweden-transplant-idUSKCN0HT0GC20141004 accessed 31 Oct 2022
[365] N Hammond-Browning, 'Uterus Transplantation: Five Years on from the World's First Birth' (n 25).
[366] Kisu and others, 'Comment on "Birth of a Healthy Baby 9 years after a Surgically Successful Deceased Donor Uterus Transplant' (n 26).

of UTx procedures are continually improving, but despite the growing number of live births, it is important to remember that the procedure remains experimental.[367]

The motivation behind UTx is that it allows individuals to become pregnant and gestate a child when they previously would not have been able to do so for a variety of reasons.[368] This has the potential to improve quality of life for recipients. However, there are a multitude of risks that accompany the procedure for both donors and recipients.[369] The risks to the recipients will be discussed in this thesis, and include the invasive 6-hour operation required to carry out the transplant[370] and the need to take immunosuppressants to minimise the risk of organ rejection,[371] which can have negative side effects on the recipient and the fetus.[372] A successful transplant results in the opportunity for two pregnancies, however these will be high risk pregnancies[373] and delivery must be by caesarean section, a further invasive operation.[374] Furthermore, Castanos noted that 'for some potential recipients the lack of sensation and normal delivery could undermine their desire to experience pregnancy.'[375] Finally, the uterus will be removed six months after the birth(s), in another invasive operation. However, this final operation ensures that immunosuppressants do not have to be taken for longer than necessary.[376] These risks must be carefully considered by participants alongside surrogacy and adoption to determine whether UTx and the possibility it brings for gestation is worth the potential risks it poses to the physical and mental health of recipients.

3.4.2.1 UTx Criteria regarding Biological Sex

[367] Mats Brännström and others, 'Uterus Transplantation: A Rapidly Expanding Field' (2018) 102 Transplantation 569-577
[368] L O'Donovan, 'Pushing the Boundaries: Uterine Transplantation and the Limits of Reproductive Autonomy' (n 35).
[369] For donor risks see, I Kisu and others, 'Risks for Donors in Uterus Transplantation' (2013) 20 Reproductive Sciences 1406-15.
[370] Womb Transplant UK, 'Everything you Need to Know about Uterine Transplantation' (*Womb Transplant UK*, 30 Sep 2015) https://wombtransplantuk.org/everything-you-need-to-know-about-uterine-transplantation accessed 24 December 2022
[371] ibid
[372] Rui Zhang and others, 'Immunosuppression in Uterine Transplantation' (2020) 63 Transplant Immunology
[373] Consider here potential rejection of uterine transplant, also risk factors involved with taking immunosuppressants during pregnancy
[374] 'Womb Transplants given UK Go-ahead' *BBC News* (30 Sep 2015) https://www.bbc.co.uk/news/health-34397794 accessed 14 December 2022
[375] R Castanos and others, 'The Ethics of Uterus Transplantation' (2011) 27 Bioethics 65, 68.
[376] Womb Transplant UK, 'Everything you Need to Know about Uterine Transplantation' (n 370).

UTx is still 'transitioning from an experimental phase to an established clinical practice[377] and in most places is only performed as part of a clinical trial.[378] In order to take part in UTx clinical trials, patients must have their own ovaries and eggs.[379] Therefore, UTx is currently only available to cisgender women who suffer from absolute uterine factor infertility (AUFI).[380] AUFI affects 1.5 million females worldwide.[381] Individuals with AUFI

> either lack a uterus for congenital (ex. Mayer-Rokitansky-Kuster-Hauser (MRKH) syndrome) or iatrogenic (ex. hysterectomy for cervical cancer, leiomyoma, uncontrolled postpartum bleeding) reasons, or they possess a uterus that is non-functional due to some anatomical or physiological defect (ex. intrauterine adhesions, severe adenomyosis, congenital uterine malformation).[382]

Hammond-Browning notes that this requirement by the surgical teams to limit UTx to biological females able to produce ova may be medically justifiable in a clinical trial setting, but it 'is not legally justified, as other infertile women can use a donor ovum in other assisted reproductive treatments'[383] and the UK legally recognises donor gametes.[384]

Following such questions surrounding whether the limitation of UTx to cis-gender females can be justified, arguments have emerged for UTx to become available to those who are not born biologically female.[385] Alghrani posits that 'transgender, non-binary, and other gender plural and cisgender men [should also be able to] assert a right to gestate under the concept of procreative liberty.'[386] Procreative liberty is considered to denote freedom of choice related to procreation.[387] Alghrani argues that procreative liberty should include the right to gestate and should not be limited to those who can genetically reproduce.[388] Whilst Alghrani's claim has merit, it is necessary to consider what the legal framework for UTx in those with

[377] Elliot G Richards and others, 'Uterus Transplantation: State of the Art in 2021 (2021) 38 Journal of Assisted Reproduction and Genetics 2251-2259
[378] E.g. Baylor Scott & White offer the procedure outside of a clinical trial. Amanda D'Ambrosio, 'More Hospitals Offering Uterus Transplant' MedPage Today (22 October 2020, updated 23 October 2020) https://www.medpagetoday.com/obgyn/infertility/89274 accessed 15 May 2023
[379] ibid
[380] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27); B Jones and others, 'Uterine Transplantation in Transgender Women' (2019) BJOG 126 152-6.
[381] R Flyckt and others, 'Deceased Donor Transplantation' (2017) 107 Fertility and Sterility e13.
[382] Bethany Bruno and Kavita Shah Arora, 'Uterus Transplantation: The Ethics of Using Deceased vs Living Donors' (2018) 18 American Journal of Bioethics 6.
[383] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27).
[384] Human Fertilisation and Embryology Authority, 'Donation' (*HFEA*, Oct 2022) https://www.hfea.gov.uk/donation/ accessed 31 December 2022
[385] B Jones and others (n 380) 152.
[386] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301, 304.
[387] John Robertson, Embryos, Families and Procreative Liberty: The Legal Structure of New Reproduction' (1986) 59 S. Cal. Rev. 939–1041.
[388] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301, 307.

physiology AMAB may look like. The courts in England and Wales have acknowledged social and psychological parenthood,[389] and how 'families are formed in different ways these days and [that] the law must attempt to keep up and respond to developments.'[390] Although the law and court rulings have been progressive when it comes to surrogacy,[391] adoption,[392] and gamete donation,[393] they traditionally have not been as progressive regarding trans parenthood.[394] Therefore, although a direct prohibition on UTx in transgender individuals would be unlikely, it also seems unlikely that the courts and legislators in England and Wales would express direct support for UTx in transgender individuals.

A further consideration concerns how the Equality Act (2010) stipulates that gender reassignment is a protected characteristic.[395] This means that transgender people are protected from direct and indirect discrimination on the basis of their assigned gender. Therefore, if UTx becomes a viable therapeutic practice for women with AUFI it would be 'legally impermissible to refuse to perform UTx in transgender women solely because of their gender identity.'[396] However, some academics dispute whether permitting UTx in transgender individuals would be an issue of 'equality'.[397] It could be presented that given the substantial risk in UTx procedures, which would be heightened if the procedure were to be carried out on trans people,[398] that it should not be permitted given safety concerns.[399] This circumvents the question of equality. However, given opinions that UTx in a trans person would be possible,[400] it seems necessary to acknowledge the potential equality issue that would arise if trans women were to be excluded from accessing UTx.

It must also be considered whether procreative liberty and the right to gestate would extend to a cisgender man. Sparrow argues that as it is not normal for cisgender men to become

[389] *Re G* [2006] UKHL 43, [paras 33–35] per Baroness Hale.
[390] *Re G (Children)* [2014] EWCA Civ 336, [para 30] per LJ Black.
[391] See, *Whittington Hospital NHS Trust (Appellant) v XX (Respondent)* [2020] UKSC 14.
[392] See, Adoption and Children Act 2002 ss 50, 51, and explanatory notes 5, on the fact that adoption orders may be made by single people, married couples and unmarried couples.
[393] See, HFEA 2008 amendments.
[394] See, *R (Alfred McConnell) v The Registrar General for England and Wales and others* [2020] EWCA Civ 559; *R (on the application of McConnell) (Appellant) v Registrar General for England and Wales (Respondent)* UKSC 22020/0092.
[395] Equality Act 2010, s 7.
[396] B Jones and others (n 380) 152.
[397] I am grateful to Natasha Hammond-Browning for discussions about this in a panel session at the Socio-Legal Studies Association Conference in April 2023.
[398] See, section 3.5.2, and Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30).
[399] On risks see, Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30) 439–47.
[400] Testa, as quoted in Dina Fine Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).

pregnant, and therefore barriers to male pregnancy are not restrictions of procreative liberty.[401] However, his argument is unconvincing. He relies on heteronormative reproduction, a weak foundation upon which to build an argument, as 'the social meaning of sexed bodies has changed and continues to change in a variety of ways'.[402] It is clear through the legalisation of same sex marriage in England and Wales in 2013,[403] the fact that same-sex couples can both be registered on their child's birth certificate,[404] and access IVF treatment,[405] and adoption,[406] that heteronormative preconceptions are constantly being challenged within the reproductive sphere. Furthermore, Sparrow's argument is unlikely to withstand the fact that technological developments in the form of AAPT and UTx are likely to further erode outdated societal perceptions surrounding the gendered nature of gestation. However, a potential barrier regarding the possibility of a cisgender man gestating, is that the law in England and Wales currently prohibits the placement of an embryo into a cisgender man with the intention to implant.[407] However, this legislation was drafted before UTx was a possibility and may be repealed in the future given it can be considered at odds with procreative liberty.

Consequently, UTx is expected to at some point be available to not only cisgender women suffering from AUFI, and 'Female-2-Male' transgender men with absolute uterine factor infertility that wish to gestate, but also 'Male-2-Female' transgender women, and cisgender men[408] who have physiology AMAB.

Changing Biological Facts of Gestation

3.5 How AAPT and UTx will Physically Alter the Gestational Process by Detaching Gestation from Biological Sex

Novel reproductive technologies such as AAPT and UTx will physically alter the process of gestation in a way that already established assisted gestative technologies do not. They permit

[401] Robert Sparrow, 'Is it 'Every Man's Right to Have Babies if He Wants Them? Male Pregnancy and the Limits of Procreative Liberty' (2008) 18 The Kennedy Institute of Ethics Journal 275-99.
[402] Timothy F Murphy, 'Assisted Gestation and Transgender Women' (2015) 29 Bioethics 389–97.
[403] Marriage (Same Sex Couples) Act (2013), s 1(1).
[404] 'Register a birth' (*Gov UK)* https://www.gov.uk/register-birth/who-can-register-a-birth accessed 2 Jan 2023
[405] HFEA 2008, s 54(2)(c), 54A(1).
[406] Adoption and Children Act 2002.
[407] HFEA (2008), s 3(2)(2).
[408] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362).

gestation that will no longer be strictly limited to those with physiology AFAB.[409] The practical impact that this will have on the process of gestation will be detailed in this section,[410] by considering how the gestational process will become detached from biological sex and the impact this may have on associations between sex and gestation.

It remains beneficial to discuss both AAPT and UTx in tandem throughout this thesis;[411] however, a distinction is made here as the two technologies will operate very differently in how will detach gestation from being contingent on female physiology. Although Romanis rightfully notes that AAPT and UTx will 'not introduce gestation outside the gender binary' it will fundamentally alter the fact that gestation is currently only capable of being carried out within the womb of an individual AFAB. [412]

3.5.1 AAPT

Ectogestation in the form of AAPT will physically change the process of gestation by permitting gestation ex utero.[413] This will have varying degrees of practical impact on the gestational process depending on the point in which transfer will take place for partial ectogestation and whether complete ectogestation is possible.

Throughout the literature on AAPT there are competing ideas on when the earliest point of transfer could be for partial ectogestation, as the transfer procedure would require delivery by caesarean section.[414] Romanis has suggested that 13 weeks would be the earliest that transfer could be carried out, because this is the earliest point an entity has fetal physiology.[415] Cohen, without providing substantive reasoning as to why, puts forward 18 weeks[416] as a potential point of transfer. However, fetuses must have reached a certain point in development to withstand a caesarean section procedure, and Di Stefano's study found that 'most participants [doctors] identified 23 or 24 weeks as the lowest gestation they would support a caesarean section for fetal reasons'.[417] Although there is the possibility that caesarean sections could

[409] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[410] This section is concerned with how the process of gestation will be physically/practically altered with the introduction of AAPT and UTx.
[411] See, EC Romanis, 'Assisted Gestative Technologies' (n 12).
[412] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[413] E Partridge and others (n 14).
[414] JH Schultz (n 23) 886.
[415] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276).
[416] G Cohen, 'Artificial Wombs and Abortion Rights' (2017) 47 Hastings Center Report.
[417] Di Stefano and others, 'Ectogestation ethics: The Implications of Artificially Extending Gestation for Viability, Newborn Resuscitation and Abortion' (2019) 34 Bioethics 371-384.

occur earlier, the Nuffield Council has noted that earlier caesarean sections are more risky as they would involve a classical caesarean section, with a midline vertical incision,[418] rather than a lower segment transverse caesarean section.[419] Prior to 30 weeks gestation, 'the small fetal head may become entrapped by the small low transverse incision space and uterine contractions, therefore classical caesarean section is desirable to prevent the fetal risk on intracranial haemorrhage.'[420] However, classical caesarean sections carry a number of demerits, including increased blood loss, difficulty of uterine closure, increased complications of infection, postoperative adhesion and potential uterine rupture, [421] especially during subsequent pregnancies.[422] Currently, caesarean section delivery is 'not recommended before 23 weeks' gestation … even in the setting of malpresentation.'[423] However, this recommendation is based on 'a lack of evidence of improved neonatal outcomes and survival'.[424] Following this, it may be difficult to reconcile this recommendation with the new reality if AAPT improves neonatal outcomes around the viability threshold. Consequently, there will likely be calls for its earlier use[425] and earlier caesarean sections may become more common practice, as they are required for fetal transfer to AAPT.[426] Therefore, although it would currently be unwise to consider AAPT transfers happening prior to 22 - 24 weeks,[427] partial ectogestation may be possible from 13 weeks gestational age.[428] In light of this, partial ectogestation will at least halve the gestational period reliant on individuals AFAB. This should not be underestimated; if routinely available, the ability to reduce the period of gestational labour from reproduction would undoubtedly alter how society perceives gestation, as a physically laborious process solely carried out by individuals AFAB.

However, even a reduced period of gestational labour gives rise to the potential for infringement on the bodily autonomy of a pregnant person.[429] Consequently, the extent to which AAPT will physically alter the process of gestation could be considered to largely hinge

[418] Amano Kan, 'Classical Cesarean Section' (2020) 6 The Surgery Journal S98-S103.
[419] M Brazier and others, 'Critical Care Decisions in Fetal and Neonatal Medicine: Ethical Issues' (*Nuffield Council on Bioethics*, 2006) 67. https://www.nuffieldbioethics.org/assets/pdfs/Critical-care-decisions.pdf accessed 21 April 2023
[420] Amano Kan (n 418).
[421] Amano Kan (n 418).
[422] M Brazier and others, 'Critical Care Decisions in Fetal and Neonatal Medicine' (n 419).
[423] Heather N Czarny, 'Association Between Mode of Delivery and Infant Survival at 22 And 23 Weeks of Gestation' (2021) 3 American Journal of Obstetrics and Gynecology Maternal-Fetal Medicine 1.
[424] ibid
[425] EC Romanis, 'Is "Viability" Viable? Abortion, Conceptual Confusion and the Law in England and Wales and the United States' (2020) 7 Journal of Law and the Biosciences 1-29.
[426] JH Schultz (n 23).
[427] G Cohen (n 416); Di Stefano and others (n 417).
[428] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276).
[429] Lynne Newhall (n 199).

on whether complete ectogestation becomes a reality. This is as complete ectogestation would allow those with physiology AFAB to opt out of the gestational process completely, and essentially gestate 'as men [read: people AMAB] do'.[430] Permitting gestation that does not require an individual to carry out gestational labour in any capacity drastically alters the gestational process from one that is reliant on a pregnant person physically for an extended period of time and may infringe on their bodily autonomy, to one that is not reliant on a human gestator at all.

However, it is presented here, and throughout this thesis that partial ectogestation will still have a significant impact on practically altering the process of gestation, although to a lesser extent than complete ectogestation. Partial ectogestation would allow those AFAB to opt out of at least part of the process of gestation. AAPT, whether partial or complete, ensures that gestational labour is not limited to those AFAB, as it can also be undertaken by a machine.[431]

AAPT, whether used to undertake partial or complete ectogestation has the capacity to detach gestation from sex,[432] by permitting gestation outside of the female womb in an artificial chamber.[433] However it is necessary to consider the extent to which AAPT in permitting gestation detached from biological sex will 'un-sex' gestation.

It can be argued that despite AAPT, gestation will remain sexed, as within the sex binary, the process is still only capable of being carried out by an individual with female physiology.[434] This female process can only be supported by an artificial device also capable of gestation, whether that be partially or completely. Therefore, Romanis suggests that AAPT may 'unhumanise' rather than 'un-sex' the gestational process.[435] The potential for AAPT to contribute towards 'un-sexing' the process of gestation may be limited by the fact that within the sex binary, even limited gestation will still only be possible in individuals with female physiology. However, supporting gestation using AAPT generates a new avenue by which gestation can be sustained. Despite operating within the sex binary, AAPT carrying out gestational labour detaches the gestational process from solely being undertaken by individuals AFAB. Furthermore, AAPT permits those with female physiology the choice to opt out of the gestational process and reproduce as those AMAB do. [436] Even in part, altering the gestational

[430] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[431] E Partridge and others (n 14).
[432] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[433] E Partridge and others (n 14).
[434] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[435] ibid
[436] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).

process in this manner demonstrates that the advent of AAPT will mean that gestational labour will no longer be solely undertaken by those AFAB. This will 'un-sex' gestation by detaching it from assigned biological sex at birth.[437]

3.5.2 UTx

UTx also has a practical impact on the process of gestation, by providing those who suffer from AUFI the means to gestate. As has already been mentioned, transplants are currently only possible in cisgender women.[438] However, there is potential for transfer in 'male-2-female' transgender women and cisgender men.[439] This would practically alter the process of gestation, as gestation would no longer be limited to those with physiology AFAB.[440]

UTx trials have currently only involved cisgender women suffering from AUFI.[441] It is on this basis that it can be assumed UTx will be possible in transgender men who have not had gender affirming surgery, and who have AUFI but wish to gestate. However, the ability for those with physiology AMAB to receive UTx is currently unheard of, and currently prohibited given safety concerns.[442] This raises questions regarding whether transgender women and cisgender men will be able receive UTx and gestate.[443] There are several medical challenges that arise when considering the possibility of UTx in an individual AMAB. UTx for someone AMAB would require 'the creation of adequate uterine vascularization de novo, the necessity for appropriate hormone replacement to sustain implantation and pregnancy, and the placement of the uterus in a non-gynecoid pelvis.'[444] Given these unique considerations, UTx in transgender women and cisgender men does not have an adequate research background.[445] Therefore the possibility of UTx in transgender women and cisgender men currently seems a

[437] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[438] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27).
[439] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362).
[440] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[441] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27).
[442] Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30).
[443] See, Dina Fine Maron, 'How a Transgender Woman Could Get Pregnant' *Scientific American* (15 June 2016) https://www.scientificamerican.com/article/how-a-transgender-woman-could-get-pregnant/ accessed 2 Jan 2023; Leah Samuel, 'With Uterus Transplants a Reality, Transgender Women Dare to Dream of Pregnancies' *STAT* (7 March 2016) https://www.statnews.com/2016/03/07/uterine-transplant-transgender/ accessed 2 Jan 2023
[444] Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30).
[445] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 307.

very remote possibility, especially as UTx trials involving cisgender women are still experimental.[446]

However, transplant surgeons and reproductive specialists have noted that it is theoretically possible for UTx to be carried out in individuals with physiology AMAB,[447] and restricting care to those AFAB beyond experimental trials could not be justified.[448] Therefore, this thesis will continue to work on the assumption that UTx will become a clinical reality not only for cisgender women, but also transgender and nonbinary individuals, and cisgender men. Consequently, it is necessary to consider the impact that an individual with physiology AMAB gestating would have on perceptions of gestation.

In contrast to AAPT, UTx more obviously and directly challenges the link between having physiology AFAB and gestation, by facilitating gestation in individuals AMAB.[449] The impact this may have on 'un-sexing'[450] gestation therefore needs to be considered. Whilst UTx in an individual AMAB, permits them the ability to gestate and consequently detaches gestation from physiology assigned at birth, there are some limitations that prevent UTx from completely detaching gestation from sex. First, it must be considered how gestation remains contingent on female biology. It requires a functioning uterus be donated by a donor with physiology AFAB in order to facilitate the process of gestation,[451] maintaining the link between biological sex and gestation. However, despite the reliance on female reproductive organs, UTx still has the potential to 'break the link between the cultural understandings of female biological function and gestation,'[452] by permitting those AMAB the ability to gestate as those AFAB do. Severing cultural links between sex, gender and gestation though may be limited as it is likely that the majority of individuals utilising UTx will be AFAB.[453]

Ultimately, the capacity of UTx to permit gestation in individuals AMAB directly challenges the fact that gestation is currently only possible in individuals AFAB.[454] To change

[446] Mats Brännström and others, 'Uterus Transplantation: A Rapidly Expanding Field' (n 367).
[447] Testa, as quoted in Dina Fine Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).
[448] N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27); B Jones and others (n 380); A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29).
[449] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[450] ibid
[451] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362) 810.
[452] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[453] Chapter 5 considers whether this minority may be due to allocation criteria. Also consider this may be due to preference, and potential stigmatisation that may arise regarding cis men gestating. Jörg Gross and Alexander Vostroknutov, 'Why Do People Follow Social Norms?' (2022) 44 Current Opinion in Psychology 1-6.
[454] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

this current biological certainty detaches gestation from assigned biological sex, even if the gestational process remains contingent on functioning uterus,[455] and its use in individuals AMAB may be limited.[456]

Similarly to AAPT, the potential impact that UTx may have on altering the process of gestation, by detaching gestational labour from assigned biological sex,[457] cannot be fully realised until the technology becomes a clinical reality and is accessible to individuals AMAB. But it is undoubtable that UTx, by permitting gestation in an individual AMAB[458] goes directly towards challenging the association between gestation and assigned biological sex.[459]

3.5.3 Comparing the Impact of AAPT and UTx on Detaching Gestation from Assigned Biological Sex

The previous section outlined how both AAPT and UTx may detach gestation from assigned biological sex,[460] however the question of which technology will go further in destabilising this link is yet to be determined. This analysis seeks to compare the impact of AAPT and UTx. It will assume that UTx is capable of becoming a clinical reality for individuals AMAB,[461] but a distinction is made between the potential advent of complete and partial ectogestation.

If partial ectogestation and UTx both become a clinical reality, a more convincing case can be made for UTx detaching gestation from assigned biological sex. This is as partial ectogestation using AAPT would not wholly detach the gestational process from individuals with physiology AFAB, as they would still need to undertake a period of gestational labour.[462] However, UTx, in permitting gestation in an individual with physiology AMAB, would expressly demonstrate that gestation is not restricted to individuals born with physiology assigned female.[463]

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[455] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362) 810.
[456] Chapter 5 considers whether this minority may be due to allocation criteria. Also consider this may be due to preference, and potential stigmatisation that may arise regarding cis men gestating. Jörg Gross and Alexander Vostroknutov (n 453).
[457] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362) 810.
[458] See, Dina Fine Maron (n 443); Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30).
[459] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[460] ibid
[461] See, Dina Fine Maron (n 443); Ariel Lefkowitz and others, 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (n 30).
[462] E Kingma and S Finn, 'Neonatal Incubator or Artificial Womb?' (n 2) 356.
[463] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

On the other hand, if both complete ectogestation and UTx become a clinical reality, AAPT would likely go further towards detaching gestation from assigned biological sex. This is as, whilst UTx would require a donated uterus from an individual AFAB[464] for gestation to be possible, complete ectogestation using AAPT does not rely on an individual with female physiology to carry out gestational labour.[465]

Overall, both AAPT and UTx will alter what is currently believed to be biological fact,[466] by providing for gestation possible in a person or device that was not born with female physiology, demonstrating their ability to detach the gestational process from assigned biological sex.[467]

3.6 Conclusion

Gestation is immutably biologically sexed,[468] and the potential for the process of gestation to be detached from biological sex was long thought of as biologically impossible. However, AAPT and UTx are novel forms of assisted gestation that will both detach gestation from assigned biological sex, as their advent would mean gestational labour is no longer carried out exclusively by individuals with physiology AFAB.[469]

AAPT will permit gestation that is capable of being sustained by a machine,[470] and UTx will permit gestation in individuals AMAB demonstrating that gestation will no longer solely be limited to individuals AFAB.[471] Despite presenting how these technologies will operate within the sex binary to some extent, it is undoubtable that AAPT and UTx will fundamentally alter what is considered to be biological certainty, as gestation is currently only capable of being carried out in an individual AFAB. Providing for gestation that is not solely limited to individuals AFAB will biologically 'un-sex' gestation by 'subvert[ing] empirical facts of reproduction'.[472]

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[464] Can either be from a live donor or cadaver. Nicola Williams, 'Should Deceased Donation be Morally preferred in Uterine Transplantation Trials?' (2016) 30 Bioethics 415-424.
[465] Seppe Segers, 'The Path Towards Ectogenesis: Looking Beyond the Technical Challenges' (2021) 22 BMC Medical Ethics 1, 2.
[466] E Jackson, 'Degendering Reproduction?' (n 35), 347.
[467] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[468] E Jackson, 'Degendering Reproduction?' (n 35), 347.
[469] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[470] E Partridge and others (n 14).
[471] Testa, as quoted in Maron, 'How a Transgender Woman Could Get Pregnant' (n 28).
[472] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

Detaching gestation from assigned biological sex will not only have a profound impact on reproductive health, but it will also impact society's view on what it means to be a man, woman, or mother. In doing so, the advent of AAPT and UTx will provide compelling arguments for the full reworking of abortion law in England and Wales.

Chapter IV

"De-Gendering" Gestation – The Inaccuracies of 'the Pregnant Woman'

4.1 Introduction

Currently, gestation is considered 'a woman's job'.[473] This chapter seeks to unpack this perception of gestation as a gendered process. It will argue that although gestation is currently biologically limited to individuals AFAB with a working uterus,[474] gestation is not solely carried out by women.[475] Despite this, this chapter will demonstrate that perceptions surrounding gestation continue to be centred around women, because of the fact that gestation can currently only be carried out by those with physiology AFAB. However, this has the potential to change with the introduction of novel assisted gestative technologies: AAPT and UTx. The purpose of this chapter is to demonstrate that, although gestation is currently restricted to those AFAB, and this has shaped current perceptions of gestation, AAPT and UTx have the potential to change the perception that gestation is gendered by detaching it from sex.[476] Building on the previous chapter that determined that AAPT and UTx will decouple gestation from biological sex, it is also necessary to determine how this may erode the conflation of sex and gender, and more specifically the association between gestation and women. Considering how AAPT and UTx will influence perceptions of gender is imperative and this thesis has already shown the impact this has had on the construction of abortion law[477] and will go on to consider how destabilising the gender order may trigger legal reform.[478]

This chapter has two parts. Part One will consider how gestation is gendered in social consciousness. It will start by drawing a distinction between sex and gender, before turning to discuss transmasculine experiences of gestation to demonstrate that, although currently bound by sex, gestation is not contingent on a specific gender.[479] This part will then conclude that, despite this, perceptions surrounding gestation continue to be gendered, due to the strong associations between sex and gender.

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[473] Julien Murphy (n 69) 31.
[474] Jennifer Bard, 'Immaculate Gestation? How Will Ectogenesis Change Current Paradigms of Social Relationships and Values?' in Scott Gelfand and John Shook (eds), *Ectogenesis: Artificial Womb Technology and the Future of Human Reproduction*, (Rodopi 2006) 149-158.
[475] Also carried out by individuals who identify as men, and non-binary individuals.
[476] See, E Jackson, 'Degendering Reproduction?' (n 35); A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 304.
[477] In Chapter Two.
[478] In Chapter Five.
[479] E.g. Thomas Beatie, Freddy McConnell and Hayden Cross.

Part Two will then assess whether the ability of AAPT and UTx to 'un-sex' gestation[480] will permit gestation to be 'de-gendered'. AAPT and UTx have huge potential to alter gestational accessibility, and by virtue of this enhance gestational equality.[481] The ability for these technologies to generate new avenues into biological parenting is transformative in itself, but the impact of this may go further and inform social perceptions surrounding gestation and gender. A multitude of factors inform social perceptions, and although it is not a given, studies support the notion that greater exposure and visibility positively influences social perceptions,[482] in permitting broader opportunities for the exchange of ideas and reflection on values. Therefore, this thesis presents that AAPT and UTx, introducing and providing visibility of gestation detached from sex, may begin to alter the social perception that gestation is gendered. A particularly pertinent factor when considering visibility of novel reproductive technologies concerns accessibility. Inaccessibility is likely to limit visibility. Therefore, potential legal, social, and economic barriers to accessibility must be discussed to determine the potential impact of AAPT and UTx on social perceptions. Determining the potential for conventional social perceptions to be challenged is necessary in this chapter, as this will likely have an impact on the extent to which there is support for legal change regarding gendered laws on gestation.[483]

This chapter concludes that detaching gestation from sex has the potential to impact the current association between gestation and gender, and therefore perceptions surrounding gestation and gender will likely change with the advent of novel assisted gestative technologies.

Part One

Gestation in Social Consciousness

4.2 Gender, Sex and Gestation

[480] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[481] ibid
[482] On the 'mere exposure effect' See, RB Zajonc, 'Feeling and Thinking: Preferences need no Inferences' (2008) 35 American Psychologist 117-123; RB Zajonc, 'Mere Exposure: A `Gateway to the Subliminal' (2001) 10 Current Directions in Psychological Science 224-228.
[483] See, 'social change usually entails policy change' in Christopher Choong Wend Wai, 'Policy Change vs Social Change: It's a Question of Power' (*LSE Blogs*, 5 March 2021) https://blogs.lse.ac.uk/socialpolicy/2021/03/05/policy-change-vs-social-change-its-a-question-of-power/ accessed 31 Aug 2023.

Chapter Three demonstrated that gestation is currently only possible in individuals with female physiology.[484] There is a longstanding presumption that gestation sustained by pregnancy is undertaken exclusively by women,[485] premised on the inaccurate assumption that individuals with female physiology are women and identify as such.

As noted in the introduction, it is necessary to draw a distinction between sex and gender, as these terms are not synonymous. As conventionally understood, the term sex is used to denote 'the physical attributes of bodies,'[486] this includes reproductive organs, chromosomes, and hormones. However, gender describes 'personality attributes and socio-sexual roles that society understands to be "masculine" or "feminine".'[487] This is socially constructed and may change over time.[488] Gender and sex have been 'historically and popularly'[489] conflated, and this is now embedded in both the law and society. However, the sex/gender categories (male/man, and female/woman) are not mutually exclusive.

The law can be seen to consistently reinforce the conflation of gender and sex particularly in laws surrounding gestation. Section 1 (1)(a) of the Abortion Act 1967 (AA 1967) refers to someone gestating as 'the pregnant woman'[490] and s (3)(2) of the Human Fertilisation and Embryology Act (HFEA 2008) stipulates that permitted eggs, sperm and embryos can only be placed 'in a woman',[491] and defines mother as '[t]he woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs'.[492] The continued use of gendered language throughout the HFEA 2008, despite that fact that law making in England and Wales has been gender neutral since 2007[493] demonstrates the extent to which cis-normative understandings of gestation and even parenthood pervade society.

The conflation of sex and gender that continues to be reflected in the law surrounding gestation is inaccurate. It is not the case, as the AA 1967 and HFEA 2008 suggest, that someone with female physiology and the ability to gestate is necessarily a woman. Sex and gender ought to be better distinguished, as an individual can be legally recognised as male under the GRA 2004 and have female physiology.[494] This means that individuals who are legally recognised

[484] E Jackson, 'Degendering Reproduction?' (n 35) 347.
[485] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[486] Francisco Vakdes (n 38) 164.
[487] ibid
[488] ibid
[489] ibid 166.
[490] AA 1967, s (1)(a).
[491] HFEA 2008, s (3)(2)(a).
[492] HFEA 2008, s 33(1).
[493] Drafting Techniques Group of the Office of the Parliamentary Counsel, Office of the Parliamentary Counsel: Drafting Guidance (June 2020), 2.1.
[494] GRA 2004, s (4).

as men are able to conceive, undergo pregnancy and give birth.[495] Whilst the process of gestation is currently biologically bound to assigned biological sex,[496] it is not bound to a particular gender identity.

The Paradox of Gestation: Separate from, yet Intertwined with Gender

4.3 Transmasculine Experiences of Gestation

Considering transmasculine gestation[497] it becomes clear that gestation is not necessarily contingent on a specific gender identity. Drawing on the legal landscape surrounding gestation and the experiences of transmasculine gestators throughout pregnancy and parenthood, this section will assess the impact that transmasculine gestation has had on perceptions of gestation and gender. It will determine that the conflation of biological sex and gender has informed the perception that only women gestate.[498] This forms the basis of reasoning that gestation detached from biological sex could disrupt the conceptual link between gestation and gender.

4.3.1 Legal Barriers to Transmasculine Gestation

The ability for transmasculine individuals to gestate is the first step towards detaching gestation from gender. Although such gestation is possible, it subverts the traditional sex/gender binary, and therefore has been met with a sense of 'absurdity'.[499] Consequently, many societies continue to subscribe to genitocentric ideals and thus require individuals to undergo gender confirmation surgery or sterilisation to change their legal gender.[500] For example, Japan requires mandatory sterilisation of trans individuals to complete legal transition,[501] and 'of the 41 countries in Europe and Central Asia that have a legal gender recognition procedure in place, [in 2020] 13 require[d] that trans people undergo mandatory sterilisation before changing their

[495] Examples include Thomas Beatie, Freddy McConnell, and Hayden Cross.
[496] See, Chapter Three.
[497] The focus here is on transmasculine gestation, however it is acknowledged that non-binary and gender expansive individuals can also gestate.
[498] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).
[499] I Aristarkhova, 'Man as Hospitable Space: The Male Pregnancy Project' (2009) 14 Performance Research 25, 27.
[500] A Margaria, 'Trans Men Giving Birth and Reflections on Fatherhood: What to Expect?' (2020) International Journal of Law, Policy and The Family 34 225, 229.
[501] Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (2003) Article 3(1)(iv); The 2003 law was upheld by the Japanese Supreme Court in 2019.

gender marker.'[502] Furthermore, even in countries where sterilisation is not required, such as England and Wales,[503] Faye highlights that discussions surrounding fertility preservation are rarely had with transitioning individuals.[504] This results in many transgender individuals giving up their ability to gestate in order to be legally recognised as the gender they identify as.[505]

The protection of human rights for trans persons surrounding gestation has been gradually improving in Europe in recent years. In the case of *VC v Slovakia*,[506] which concerned the forced sterilisation of a cisgender woman during labour, the European Court of Human Rights (ECtHR) found unanimously that to conduct non-consensual sterilisation was a violation of Articles 3 and 8 of the European Convention on Human Rights (ECHR).[507] However, it took longer for the rights of trans persons in this context to be acknowledged. It was not until the case of *YY v Turkey*[508] in 2015, that the ECtHR held unanimously that it was a violation of Article 8 to require sterility before granting individuals access to gender reassignment.[509] However, the court here did not clearly state 'whether sterilisation could ever be a requirement for the legal recognition of gender.'[510] Therefore, trans persons could still be required to give up their ability to gestate.

National courts in Germany,[511] Sweden[512] and Italy[513] had passed rulings on the incompatibility of sterilisation requirements for trans individuals; however, this issue did not reach the ECtHR until 2017. It was the case of *AP, Garcon, and Nicot v France*[514] that strengthened the human rights protection afforded to trans persons. Here, the ECtHR held procedures likely to cause sterility are not acceptable requirements for obtaining gender recognition under the Convention.[515] This goes a step further than solely recognising procedures with conditions of sterility as unlawful, by also demonstrating that conditions of likely sterility require individuals to renounce full exercise of their physical integrity in a

[502] TGEU, Map Presenting Data on Countries in Europe and Central Asia Requiring Sterilisation. (10 May 2020) <https://tgeu.org/wp-content/uploads/2020/05/MapB_TGEU2020_PRINT-1.pdf> accessed 7 November 2022
[503] GRA 2004 s (2)(1).
[504] Shon Faye, *The Transgender Issue: An Argument for Justice* (Allen Lane 2021) 49.
[505] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[506] VC v Slovakia, Application No. 18968/07, 8th Feb 2012
[507] ibid
[508] YY v Turkey, Application No. 14793/08, 10 March 2015
[509] ibid
[510] Damian Gonzalez-Salzberg, 'An Improved Protection for the (Mentally Ill) Trans Parent: A Queer Reading of AP, Garçon and Nicot v France' (2018) 81 Modern Law Review 526-538, 530.
[511] Federal Constitutional Court of Germany, 1 BvR 3295/07 (11 January 2011).
[512] Stockholm Administrative Court of Appeals, Socialstyrelsen v NN, M ̈al nr 1968-12 (19 December 2012).
[513] Constitutional Court of Italy, 221/2015 (21 October 2015).
[514] *AP, Garçon and Nicot v France Applications*, Nos. 79885/12 52471/13 and 52596/13, (6 April 2017).
[515] ibid

manner that can only be described as a violation of the right to private life under Article 8 of the Convention.[516]

Despite this ruling, Romanis notes that it is still possible for states to set other conditions that make transgender and nonbinary reproduction unfeasible.[517] Dunne puts forward the example of 'labelling transgender individuals as incapable child-carers.'[518] Whilst this would not justify sterilisation, 'it can legitimise national rules which withhold custody or reduce employment rights.'[519] Such national rules, could prevent transgender and nonbinary individuals from engaging in procreation,[520] infringing on procreative liberty. Although there remains the possibility that conditions could be enforced to discourage or even prevent transgender and non-binary individuals from reproducing, the 2017 ruling of *AP, Garcon, and Nicot v France*[521] has been considered a step forward[522] for transgender justice. Following this ruling, 14 countries in Europe and Central Asia (not just European Convention signatories) have revoked their sterilisation requirements for trans persons.[523] Consequently, it is now increasingly widespread that transmasculine and nonbinary individuals are able to transition and retain their generative reproductive function. This means that individuals recognised as legally male with female physiology are able to gestate, supporting the statement that gestation is not necessarily contingent on a specific gender.

4.3.2 Diverse Experiences of Gestation: The Experiences of Men who have Undergone Gestation

Transgender men with female reproductive organs have experienced conception, pregnancy, and birth. These experiences are beginning to be quantified through first-hand accounts of trans pregnancies,[524] and academic literature on trans pregnancy.[525] In a US study of trans and gender

[516] *AP, Garçon and Nicot v France* (n 514) [131].
[517] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[518] Peter Dunne, 'Transgender Sterilisation Requirements in Europe,' (2017) 25 Medical Law Review 554, 557.
[519] ibid.
[520] As it may not be economically feasible, or they may risk having their children removed.
[521] *AP, Garçon and Nicot v France Applications* (n 514).
[522] Damian Gonzalez-Salzberg (n 510) 532.
[523] These countries are Armenia, Azerbaijan, Belgium, Croatia, France, Greece, Lithuania, Luxembourg, Norway, the Russian Federation, Slovenia, Switzerland and Ukraine. – as noted by the court in *AP, Garcon and Nicot v France Applications* (n 514) [71] see, https://sex-matters.org/wp-content/uploads/2021/02/Garcon- -Nicot-v-France.pdf accessed 7 November 2022
[524] Thomas Beatie, *Labor of Love: The Story of One Man's Extraordinary Pregnancy* (Berkeley, CA Seal Press 2009); Syrus Marcus Ware, 'Confessions of a Black Trans Dad' in Julia Chinyere Oparah, and Alicia Bonaparte (eds), *Birthing Justice: Black Women, Pregnancy and Childbirth* (New York, Routledge 2015)
[525] See for example, Alexis D Light and others. 'Transgender Men who Experienced Pregnancy after Female-To- Male Gender Transitioning' (2014) 124 Obstetrics and Gynecology 1120-1127; Sarah James-Abra and others, 'Trans People's Experiences with Assisted Reproduction Services: A Qualitative Study' (2015) 6 Human

expansive individuals AFAB,[526] 12% of 1694 participants reported having been pregnant,[527] and likely support[528] for movement can be seen as 'an international Facebook group for trans birth parents and their allies has attracted over 5700 members since its inception in 2015.'[529] Their experiences are to be discussed here in order to highlight the continued association between gestation and women. Trans experiences of gestation, whilst growing in visibility, have previously been met with 'disbelief', 'annoyance' and 'revulsion'.[530] Coverage by the media of transgender pregnancies can be considered to perpetuate this attitude. Perhaps the most sensationalised was the US case of Thomas Beatie, who was widely considered to be the first pregnant man.[531] Beatie is a transgender man who became pregnant in 2007, as his wife was infertile.[532] His experience was met with backlash as the media scandalised his situation with offensive headlines, such as 'Married "Man" Claims to be Five Months Pregnant.'[533] Hayden Cross experienced something similar, his experience of trans birth was also accompanied by an alarming headline: 'First man to give birth in the UK warns others not to try it because it's "really hard".'[534] It is such coverage of trans procreation by the media that likely contributes to the internal and external struggles faced by trans men whilst gestating.

One study found that individuals that had undergone trans pregnancy 'talked at length about enjoying their pregnancy and spoke of the pleasures they experienced in their pregnant

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Reproduction 1365–74; Juno Obedin-Maliver and Harvey J Makadon, 'Transgender Men and Pregnancy' (2016) 9 Obstetric M*edicine* 4-8; Smantha L Tornello and Henry Bos, 'Parenting Intentions Among Transgender Individuals' (2017) 4 LGBT Health 115-120; Rosie Charter and others, 'The Transgender Parent: Experiences and Constructions of Pregnancy and Parenthood for Transgender Men in Australia' (2018) 19 International Journal of Transgenderism 64- 77; Nik Lampe and others, 'Continuity and Change in Gender Frames: The Case of Transgender Reproduction' (2019) 33 Gender and Society 865-887.

[526] This thesis focuses on transgender men who have undergone gestation, to highlight the position of gestation within the gender binary.

[527] Heidi Moseson and others, 'The Imperative for Transgender and Gender Nonbinary Inclusion: Beyond Women's Health' (2020) 135 Obstetrics and Gynecology 1059-1068.

[528] Expansion of a Facebook group is likely to be indicative of support. However, not all 5700 members may in fact support trans pregnancies.

[529] FR White and others, 'Embodies Experiences of Trans Pregnancy' (2021) Body and Society

[530] P Currah, 'Expecting Bodies: The Pregnant Man and Transgender Exclusion from the Employment Non-Discrimination' (2008) 36 Women's Studies Quarterly 330.

[531] Suyeon Son, 'Thomas Beatie, World's First Pregnant Man, describes Social, Legal Challenges' *The Daily Northwestern* (24 Feb 2013) https://dailynorthwestern.com/2013/02/24/campus/thomas-beatie-worlds-first-pregnant-man-describes-social-legal-challenges/ accessed 22 Nov 2022

[532] Daniel Nasaw, 'Pregnant Man' Thomas Beatie and Wife Nancy Expecting Second child.' *The Guardian* (13 Nov 2008) https://www.theguardian.com/world/2008/nov/13/gayrights-usa-thomas-beatie-pregnant accessed 28 Nov 2022

[533] James Macintyre, 'Married 'Man' Claims to Be Five Months Pregnant' *The Independent* (27 March 2008) https://www.independent.co.uk/life-style/health-and-families/health-news/married-man-claims-to-be-five-months-pregnant-801331.html accessed 27 December 2023

[534] Ellie Cambridge, 'First Man to Give Birth in the UK Warns Others Not to Try it Because it's 'Really Hard'. *The Sun* (9 Jan 2019) https://www.thesun.co.uk/news/8152999/first-man-give-birth-uk-warns-really-hard/ accessed 22 Nov 2022

bodies'[535] particularly in private. However, being pregnant in public was 'spoken about negatively.'[536] Further to this, another survey into the experience of transgender and gender variant individuals during conception, pregnancy, and birth, detailed that participants often found it difficult to navigate their identity both internally and externally, and reported feelings of loneliness while gestating.[537] This study suggested pre-conception counselling would likely improve the experiences of transgender individuals looking to gestate.[538] Although pre-conception counselling does not directly address the broader issues of social discrimination and oppression that transgender and non-binary individuals face,[539] it would still likely positively impact trans peoples' individual experiences of gestation.

The struggles of transgender gestation are not only perpetuated by the media, but also the health care system.[540] Trans individuals are routinely misinformed about their reproductive choices, and do not receive equal access to regulated fertility treatment.[541] They describe 'difficulties in accessing pregnancy and birthing care because of (a fear of) transphobia, and even report feeling pressure to present as women to conform to the expectations of healthcare providers.'[542] There is clearly a need for more research into non-binary reproduction[543] in order to better educate health care providers and by consequence improve the experience of trans and non-binary individuals who choose to gestate.

Journalist Freddy McConnell has written numerous articles on his experience being pregnant as a trans man,[544] and the struggles that trans people face, particularly surrounding reproduction.[545] McConnell has been transitioning since 2013 and has not had a hysterectomy

[535] FR White and others (n 529).
[536] ibid
[537] Sven A Ellis, and others, 'Conception, Pregnancy and Birth Experiences of Male and Gender Variant Gestational Parents: It's How We Could Have a Family' (2014) 60 Journal of Midwifery Women's Health 62-69.
[538] ibid
[539] To tackle this more broadly it is necessary to consider better training for midwifes and more inclusive sexual education in schools etc.
[540] Nik M Lampe and others, 'Continuity and Change in Gender Frames: The Case of Transgender Reproduction' (2019) 33 Gender and Society 865-887.
[541] Shon Faye (n 504) 49.
[542] Olivia Fischer, 'Non-binary reproduction: Stories of Conception, Pregnancy, and Birth,' (2021) 22 International Journal of Transgender Health 77, 81 in Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[543] ibid
[544] Freddy McConnell, 'Why I'm Sharing Everything About My Experience as a Pregnant Dad' (*Vice*, 2021) https://www.vice.com/en/article/y3g59m/what-its-like-to-be-pregnant-trans-man accessed 5 December 2022
[545] Freddy McConnell, 'A Brief History of the 'Pregnant Man!' (*Vice*, 2021) https://www.vice.com/en/article/n7vybb/a-brief-history-of-the-pregnant-man accessed 5 December 2022

nor gender reconstructive surgery.[546] He has given birth to two children and details the difficulties transgender parents face post-birth.[547]

These experiences of transmasculine gestation demonstrate overwhelmingly that gestation and gender remain conceptually integrated.[548] From negative media coverage[549] and poor healthcare experiences[550] to difficult legal challenges,[551] transmasculine gestators are navigating the gestational process society deems to be for 'women' as 'men'. Transmasculine gestation arguably has not had the transformative effect on changing perceptions surrounding gestation and gender as may have been expected,[552] and this continues to be reinforced by the association between gestation and motherhood.

4.3.3 Diverse Experiences of Motherhood: Are Transmasculine Parents Mothers?

A striking example of how gender and gestation remain integrated despite transmasculine pregnancy concerns how trans men who give birth to their children are legally recognised as the birth mother of their child.[553] This is as the HFEA 2008 defines 'mother' as the 'woman who is carrying or has carried a child.'[554] Again, conflating gender and sex, by assuming those with female physiology identify as women and by consequence are mothers. This law appears unjust and oppressive towards trans men who identify as and are legally recognised as male,[555] as it is both '[unable] and [unwilling] to accommodate the lived reality of trans experiences.'[556] Despite this, the Family Division of the High Court in England and Wales has attempted to justify recognising men who have undergone gestation as mothers, as McFarlane states motherhood refers to any individual who 'undergoes the physical and biological process of

[546] Robert Booth, 'Trans Man Loses UK Legal Battle to Register as his Child's Father' *The Guardian* (16 Nov 2020) https://www.theguardian.com/society/2020/nov/16/trans-man-loses-uk-legal-battle-to-register-as-his-childs-father accessed 13 December 2022
[547] Freddy McConnell, 'Why I'm Sharing Everything About My Experience as a Pregnant Dad' (n 544); Freddy McConnell, 'A Brief History of the 'Pregnant Man!' (n 545).
[548] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[549] James Macintyre (n 533); Ellie Cambridge (n 534).
[550] Shon Faye (n 504) 49.
[551] *R (McConnell and YY) v Registrar General* [2020] EWCA Civ 559
[552] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[553] *R (McConnell and YY) v Registrar General* [2020] EWCA Civ 559, 29 April 2020; BGH XXI ZB 660/14, 6 September 2017.
[554] HFEA 2008, s (33)(1). Also note issues with this definition in section 3.3.1 on surrogacy.
[555] See, Zaina Mahmoud and Elizabeth Chloe Romanis, 'On Gestation and Motherhood' (n 330); A Margaria (n 500); Alan Brown, 'Trans Parenthood and the Meaning of 'Mother, 'Father' and 'Parent' – R (McConnell and YY) v Registrar General for England and Wales [2020] EWCA Civ 559' (2021) 29 Medical Law Review 157-171.
[556] Alan Brown, Trans Parenthood and the Meaning of 'Mother', 'Father' and 'Parent' (n 555) 170.

carrying a pregnancy and giving birth.'[557] He seems to suggest that motherhood should not be attached to gender, contesting 'the "binary" presumption – along which lines legal parenthood is organised – that men are "fathers" and women are "mothers".'[558] The court's attempt to disregard the normative perceptions of gender and parenting does nothing to assist the plight of transgender fathers. Dissatisfaction is clear, as McConnell notes that both of his children have inaccurate birth certificates as neither certificate recognises him as the father of his children,[559] and has made unsuccessful attempts to challenge the law.[560] Whilst the court claims there can exist a 'male mother',[561] society's perception of a male mother will continue to be impacted by the fact that 'mother' is associated with the female reproductive capacity. Motherhood undoubtedly remains socially gendered despite the court's claim, potentially reinforcing the 'law's gendering function'[562] through its regulation of family relationships. The law continues to privilege a cisgender reality by not permitting trans and non-binary individuals who give birth to be legally recognised on their child's birth certificate in a way that reflects their identity. The court's attempt to reconcile this was to claim that motherhood is detached from gender – this is not least concerning, but also unnecessary.

Instead, to better acknowledge the fact that gestation is not bound by gender, there could be a departure from assigning socially gendered terms at birth. The terms motherhood and fatherhood could be replaced simply with parenthood.[563] The issue arising from this concerns whether to do so would successfully balance the interests of those who identify with the binary presumed gender associated with legal parenthood, and would like to be recognised in line with that, and non-binary individuals. It is outside the scope of this thesis to consider whether de-gendering parenthood to the point where the terms mother and father are not used when registering a birth would be beneficial. However, it is noted that in the cases highlighted above it would have been more fitting to recognise the transgender men who have given birth as fathers, as this is what they are to their children. This follows the demand of the Parliamentary Assembly of the Council of Europe (PACE) on their 2018 resolution, calling for trans people's parenthood to be documented in line with their recognised legal gender identity.[564] Notably,

[557] *Re TT and YY* [2019] EWHC 2384, 25 September 2019 [279].
[558] A Margaria (n 500) 234.
[559] R (McConnell and YY) v Registrar General [2020] EWCA Civ 559, 29 April 2020.
[560] ibid
[561] *Re TT and YY* [2019] EWHC 2384, 25 September 2019 [280].
[562] G Baars, 'Queer Cases Unmake Gendered Law, or, Fucking Law's Gendering Function' (2019) 45 Australian Feminist Law Journal 41.
[563] A Margaria (n 500) 245.
[564] PACE Resolution 2239 (10 October 2018) 'Private and family life: achieving equality regardless of sexual orientation' s 4(6).

this is already possible in Sweden, whereby in 2019 a law was enforced that recognises trans men who give birth as the child's father on birth registration documents.[565] Rubio-Marín posits that to recognise parents on birth documents in line with their recognised legal gender identity goes further for 'disestablishing the gender order'[566] than abandoning gendered language when discussing parenthood. That this is not yet the case in England and Wales confirms that trans men and non-binary individuals who choose to gestate continue to suffer oppression at the hands of the law, whereby the continued integration of gestation and gender permits misgendering.[567]

4.3.4 Oppression is Rooted in Female Biology: Why Transmasculine Gestation has not Changed Perceptions Surrounding Gestation

The notion that gender-based oppression is rooted in female biology was vocalised by Simone de Beauvoir,[568] and further pursued by Shulamith Firestone.[569] Both posit that female biology is the foundation of women's oppression, and it is this that permits the development of oppressive structures, practices and beliefs.[570] Alongside female reproductive function, it is also important to note the conceptual link this has with the 'identity category "woman", and the social role "mother".'[571] Arguably, all these factors 'mutually [reinforce]'[572] each other, resulting in the perception that reproductive functioning denotes 'womanhood'.

Despite transmasculine pregnancies demonstrating expressly that gestation should no longer be gendered, it remains sexed, and it is the sex binary function that is being used to oppress those who gestate.[573] The female biological functioning of trans men who gestate is a source of oppression, resulting in trans men being recognised by the law as both women[574] and mothers.[575] Transmasculine gestation has consequently not changed perceptions surrounding gestation, as 'either these subjects are not "really" men, have temporarily suspended their masculine status, or are legally defined as "mothers".'[576] Transmasculine gestators are

[565] RFSL, 'Legal Parenthood' (*RFSL*, 12 April 2022) https://www.rfsl.se/en/organisation/familj/att-bli-och-vara-foralder/legal-parenthood-assisted-fertilization/ accessed 11 Jan 2023
[566] R Rubio-Marín, 'The (Dis)establishment of Gender: Care and Gender Roles in the Family as a Constitutional Matter' (2016) 13 International Journal of Constitutional Law 787–818.
[567] Alan Brown, Trans Parenthood and the Meaning of "Mother", "Father" and "Parent"' (n 555) 170.
[568] Simone de Beauvoir, *The Second Sex* (H.M Parsley (tr), Vintage London 1997 [1949]).
[569] Shulamith Firestone, *The Dialectic of Sex* (William Morrow and Company 1970).
[570] Kathryn MacKay (n 314) 348.
[571] ibid
[572] ibid
[573] Supporting de Beauvoir's and Firestone's link between oppression and biology.
[574] AA 1967 s 1.
[575] HFEA 2008, s 33(1).
[576] FR White and others (n 529).

ultimately considered female where it counts[577] and the conflation of sex and gender perpetuates the notion that gestation is solely carried out by women. Therefore, transmasculine gestation has not altered the perception that gestation is women gendered, as gestation remains biologically sexed female.

However, Romanis suggests that the development of assisted gestative technologies will mean a departure from sexed gestation.[578] In detaching the root of gestative oppression[579] from gestation, novel assisted gestative technologies have the potential to not only enhance equality in procreative opportunity,[580] but could also disrupt the idea that gestation is solely carried out by women.

Part Two

The Impact of Gestation Detached from Sex

4.4 Whether Detaching Gestation from Sex will Impact on the Association Between Gestation and Gender

Experiences of transmasculine gestation demonstrate that the association between gestation and gender can be primarily attributed to the social conflation of sex and gender,[581] and the fact that gestation is currently reliant on an individual with physiology AFAB. Consequently, if AAPT and UTx have the capacity to detach gestation from physiology AFAB, as demonstrated in Chapter Three, they may

1. Highlight that gender and sex are not synonymous
2. Reinforce the notion that gender does not dictate a capacity to gestate
3. Shift the social perception that gestation is gendered.

This has the potential to lead to gestation being detached from gender in social consciousness, which may impact on abortion regulation.[582]

[577] ibid
[578] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[579] Demonstrated by the experiences of transmasculine gestation, as detailed earlier.
[580] EC Romanis, 'The equality-enhancing potential of novel forms of assisted gestation' (n 6); Kathryn Mackay (n 314).
[581] Francisco Vakdes (n 38) 166.
[582] Christopher Choong Wend Wai (n 483).

Potential Barriers to AAPT and UTx Effectively De-Gendering Gestation

4.5 Accessing AAPT and UTx

Although Chapter Three demonstrated the ability for AAPT and UTx to un-sex the process of gestation,[583] these technologies need to be accessible for their potential to be realised and ensure that those who stand to benefit from these technologies are able to do so. Roberts has observed that 'technologies rarely achieve their subversive potential'[584] due to barriers to access. Therefore, this section will consider the potential legal, social, and economic barriers that may prevent certain groups of people from accessing AAPT and UTx. In the context of this thesis is it important to discuss access, as greater access and consequently greater visibility of gestation detached from sex, has the potential increase the likelihood that these technologies will shift social perceptions surrounding gestation as a gendered process.[585]

4.5.1 Legal Barriers to Accessing AAPT and UTx: The Pre-Conception Welfare Principle

The pre-conception welfare principle is a heavily criticised legal device[586] that seeks to protect the interests of potential children.[587] However, it currently operates as a barrier to accessing assisted reproductive technologies.[588] In England and Wales the pre-conception welfare principle stipulates that '[a] woman shall not be provided with treatment services … unless account has been taken of the welfare of any child who may be born as a result of the treatment.'[589] The purpose of a pre-conception welfare principle is 'to ensure that prospective patients are judged fit people to bring a child into the world prior to acceptance onto an

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[583] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[584] D Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York, Vintage Books 2017) 248.
[585] See, the 'mere exposure' effect. RB Zajonc, 'Feeling and thinking: Preferences need no inferences' (n 482); RB Zajonc, 'Mere exposure: A gateway to the subliminal' (n 482); Paul Hekkert and others, 'The Mere Exposure Effect for Consumer Products as a Consequence of Existing Familiarity and Controlled Exposure' (2013) 144 Acta Psychologica 411-417. See also, Snéha Khilay, 'Changing Perceptions' (2012) LSE Blogs https://blogs.lse.ac.uk/equityDiversityInclusion/2012/10/changing-perceptions/#:~:text=Engagement%20with%20others%20within%20the,play%20in%20a%20given%20situation accessed 27 December 2023
[586] E Jackson, 'Conception and the Irrelevance of the Welfare Principle' (2002) 65 The Modern Law Review 176-203; Sacha Waxman, 'Applying the Preconception Welfare Principle and the Harm Threshold: Doing More Harm than Good?' (2017) 17 Medical Law International 134-57.
[587] HFEA (1990) s 13(5) (as amended).
[588] S Sheldon and others, 'Supportive Parenting', Responsibility and Regulation: The Welfare Assessment under the Reformed Human Fertilisation and Embryology Act (1990)' (2015) 78 The Modern Law Review 461-492.
[589] HFEA (1990) s 13(5) (as amended).

infertility clinic's treatment programme.'[590] Many countries have pre-conception welfare principles of varying robustness. For example, in Australia some states consider welfare interests as 'paramount',[591] others require 'proper consideration'[592] of child welfare. In Canada, child welfare is 'given priority in all decisions'[593] regarding the use of assisted reproductive technologies. In England and Wales, the pre-conception welfare principle must be assessed before receiving IVF treatment, as IVF is regulated by the HFEA[594] and consequently the licence conditions laid out in ss 12-14A of the HFEA 1990 (as amended) apply. This is relevant in the context of this thesis, as IVF is a necessary component of UTx treatment,[595] and it would also be necessary for complete ectogestation using AAPT.[596]

The pre-conception welfare principle has the potential to limit access to AAPT and UTx,[597] as it has already been relied on in England and Wales to limit who can have a child. Prior to its reform in 2008, the HFEA 1990 welfare clause sought to entrench the traditional nuclear family model of 'heterosexual, preferably married, parents'[598] by requiring clinicians to consider the child's need for a father when assessing welfare.[599] This provision permitted the unjust exclusion of lesbian couples and single mothers from accessing assisted reproductive technologies in many countries.[600] Despite this provision being replaced with the need for 'supportive parenting' not 'a father' in 2008,[601] Sheldon argues that practice has not been largely influenced by the reform.[602] This was likely as the Human Fertilisation and Embryology

[590] E Jackson, 'Conception and the Irrelevance of the Welfare Principle' (n 586) 177.
[591] S 4A of the Assisted Reproductive Treatment Act 1988 (South Australia).
[592] S 4 (1)(d)(iv) of the Human Reproductive Technology Act 1991 (Western Australia).
[593] C 2, s 2(a) of the Assisted Human Reproduction Act (Canada).
[594] Under Paragraph 1, Schedule 2 of the HFEA 2008
[595] Jessica Daolio and others, 'Uterine Transplantation and IVF for Congenital or Acquired Uterine Factor Infertility: A Systematic Review of Safety and Efficacy Outcomes in the First 52 Recipients' (2020) 15 PlosOne.
[596] Amel Alghrani, 'Regulating the Reproductive Revolution: Ectogenesis – A Regulatory Minefield? in M Freeman (ed), *Law and Bioethics: Volume 11* (1st edn, OUP 2008) 327.
[597] On AAPT and applying the pre-conception welfare principle to future 'ecto-children', see Natasha Hammond-Browning, 'A New Dawn: Ectogenesis, Future Children and Reproductive Choice' (2018) 14 Contemporary Issues in Law 349-373; on UTx and the application of the pre-conception welfare principle due to the need for IVF, see Laura O'Donovan, 'Why Uterine Transplantation Requires us to Rethink the Role of the Pre-Conception Welfare Principle' (2022) 9 Journal of Law and the Biosciences 1, 10.
[598] J Dewar, 'The Normal Chaos of Family Law' (1998) 61 Modern Law Review 467, 482.
[599] See generally, RG Lee and D Morgan, *Human Fertilisation and Embryology: Regulating the Reproduction Revolution* (Oxford, Blackstone Press 2001) Chapter 6.
[600] See, G De Wert and others, 'ESHRE Task Force on Ethics and Law 23: Medically Assisted Reproduction in Singles, Lesbian and Gay Couples and Transsexual People' (2014) 29 Human Reproduction 1859-65; The Ethics Committee of the American Society for Reproductive Medicine, 'Access to Fertility Treatment by Gays, Lesbians, and Unmarried Persons: A Committee Opinion' (2013) 6 Fertility and Sterility 1524-27; Evangelia Elenis and others, 'Access to Infertility Evaluation and Treatment in two Public Fertility Clinics and the Reasons for Withholding it: A Prospective Survey Cohort Study of Healthcare Professionals' (2020) 10 BMJ Open 1-7.
[601] S 14(2)(b) HFEA 2008
[602] S Sheldon and others, 'Supportive Parenting' (n 588).

Authority's Code of Practice issues advice on how s 13(5) should be interpreted in line with changing social perceptions on families and parenting.[603] The change to legislation seems to simply reflect the Human Fertilisation and Embryology Authority's desire to avoid discrimination, and in practice did not change the clinical approach to determining welfare.[604] An empirical study into 20 clinics licenced to carry out IVF in the UK found that commonly 'lesbian couples were now seen as raising no particular issues at all'[605] and only one clinic 'considered the treatment of single women and of patients in lesbian and gay relationships to "merit careful consideration".'[606] Similarly another study by Lee found that 'the treatment of single women was considered completely unproblematic at some clinics but, in others, single women still attracted particular scrutiny regarding their suitability as future parents'.[607]

The issue at hand potentially leading to indirect discrimination here is the subjectivity[608] of the pre-conception welfare provision, which is informed by the clinician's 'own views on the family unit and the circumstances conducive to the promotion of child welfare.'[609] Fox highlights that the impact of this reform in practice hinges on the interpretation of the 'supportive parenting' requirement by clinicians.[610] However, drawing again on Sheldon's study it can be suggested that refusal for treatment due to being in a lesbian relationship or being a single woman is unlikely.[611]

Another manner in which the pre-conception welfare principle could potentially limit access is the requirement for clinicians to also consider the impact of treatment on existing children.[612] This has the potential to limit access to UTx, as Hammond-Browning posits that 'if account is taken of existing children of the family, the medical risks of this procedure further justify excluding women who are already mothers.'[613] It is important to remember that not only is the initial transplant produce itself very complex, but the individual would also then have a high risk pregnancy, an invasive caesarean section operation, before then having another

[603] See, Human Fertilisation and Embryology Authority, *Code of Practice* (1st ed, 199) paras 3.16 and 3.19; (7th ed, 2007) para G.3.3.2.
[604] S Sheldon and others, 'Supportive Parenting' (n 588).
[605] ibid 485.
[606] ibid 484.
[607] Ellie Lee and others, 'Assessing Child Welfare under the Human Fertilisation and Embryology Act 2008: A Case Study in Medicalisation?' (2014) 36 Sociology Health & Illness 500, 509.
[608] Laura O'Donovan, 'Why Uterine Transplantation Requires us to Rethink the Role of the Pre-Conception Welfare Principle' (n 597) 10.
[609] ibid
[610] Marie Fox, 'The Human Fertilisation and Embryology Act 2008: Tinkering at the Margins' (2009) Feminist Legal Studies 333, 337.
[611] S Sheldon and others, 'Supportive Parenting' (n 588).
[612] HFEA (1990) s 13(5) (as amended).
[613] Natasha Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27) 1323.

operation so the transplanted womb can be removed.[614] It therefore must be considered whether this would lead to some people being excluded from UTx due to the risks associated with the procedure. However, O'Donovan draws on the ability of parents to seek non-therapeutic cosmetic surgery requiring general anaesthesia,[615] to suggest that the risks of UTx, although distinct, are unlikely to justify refusal of treatment, when considering the impact on existing children.

Although the pre-conception welfare principle has the potential to limit access to novel assisted gestative technologies, empirical studies into the current impact of the principle suggest this would be unlikely. However, it must be noted that AAPT and UTx, in generating new avenues into parenthood via assisted gestation may trigger further reform of the pre-conception welfare principle to regulate who can access new treatment services. Following this, whether the pre-conception welfare would impede access to AAPT and UTx would need to be re-evaluated. However, the trajectory of the pre-conception welfare principle in adopting more expansive language[616] and its application by clinicians[617] continues to suggest that even in light of potential reform, the pre-conception welfare principle is unlikely to limit the accessibility of AAPT and UTx to those seeking to benefit from the technology.

4.5.2 Social Barriers to Accessing AAPT and UTx: The Medicalisation of Pregnancy and Medical Gatekeeping

Reproduction is increasingly being medicalised alongside the growth of reproductive technology.[618] Medicalisation concerns the fact that human reproduction, including conception, pregnancy, and childbirth, can be controlled by the medical profession, and treated as medical conditions.[619] Neonatal research and the development of prenatal technologies has given the medical profession greater access to the reproductive process from preconception through to childbirth. This can be seen in creation of embryos in vitro, prenatal health tests and ultrasounds, labour intervention in the form or caesarean sections and epidural analgesia, and

[614] R Castanos and others (n 375).
[615] Laura O'Donovan, 'Why Uterine Transplantation Requires us to Rethink the Role of the Pre-Conception Welfare Principle' (n 597) 11.
[616] S 14(2)(b) HFEA 2008
[617] S Sheldon and others, 'Supportive Parenting' (n 588).
[618] S Holm, 'The Medicalization of Reproduction – A 30 Year Retrospective' in F Simonstein (ed), *Reprogen-ethics and the Future of Gender* (Dordrecht Springer 2009) 33-4
[619] Victoria Adkins, 'Impact of Ectogenesis on the Medicalisation of Pregnancy and Childbirth' (2021) 47 Journal of Medical Ethics 239.

abortion care.[620] Obstetric intervention has become routine. The medicalisation of pregnancy is beneficial in that it can help to reduce perinatal, and infant mortality.[621] However, Johanson has suggested that the falling mortality rates in the West seen in the 20th century[622] can largely be attributed to 'health developments in disease control, smaller family sizes, and high standards of living.'[623] It cannot be assumed that the medicalisation of reproduction 'has invariably had beneficial effects.'[624] Instead the medicalisation of conception, pregnancy and childbirth can be posited as problematic, the overuse of medical intervention 'can harm pregnant women by causing them to distrust their own bodily sensation, reduce their autonomy in decision making and increase the tension between maternal and fetal needs.'[625] The advent of UTx and AAPT will undoubtedly further increase the medicalisation of conception, gestation, and childbirth. UTx is permissible to facilitate gestation but would result in a high-risk pregnancy subject to increased monitoring of the fetus, and medical intervention through IVF and a caesarean section.[626] Furthermore, AAPT has the potential to increase the medicalisation of pregnancy by 'separating the reproductive process from the human body and making the fetus and woman two distinct entities.'[627] This has the potential to subject the gestateling[628] to greater access and intervention from obstetricians. The medicalisation of conception, pregnancy and childbirth can impact the relationship between doctors and pregnant people or intended parents, and the treatment of the fetus.[629] Increased reliance on medical support and intervention also gives rise to the possibility of medical gatekeeping. The following section is concerned with how access to AAPT and UTx may be regulated by the medical profession and how this could impact on access to the technology.

4.5.3 Accessing UTx

[620] ibid; Richard Johanson and others, 'Has the Medicalisation of Childbirth Gone Too Far?' (2002) 324 British Medical Journal 892-895.
[621] J Liljestrand, 'Reducing Perinatal and Maternal Mortality in the World: The Major Challenges' (2005) 106 BJOG: An International Journal of Obstetrics and Gynaecology 877-880.
[622] World Health Organisation, United Nations Children's Fund (Unicef) *Revised 1990 estimates of maternal mortality: a new approach by WHO and UNICEF.* (Geneva, WHO 1996) https://apps.who.int/iris/bitstream/handle/10665/63597/WHO_FRH_MSM_96.11.pdf accessed 31 Oct 2023
[623] Richard Johanson and others (n 620).
[624] ibid
[625] Victoria Adkins (n 619) 239.
[626] Indirect economic barriers can arise from this increased medicalisation, which are discussed in detail later.
[627] Victoria Adkins (n 619) 239.
[628] EC Romanis, 'Artificial Womb Technology and The Frontiers of Human Reproduction' (n 13).
[629] See, Victoria Adkins (n 619).

UTx is still an experimental procedure,[630] yet the viewpoint that those with AUFI due to Mayer-Rokitansky-Küster-Hauser syndrome (MRKH)[631] or uterine cancer are more deserving of UTx has already emerged.[632] This is likely influenced by that fact that females with AUFI are currently the only group able to access UTx.[633] This chapter has already established that under the concept of procreative liberty the right to gestate extends beyond those born AFAB.[634] Furthermore, O'Donovan posits that UTx 'meets the harm/benefit threshold such that in order to respect reproductive autonomy… the procedure ought to be permitted'[635] in those AMAB. However, meeting the harm/benefit threshold will not prevent social perceptions surrounding who is deserving of UTx potentially impacting its accessibility in the form of medical gatekeeping.

It is necessary to consider how UTx may be allocated, as demand is likely to outstrip supply.[636] Considerations have been based on a number of 'psychosocial and medical factors',[637] especially due to the high risks associated with the procedure.[638] This may include individuals' 'motivation to seek treatment, … age, child-rearing capacity, and the amount of infertility treatment required.'[639] Such criteria will likely be used in order to determine who is prioritised for UTx, and 'statistical models' are expected to run to ensure the allocation criteria is rightfully 'objective'.[640]

Furthermore, the Montreal criteria[641] currently stipulates that only 'genetic females' should be permitted to receive UTx.[642] This was understandable given that this criterion was developed in 2012 and relied on Moore's criteria regarding ethical surgical intervention that

[630] Natasha Hammond-Browning, 'Uterus Transplantation: Five Years on from the World's First Birth' (n 25).
[631] A disorder meaning the female reproductive system is underdeveloped or absent, so are unable to carry a pregnancy. MedlinePlus, 'Mayer-Rokitansky-Küster-Hauser syndrome' (2022) https://medlineplus.gov/genetics/condition/mayer-rokitansky-kuster-hauser-syndrome/ accessed 1 April 2023
[632] As it is considered as treatment for AUFI. Mats Brännström and others, 'Uterus Transplantation: A Rapidly Expanding Field' (n 367).
[633] Natasha Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27).
[634] See, A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301-328.
[635] Laura O'Donovan, 'Pushing the Boundaries: Uterine Transplantation and the Limits of Reproductive Autonomy' (n 35) 490.
[636] EC Romanis and JA Parsons, 'Directed and Conditional Uterus Donation' (n 362).
[637] Laura O'Donovan and others, 'Ethical and Policy Issues Raised by Uterus Transplants' (2019) 131 British Medical Bulletin 19, 25.
[638] T Davidson and others, 'The Costs of Human Uterus Transplantation: A Study Based on the Nine Cases of the Initial Swedish Live Donor Trial' (2021) 36 Human Reproduction 358.
[639] Michelle J Bayefsky and Benjamin E Berkman, 'The Ethics of Allocating Uterine Transplants' (2016) 25 Cambridge Quarterly of Healthcare Ethics 350, 351.
[640] ibid 362.
[641] A criterion developed by medical researchers in Canada.
[642] A Lefkowitz and others, 'Ethical Considerations in the Era of the Uterine Transplant: An Update of the *Montreal Criteria for the Ethical Feasibility of Uterine Transplantation'* (2012) 100 Fertility & Sterility 924-926.

calls for sufficient 'laboratory back-ground, field strength, and institutional stability.'[643] Following Moore's criteria, it is clear why UTx has only been offered to genetic females at this stage of clinical trials. Although there remain 'potential unexplored issues surrounding uterus transplant with a non-genetically female recipient',[644] there has been at least '20 years of rigorous research'[645] into UTx. It has been nine years since the first documented live birth,[646] and 'there appears to be no absolute underlying genetic or physiologic contraindication to pregnancy in non-XX individuals who undergo UTx.'[647] Therefore, it can be posited that 'research trials should consider including transgender individuals,'[648] to develop this technology appropriately for use in individuals AMAB.

Despite the potential for UTx in transgender individuals, Romanis raises the concern that 'if biosex roles in reproduction continue to be reinforced, it can be reasoned that people AFAB without a uterus are in greater need than trans women or cis-men.'[649] However, following AAPT and UTx's potential ability to detach gestation from assigned biological sex, reproductive binaries may no longer be reinforced, and marginalised groups may receive equal prioritisation regarding access criteria. Furthermore, if UTx does become a clinical reality for individuals AMAB, prioritising UTx in individuals AFAB would have no place in an 'objective'[650] allocation criteria.

Assigned biological sex has the potential to impact on access to UTx, with the concern being raised that individuals AMAB may not be able to access the technology, as biases around gender roles are likely to favour cis-women's use of UTx. However, if there is a marked change for allocation that does not favour traditional biosex roles, which is likely to be strengthened with more widespread use of AAPT and UTx, this barrier to AMAB access of UTx would be eroded.

4.5.4 Accessing AAPT

[643] Francis D Moore, 'Ethical Problems Special to Surgery: Surgical Teaching, Surgical Innovation, and the Surgeon in Managed Care' (2000) 135 Archives of Surgery 14, 15.
[644] Bethany Bruno and Kavita Shah Arora (n 382).
[645] Jacques Balayla and others, 'The Montreal Criteria and Uterine Transplants in Transgender Women' (2021) 35 Bioethics 326.
[646] Reuters, 'Swedish Woman World's First to Give Birth after Womb Transplant' (n 364).
[647] Jacques Balayla and others (n 645) 327.
[648] ibid
[649] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[650] Michelle J Bayefsky and Benjamin E Berkman (n 639) 362.

Potential gatekeeping of access to AAPT by doctors may arise if the procedure is only authorised where there is medical necessity. For example, use of AAPT may only be permitted when there are risks to the pregnant person's health that necessitates transfer to AAPT, or only approved when it is necessary for the fetus to be transferred in order to improve fetal outcomes. Utilising AAPT solely when transfer is necessary to improve fetal outcomes is a distinct possibility, as this reflects the primary aim of current researchers developing prototypes.[651] Therefore, there is the potential that this will be the only condition under which AAPT is authorised. Furthermore, there is a sense that medical resources should be used only where there is medical need,[652] and for this reason, clinicians could gatekeep AAPT to cases of necessity. This viewpoint can be given more weight when considering the inevitability of rationing medical care,[653] and the ethics of prioritising where there is medical need.[654] However, this thesis assumes that AAPT has the potential to become a readily accessible reality. The National Institute for Health and Care Excellence (NICE) guidelines regarding elective caesarean sections, highlight that maternal requests for caesarean births should be respected,[655] demonstrating that medical need is not in fact a requirement for medical procedures, and on this basis requests for AAPT transfer where there is no medical need should also be respected. However, requests for elective caesareans are 'routinely denied',[656] and there remains a possibility that clinicians may choose to gatekeep AAPT in certain situations even if its elective use is recommended. For example, clinicians may seek to gatekeep the use of AAPT given their perceptions regarding the allocation of gestational labour, and the beliefs concerning whether a pregnant person should be able to opt out of gestation.[657] Although clinical gatekeeping of AAPT is a possibility, given that elective caesarean sections are

[651] E Partridge and others (n 14).
[652] WHO, 'Caesarean Sections Should only be Performed when Medically Necessary' (*WHO.int*, 9 April 2016) https://www.who.int/news/item/09-04-2015-caesarean-sections-should-only-be-performed-when-medically-necessary accessed 10 Dec 2023
[653] Leslie P Scheunemann and Douglas B White, 'The Ethics and Reality of Rationing Medicine' (2011) 140 Chest 1625-32.
[654] Milton C Weinstein, 'Should Physicians be Gatekeepers of Medical Resources?' (2001) 27 Journal of Medical Ethics 268-274.
[655] NICE, 'Caesarean Birth' (*NICE*, 31 March 2021, last updated 6 September 2023) para 1.2.30 https://www.nice.org.uk/guidance/ng192/resources/caesarean-birth-pdf-66142078788805 accessed 9 December 2023
[656] EC Romanis, 'Why the Elective Caesarean Lottery is Ethically Impermissible' (2019) 27 Health Care Analysis 249, 250; Jerard Knott, 'Why are Maternal Requests for Caesarean Sections not always granted? (*Curtis Law*, 23 August 2018) https://curtislaw.co.uk/latest-news/why-are-maternal-requests-for-caesarean-sections-not-always-granted/ accessed 31 Oct 2023
[657] On the belief that pregnant people should not opt out of gestation. See, J Y Lee and others, 'Does Ectogestation have Oppressive Potential?' [2023] Journal of Social Philosophy 1-12, on the potential stigmatisation of people using AAPT.

supported throughout NICE guidelines,[658] it can be considered that elective use of AAPT will be feasible when the technology becomes an accessible reality.

Medical gatekeeping surrounding AAPT has largely taken a different focus in the existing academic literature,[659] surrounding the potential for clinicians to not permit abortion care. This is the case especially regarding later term abortions, due to the increased potential for the fetus to survive ex utero. A study conducted in Australia found that 41% of doctors would reconsider their stance on performing abortions at 22 weeks if AAPT were common practice.[660] However, as the majority of abortions are performed under 10 weeks,[661] which is before transfer would be able to occur (current prototypes suggest between 21- and 23-weeks gestation),[662] abortion care is unlikely to be significantly impacted by clinical gatekeeping by doctors.

4.5.5 Concluding Remarks on the Social Barriers to Accessing AAPT and UTx

It appears unquestionable that advent of AAPT and UTx will bring about increased medicalisation of gestation, a process that can already be considered overly medicalised.[663] This has the potential to 'lead to further imbalances and disputes'[664] between doctors and intended parents, and even potential restrictions on accessing such technologies. Increased medicalisation could mean that individuals who fit into the medical paradigm of 'needing or deserving' AAPT or UTx, which could be interpreted very narrowly, may mean some individuals are excluded from accessing these technologies. Such restrictions are likely to have a more profound impact on marginalised groups and individuals seeking AAPT or UTx who may be considered less deserving or not a priority for care. Consequently, minority genders, transgender and intersex individuals may struggle to access these technologies.[665] This may consequently reinforce traditional bio sex roles[666] and undermine the potential of novel assisted gestative technologies to de-couple the process of gestation from sex and gender in social consciousness.

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[658] NICE, 'Caesarean Birth' (n 655).
[659] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276).
[660] Di Stefano and others (n 417) 371-384.
[661] Department of Health, 'Abortion Statistics for England and Wales: 2020' (Oct 2021). https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2020/abortion-statistics-england-and-wales-2020 accessed 1 April 2023
[662] E Partridge and others (n 14).
[663] Victoria Adkins (n 619); Richard Johanson and others (n 620).
[664] Victoria Adkins (n 619) 242.
[665] Not limited to gender minorities, sexual and ethnic minorities, who may also face restrictions.
[666] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

4.5.6 Economic Barriers to Accessing AAPT and UTx

Economic factors also have the potential to impact on the accessibility of AAPT and UTx. Of particular concern here is the potential costs of the procedures, especially if NHS funding is not available.[667] The costs of pre-existing assisted reproductive technologies can be considered here to make an informed estimation on the potential costs of AAPT and UTx. Notably, one cycle of IVF treatment may cost up to £5,000[668] and surrogacy costs range between £10,000 - £20,000. [669] Following this, AAPT is also 'likely to be expensive.'[670]

Although UTx was estimated to cost £50,000 per operation in 2015, [671] the first womb transplant took place in the UK this summer and cost £25,000, funded by donations to Womb Transplant UK.[672] This figure was remarkably lower than predicted and can be lower than the total calculated costs for UTx in Sweden. The average cost of UTx in Sweden was calculated to be €74 567.[673] The main contributors to such a high cost included, 'sick leave (€19 164), cost of postoperative hospitalisation (€13 246), surgery cost (€12 779) and costs for preoperative investigations, including IVF (€11 739).'[674] The potential high costs of these procedures would make them extremely difficult to access. Furthermore, given this expensive process can take 2 – 5 years[675] the indirect impact on income must also be considered. The need for recipients, and potentially also their partners, to take time off work to attend multiple appointments may have a negative impact on the income of those seeking UTx, particularly for those in insecure employment.[676] This would undoubtedly limit access to those with a large disposable income, excluding individuals from lower-socio-economic backgrounds. These high costs would also likely make AAPT and UTx more difficult to access for marginalised racial groups, due to their socio-economic position in the UK.[677] Furthermore, those who are

[667] NHS funding is discussed in more detail below.
[668] NHS Website, IVF, (last reviewed October 2021) <https://www.nhs.uk/conditions/ivf/> accessed 31 October 2023
[669] Brilliant Beginnings, 'How Much can a UK Surrogate get Paid? (*Brilliant Beginnings)* <https://brilliantbeginnings.co.uk/how-much-can-a-uk-surrogate-get-paid/> accessed 21 Nov 2022
[670] C Horn, 'Ectogenesis at Home? Artificial Wombs and Access to Care' (n 345).
[671] Womb Transplant UK, 'Everything you Need to Know about Uterine Transplantation' (n 370).
[672] Maya Oppenheim, 'First Womb Transplant Takes Place in UK After Sister Donates Uterus' (n 21).
[673] T Davidson and others (n 638).
[674] ibid
[675] Natasha Hammond-Browning, 'Access to Uterus Transplantation and the Workplace' (*Bill of Health*, 19 September 2023) https://blog.petrieflom.law.harvard.edu/2023/09/19/access-to-uterus-transplantation-and-the-workplace/ accessed 10 Dec 2023
[676] ibid
[677] Office for National Statistics, 'Household Wealth by Ethnicity, Great Britain: April 2016 to March 2018' (*ONS*, 2020) <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/articles/householdwealthbyethnicitygreatbritain/april2016tomarch2018> accessed 1 April 2023

economically fortunate enough to be able to afford these technologies may face stigmatisation.[678] This is particularly pertinent for individuals who choose to use AAPT, who may be considered to be 'less' of a mother[679] for deciding to opt out of the gestational process.[680] The high direct costs of AAPT and UTx would limit access for those who cannot afford these technologies and potentially lead to stigmatisation of those who can.

It is necessary to consider whether NHS funding for AAPT and UTx would be possible in England and Wales. NICE provides guidance and recommendations regarding NHS funding; however, it is Integrated Care Boards (ICBs) which manage the NHS budget,[681] and consequently determine whether funding is available locally.[682] This section will take a holistic approach towards the likelihood of NHS funding being available for these procedures.

The NHS has a 'limited budget'[683] and 'central funding [is] no longer keeping pace with demand.'[684] Therefore, a distinction is made here between UTx and AAPT's use as a *necessary*[685] 'assisted gestative treatment', the use of AAPT as an advancement of neonatal intensive care to assist the survival of pre-term neonates, and the elective use of AAPT, as these factors are likely to impact whether funding would be available.

Arguments presented as to why NHS funding should not be available for assisted gestative technologies concern the fact that to do so would be 'inconsistent with government's obligations to prevent climate change and environmental pollution',[686] given the 'carbon legacy' of children made through medical intervention.[687] Further, that such technologies 'do not treat a disorder and [are] not medically necessary,'[688] (this can be distinguished from AAPT

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[678] J Y Lee and others, 'Does Ectogestation have Oppressive Potential?' [2023] Journal of Social Philosophy 1-12

[679] The term mother is used here as legally the individual who gestates and births the child is their mother. See, HFEA 2008, s 33(1).

[680] See, E Jackson, 'Degendering Reproduction?' (n 35) 360.

[681] The Health and Care Act (2022) introduced changes to commissioning of NHS services. Note that Clinical Commissioning Groups (which replaced primary care trusts on the 1st April 2013) have now been replaced with integrated care systems. See, NHS, 'What are Integrated Care Systems?' (*NHS)* https://www.england.nhs.uk/integratedcare/what-is-integrated-care/ accessed 11 April 2023; British Medical Association, 'Integrated care systems (ICSs)' (*BMA,* 14 Nov 2022) https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/integration/integrated-care-systems-icss accessed 11 April 2023

[682] HFEA, 'Costs and Funding' (*HFEA)* https://www.hfea.gov.uk/treatments/explore-all-treatments/costs-and-funding/ accessed 11 April 2023

[683] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 313.

[684] Hugh E Montgomery and others, 'The Future of UK Healthcare: Problems and Potential Solutions to a System in Crisis' (2017) 28 Annals of Oncology 1751.

[685] The term 'necessary' is used here as, although gestation is considered elective, this denotes circumstances where assisted gestative technologies would be necessary to achieve this elective process safely.

[686] Stephen Wilkinson and Nicola Jane Williams, 'Should Uterus Transplants be Publicly Funded? (2016) 42 Journal of Medical Ethics 559. doi: 10.1136/medethics-2015-102999

[687] C Richie, 'What would an Environmentally Sustainable Reproductive Technology Industry Look Like? (2015) 41 Journal of Medical Ethics 383-7.

[688] Stephen Wilkinson and Nicola Jane Williams, 'Should Uterus Transplants be Publicly Funded?' (n 686).

in certain circumstances which could be considered medically necessary to support life) and finally, as there are available alternatives in the form of 'adoption and surrogacy.'[689] However, Wilkinson and Williams reject such arguments, stating that they provide 'insufficient reason to withhold funding for UTx.'[690] Namely as, it would be unfair that those requiring assisted gestative technologies to reproduce be disproportionally saddled with the costs of preventing climate change, infertility can be viewed as a *bona fide* disorder warranting treatment, and adoption and surrogacy can be demerited as alternatives as neither permits gestation and adoption cannot provide for biological offspring.[691] Instead, a strong case can be made for permitting public funding for both UTx[692] and AAPT.

Alghrani notes that 'there mut be some consistency/rationale behind which treatments will be publicly funded and which will not.'[693] Following this, it is proposed that UTx and AAPT as a form of 'assisted gestative treatment' can be likened to fertility treatment via IVF, and therefore they also have the potential to receive public funding. However, there is limited public funding available for fertility treatment under the NHS, and there have been extensive cutbacks in recent years.[694] Although NICE provides guidance that 'women aged under 40 years who have not conceived after 2 years… [should be offered] 3 full cycles of IVF',[695] stricter conditions can be imposed by ICBs. Therefore, although funding could be available for AAPT and UTx based on the rationale that its available for IVF, this may not be particularly accessible given the disparity in costs.

Fertility Network UK data shows that since 2017 IVF treatment has been restricted or halted in 13 areas in England.[696] This has led to inequalities regarding access, with exemption from funding or limitations of funding being reasoned due to 'location; lesbians and single

[689] ibid
[690] ibid
[691] ibid 564.
[692] See, A Alghrani, 'Yes, Uterus Transplants should be Publicly Funded!' (2016) 42 British Journal of Medical Ethics 566-567.
[693] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 313.
[694] See, Sarah Marsh, 'IVF Cut Back in 13 Areas of England to Save Money, New Data Shows' *The Guardian* (6 August 2017) https://www.theguardian.com/society/2017/aug/06/ivf-cut-back-in-13-areas-of-england-in-bid-to-save-money-new-data-shows accessed 15 April 2023
[695] National Institute for Health and Care Excellence, 'Fertility Problems: Assessment and Treatment' Guideline: 1.11.1.3 (*NICE*, 20 Feb 2013, last updated 06 Sept 2017) https://www.nice.org.uk/guidance/cg156/chapter/recommendations#access-criteria-for-ivf accessed 15 April 2023
[696] Kimberly Bryon-Dodd, 'NHS Cutbacks Worsen IVF "Postcode Lottery" in England' (*BioNews*, 14 Aug 2017) https://www.progress.org.uk/nhs-cutbacks-worsen-ivf-postcode-lottery-in-england/ accessed 15 April 2023

women; and existing family structures.'[697] Funding can be considered a 'postcode lottery',[698] as ICBs in NHS Bury, NHS Heywood, Middleton and Rochdale, NHS Oldham and NHS Thameside and Glossop offer 3 fully funded IVF cycles, whereas NHS Croydon, NHS South Suffolk, and NHS Herts Valleys offer no IVF funding at all.[699] Funding has also been more difficult to access for lesbian and single women, as most ICBs 'do not list same-sex couples and single women as part of their funding criteria'[700] or stipulate that they must demonstrate subfertility by self-funding intrauterine insemination at least of six times,[701] likely to total around £12,000.[702] However, in 2022 the government pledged to remove the requirement for same-sex couples to self-fund artificial insemination as part of the Women's Health Strategy,[703] but it is unclear how this will impact single women looking to access IVF.[704] Finally, access to funded fertility treatment may be excluded where those seeking treatment have biological, adoptive, or stepchildren.[705] Such restrictions placed on fertility treatment funding would likely carry over to funding assisted gestative treatment in the form of AAPT and UTx. Furthermore, the advent of AAPT and UTx would further stretch already limited public funding and may lead to more cutbacks. Following this, funding may need to be prioritised.

To consider the prioritisation of funding, Alghrani draws on the 'incremental cost-effectiveness ratio'[706] implemented by NICE, which measures the cost per quality adjusted life year (QALY). The threshold laid down by NICE is £20-30,000 per QALY.[707] This could be enforced to determine whether assisted gestative treatment receives public funding. It is outside

[697] Anna Tippett, 'Reproductive Rights where Conditions Apply: An Analysis of Discriminatory Practice in Funding Criteria Against Would-Be Parents Seeking Funded Fertility Treatment in England' (2023) 26 Human Fertility 483-493.
[698] See, E Blyth and B Golding, 'Egg Sharing: A Practical and Ethical Option in IVF?' (2008) 3 Expert Review in Obstetrics & Gynecology 465-473; R Kennedy and others, 'Implementation of the NICE Guideline – Recommendations from the British Fertility Society for National Criteria for NHS Funding of Assisted Conception' (2006) 9 Human Fertility 181-189; P Mladovsky and C Sorenson, 'Public Financing of IVF: A Review of Policy Rationales' (2010) 18 Health Care Analysis: HCA: journal of Health Philosophy and Policy 113-128; Jacqui Wise, 'NICE calls for end to "Postcode Lottery" of Fertility Treatment' (2014) 349 British Medical Journal 1-2.
[699] Anna Tippett (n 697) 4.
[700] ibid
[701] ibid
[702] ibid
[703] BPAS, 'Government Pledges to end IVF Policies which Discriminate against Same-Sex Female Couples' (*BPAS*, 20 July 2022) <https://www.bpas.org/about-our-charity/press-office/press-releases/government-pledges-to-end-ivf-policies-which-discriminate-against-same-sex-female-couples/> accessed 15 April 2023; Celine Heath, 'Government Announces Huge Shake-Up to NHS IVF Rules' (*Women's Health,* 22 July 2022) <https://www.womenshealthmag.com/uk/health/female-health/a40666693/same-sex-ivf-nhs/> accessed 15 April 2023
[704] BPAS, 'Government Pledges to end IVF Policies which Discriminate Against Same-Sex Female Couples' (n 652).
[705] Anna Tippett (n 697) 4.
[706] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 315.
[707] Stephen Wilkinson and Nicola Jane Williams, 'Should Uterus Transplants be Publicly Funded?' (n 686).

the scope of this thesis to comment on NHS resource allocation and make a judgement on how funding should be allocated for novel assisted gestative technologies. However, the discussion of funding for fertility treatment in England can be drawn upon to suggest that AAPT and UTx could potentially be funded under the NHS as 'gestative treatment', however any number of criteria could be enforced to make this more difficult to access. Specifically, elective use of AAPT may potentially be excluded from public funding, given the limited funds available under the NHS.[708] A distinction is made here for non-elective AAPT use to support neonates as an advancement of current neonatal intensive care, which if a clinical reality would likely be allocated NHS funding.

Although there is potential for NHS funding to be available for AAPT and UTx, 'access to [assisted] reproductive technologies must compete with other claims on scarce healthcare resources and the nature of its outcomes are different from those of most other health services and thus according priority on a fair basis is no easy feat.'[709] UTx is looking to be both a costly and risky infertility treatment,[710] and therefore funding, whilst possible, may be unlikely, at least in the near future.[711] AAPT, whilst less risky, is also likely to be expensive,[712] and therefore funding would probably be dependent on an individual's reason for using AAPT. Therefore, it is necessary to consider that, despite convincing arguments put forward for funding, this may be unlikely. This would undoubtedly create a barrier to access given the predicted costs of such procedures outlined above. Regardless of this, an economic barrier to access would exist regardless of NHS funding status, given indirect costs.[713]

Romanis explores how indirect costs[714] have the potential to limit access to AAPT and UTx, even if public funds were to make these procedures readily accessible. This would create an economic barrier to these technologies particularly for those from lower socio-economic groups, including sexual minorities and marginalised racial groups.[715] Indirect costs may include the need for those using UTx to also receive IVF.[716] This thesis has already considered the discrimination against lesbian couples and single individuals when accessing publicly

[708] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301, 313.
[709] ibid 315; Nancy Devlin and David Parkin, 'Funding Fertility: Issues in the Allocation and Distribution of Resources to Assisted Reproduction Technologies' (2003) 6 Human Fertility s2-s6.
[710] T Davidson and others (n 638) 364.
[711] Cost and risk likely to decrease over time. See, T Davidson and others (n 638); Stephen Wilkinson and Nicola Jane Williams, 'Should Uterus Transplants be Publicly Funded?' (n 686).
[712] C Horn, 'Ectogenesis at Home? Artificial Wombs and Access to Care' (n 345).
[713] EC Romanis, 'The Equality-Enhancing Potential of Novel Forms of Assisted Gestation' (n 6).
[714] ibid
[715] ibid
[716] Laura O'Donovan and others, 'Ethical and Policy Issues Raised by Uterus Transplants' (n 587) 25.

funded IVF,[717] and although this is set to change,[718] the cost of IVF may make UTx unviable for some. Although, the cost of IVF was included in the total cost calculations for UTx in Sweden[719] and therefore, may also be included if funding is available for the procedure in England and Wales. Another potential indirect cost concerns the increased number of antenatal appointments that may come alongside UTx and AAPT, which can cost money to attend and also result in a loss of earnings due to time being taken off work.[720] Specifically regarding UTx, there may be a number of hospital appointments before successful embryo transfer occurs. Brännaström's review noted that the second case of UTx in Turkey had not resulted in successful embryo transfer four years after embryo transfer attempts were initiated.[721] It is important to note UTx can be a lengthy process and this results in increased indirect costs. Furthermore, once successful transfer takes place, the high-risk nature of UTx pregnancies would likely mean increased antenatal appointments. Romanis' empirical study details how individuals' work commitments may mean they struggle to access these appointments, with one participant detailing a situation where an individual lost their job due to having to attend an antenatal appointment.[722] This again, creates an economic barrier to accessing UTx, as individuals with less economic security may not elect to undergo UTx due to the potential indirect costs associated with the procedure. AAPT on the other hand, may have the opposite effect, with individuals shortening or removing the period of gestation having a positive economic impact,[723] by reducing the indirect costs associated with gestation. However, it could also mean 'a person needs more leave (because of the gap between 'delivery' after which there needs to be recovery, and 'birth' after which there is a newborn to care for).'[724] The extent of increased indirect costs for AAPT and UTx cannot be fully ascertained at this point, however they have the potential to dissuade some individuals from accessing these technologies.

Overall, this analysis of the potential costs associated with both UTx, and AAPT shows that the procedures would likely be inaccessible to many if NHS funding is not available. However, there is a strong case for NHS funding for AAPT as an extension of neonatal

[717] Anna Tippett (n 697) 4.
[718] BPAS, 'Government Pledges to end IVF Policies which Discriminate Against Same-Sex Female Couples' (n 652).
[719] T Davidson and others (n 638).
[720] See above on the impact of this on those in insecure employment. Natasha Hammond-Browning, 'Access to Uterus Transplantation and the Workplace' (n 675).
[721] Mats Brännström and Pernilla Dahm-Kähler, 'Uterus Transplantation, Current State and Future Perspectives' (2017) 9 Journal of Endometriosis and Pelvic Pain Disorders 2-8.
[722] EC Romanis, 'The Equality-Enhancing Potential of Novel Forms of Assisted Gestation' (n 6).
[723] A Smajdor, 'In Defense of Ectogenesis' (n 35).
[724] Victoria Hooton and Elizabeth Chloe Romanis, 'Artificial Womb Technology, Pregnancy, and EU Employment Rights' [2022] Journal of Law and the Biosciences 1, 10.

intensive care. Further to this, arguments have been made for UTx public funding,[725] and consequently potentially AAPT's elective use. Discussions regarding accessibility due to economic factors cannot be fully realised until these procedures become a clinical reality. However, this section has sought to demonstrate that accessibility is likely to be heavily influenced by economic factors. There is a presumed correlation between how many people are able to access AAPT and UTx, and how likely it is that these technologies will alter social perceptions surrounding gestation. Therefore, these economic barriers need to be overcome in order for the ideas explored in this thesis to be plausible, but this does not undermine the academic exercise of engaging with the potential impact of these technologies.

4.6 The Impact of Accessibility on the Potential for AAPT and UTx to De-couple Gestation and Gender in Social Consciousness

Legal, social, and economic factors are all likely to impact on the accessibility of AAPT and UTx. The previous chapter demonstrated how AAPT and UTx although distinct technologies, will operate by detaching gestation from assigned biological sex.[726] Un-sexing gestation may permit gestation to be de-coupled from gender in social consciousness, however, the accessibility of the technology raises questions regarding how this potential may be realised. The concern arises that, if not many people are able to access these technologies, they may not be able to effectively de-couple gestation from gender in social consciousness; consequently this would not result in pressure to change regulation regarding gestation. However, whilst this thesis acknowledges that social perceptions are likely to be influenced by accessibility, this should not bar these technologies from being capable of de-gendering gestation nor detract from their transformative potential.

AAPT's use in any context goes towards detaching gestation from assigned biological sex as it permits gestation ex utero.[727] However, UTx will be discussed further here, as only in specific circumstances does it detach gestation from assigned biological sex, namely when facilitating gestation in a trans woman or a cis-gender man. Some scholars have raised that UTx may not effectively make progress towards 'de-gendering' gestation as its use in individuals with physiology AMAB could be very limited.[728] Thus, limiting the broader scale

[725] Stephen Wilkinson and Nicola Jane Williams, 'Should Uterus Transplants be Publicly Funded?' (n 686); Amel Alghrani, 'Yes, Uterus Transplants should be Publicly Funded!' (n 692).
[726] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[727] ibid
[728] I am grateful to Natasha Hammond-Browning for discussions about this in a panel session at the Socio-Legal Studies Association Conference in April 2023.

'social change' effect.[729] However, it is possible to argue that small numbers or just one cis-gender man gestating using UTx has the potential to completely alter society's perception that gestation is contingent on gender if it were public enough.[730] It is necessary to consider this argument as it can be predicted that of the individuals seeking UTx, the minority are likely to be AMAB. Despite this, gestation permitted in a cis-gender individual AMAB through UTx simultaneously detaches gestation from sex assigned at birth and gender. In doing so, UTx 'flies in the face'[731] of gendered gestation to such an extent that just one experience could transform perceptions surrounding gestation and gender.

However, even if this is not the case and more widespread use of AAPT and UTx is necessary to alter perceptions, this does not detract from the fact that these technologies have the capacity to detach gestation from assigned biological sex.[732] It is simply the capacity of these technologies to 'un-sex' gestation[733] that has the potential ability to de-gender the gestational process in the longer term and provide a manner in which individuals can build the families that they want that is in keeping with their identities.

This discussion regarding accessibility was necessary as barriers must be overcome to ensure the full potential of these technologies to be realised. However, analysis going forward regarding the impact of de-gendering gestation works on the assumption that both AAPT and UTx will become a clinical reality and they will be readily accessible for use by anyone who wishes to use them, including those wishing to break the confines of biosex roles to gestate.

4.7 Conclusion

This chapter began by drawing on common accounts of gestation to highlight how the process of gestation has been 'historically and popularly'[734] gendered, resulting in the perception that only women can gestate.[735] However, a distinction was drawn between sex and gender, to posit that gestation, whilst dependent on female biological sex, is not restricted to a particular gender, specifically women. Transmasculine experiences of gestation highlighted how the process of

[729] ibid
[730] I am grateful to Natasha Hammond-Browning, Elizabeth Chloe Romanis, Laura O'Donovan and Nicola Williams for discussions about this in a panel session at the Socio-Legal Studies Association Conference in April 2023.
[731] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[732] ibid
[733] ibid
[734] Francisco Vakdes (n 38) 166.
[735] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35).

gestation is reliant on female physiology but is not contingent on gender.[736] However, transmasculine gestation has done little to dispel the association between gestation and gender. Whilst this may be impacted by the fact that there are drastically less transmasculine gestators than cis-gendered gestators,[737] it also needs to be acknowledged that the sex binary assigned at birth is likely informing perceptions of gestation and who has the capacity for it.[738] Female reproductive capacity, alongside the gendered nature of the law, results in the assumption that gestation is solely undertaken by women, and results in motherhood. It is biological functioning, social perceptions and the law that currently prevents gestation be detached from gender. Following findings that AAPT and UTx will detach gestation from biological sex,[739] this chapter considered the capacity for AAPT and UTx to sever ties in social consciousness between sex and gender regarding who has the capacity for gestation.

The capacity for de-gendered gestation was considered in light of potential barriers to access, as visibility and accessibility are considered to inform social perceptions.[740] Despite the existence of potential barriers, AAPT and UTx may go some way towards 'de-gendering' social perceptions of gestation simply by virtue of the fact that they have the capacity to permit gestation that is not reliant on sex assigned at birth.[741] Although a possibility, this would likely be limited in its impact on challenging the societal view that gestation is gendered. However, discussion in this chapter detailed how certain barriers to accessing AAPT and UTx have the potential to be overcome with further technological and societal progress, demonstrating the potential for widespread use of AAPT and UTx which may have an increased impact on altering social perceptions. Finally, as this thesis engages speculatively with the impact of AAPT and UTx on the assumption that they will become readily accessible realities, it is apt to speculate that the advent of AAPT and UTx will make progress in severing the link between

[736] E.g. Freddy McConnell, Thomas Beatie and Hayden Cross.
[737] Based on the fact that significantly less people in England and Wales identify as transgender and even fewer of those undergo gestation. Office for National Statistics, 'Gender identity, England and Wales: Census 2021' (*ONS*, 6 January 2023) https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/bulletins/genderidentityenglandandwales/census2021#:~:text=A%20total%20of%2045.4%20million,their%20sex%20registered%20at%20birth. accessed 27 December 2023
[738] FR White and others (n 529).
[739] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[740] RB Zajonc, 'Feeling and Thinking: Preferences Need No Inferences' (n 482); RB Zajonc, 'Mere Exposure: A Gateway to the Subliminal' (n 482).
[741] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

gestation and gender. Following this, it is necessary to discuss the legal repercussions of de-gendered gestation, specifically for abortion regulation.

Chapter V

"De-gendered Gestation" – The Impact on Abortion Regulation

5.1 Introduction

Regardless of its legality and safety, 'abortion is ubiquitous,'[742] and it 'occur[s] in all countries'.[743] Therefore, it is necessary to consider the impact that the introduction of novel assisted gestative technologies could have on abortion care. This thesis so far has considered how AAPT and UTx have the capacity to de-gender the process of gestation.[744] Chapter Three detailed how this potential could be realised, as AAPT and UTx have the capacity to detach gestation from assigned biological sex[745] by permitting gestation that is not solely carried out by biological females.[746] Chapter Four then explored how this ground-breaking biological development may impact the association between gestation and gender held in social consciousness,[747] specifically the perception that women are the only individuals able to undertake gestative labour.[748] This thesis has demonstrated the potential for AAPT and UTx to 'de-gender' the process of gestation. Consequently, the analysis in this chapter is specifically concerned with how 'de-gendered' gestation could impact abortion regulation.

This chapter will present two avenues by which 'de-gendered' gestation could impact abortion regulation. First, is simply the re-phrasing of abortion legislation, and second, revisiting the criminalisation of abortion

Considering how regulation on gestation could be re-phrased following the introduction of AAPT and UTx concerns the adoption on gender-neutral language in relevant legislation. AAPT and UTx will support calls to adopt gender-neutral language surrounding gestation and the impact of such a development will be assessed. This chapter will then consider whether AAPT and UTx, with their ability to de-gender gestation, could lead to the reconsideration of the criminalisation of abortion in England and Wales. To do this, it details a number of

[742] Sandy Goldbeck-Wood and others, 'Criminalised Abortion in UK Obstructs Reflective Choice and Best Care' (2018) 362 BMJ 1.
[743] Brooke Ronald Johnson Jr and others, 'What would be the Likely Impact of Decriminalisation on the Incidence, Timing, Provision and Safety of Abortion?' in Sally Sheldon and Kaye Wellings (eds) *Decriminalising Abortion in the UK What Would it Mean?* (Policy Press 2020) 99, 124.
[744] See, Chapter Four.
[745] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales,* (Oxford University Press 2024)
[746] See, Chapter Three.
[747] See, Chapter Four.
[748] Julien Murphy (n 69) 31.

arguments and motions presented to liberalise and decriminalise abortion law and questions whether these aims have not been realised due to the gendered nature of abortion care. The impact of ideas surrounding gender on abortion law is assessed by demonstrating that the abortion debate is one of equality and criminalisation has been impacted by the fact that the procedure solely affects those considered to be women.[749] This chapter therefore argues that if abortion regulation has been influenced by gender,[750] and AAPT and UTx have the capacity to de-gender gestation,[751] there is the possibility that their advent could advance pre-existing calls for reform of abortion law. Their advent could trigger the relaxation of existing requirements to make abortion more accessible,[752] and the decriminalisation of abortion following repeal of the law criminalising abortion in England and Wales. This possibility is considered in light of arguments that AAPT could hinder abortion access,[753] and details that the journey towards decriminalisation will not be a straightforward one. Finally, this chapter puts forward how regulation could be impacted if AAPT and UTx bring about a reconsideration of the criminalisation of abortion.

Reform to the AA 1967

5.2 Rephrasing the AA 1967

The gendered language used regarding gestation in legislation, namely reference to the 'pregnant woman',[754] has been criticised throughout this thesis. The legislation does not acknowledge that individuals who do not identify as women are capable of gestation, and such legislation is at odds with the experiences of transgender and non-binary individuals who choose to gestate.[755]

The inadequacies of the current legislation will be exacerbated with the advent of novel assisted gestative technologies bringing about 'the third reproductive revolution'.[756] AAPT and UTx will expand gestative opportunities and provide new avenues to having genetically related

[749] Supported by findings in Chapter Two.
[750] As demonstrated in Chapter Two.
[751] As demonstrated in Chapter Four.
[752] Particularly the two-doctor requirement. AA 1967 s 1(1).
[753] See, P Hendricks (n 78); B Blackshaw and D Rodger (n 78).
[754] See, OAPA 1861 s 58, 59, 60; ILPA 1929 s 1(2); AA 1967 s 1, HFEA 1990 (as amended 2008), HCA 2022 s 178.
[755] See, Chapter Four.
[756] EC Romanis, 'Assisted Gestative Technologies' (n 12).

children,[757] and therefore may be highly sought after.[758] Specifically, AAPT and UTx may be sought after by individuals who not only do not identify as women but are also not born biologically female to assist with gestation. Permitting individuals AMAB the ability to gestate using UTx[759] or permitting them greater access to the gestational process through AAPT[760] highlights that the future of gestational labour will not be solely undertaken by those AFAB. Chapter Three detailed how this alteration has the potential to change the perception that gestation is undertaken solely by women. This may put further pressure than has been seen already following non-binary and transmasculine gestation[761] to remove the gendered language from abortion legislation.

Adopting gender neutral language in legislation that regulates gestation may not have a substantial impact on who can access abortion. Transgender and non-binary individuals are able to access abortion care under the current legislation,[762] because of how providers have chosen to interpret it in practice. However, language reform would bring the experiences of gestators who do not identify as women in line with the law, signalling they are both 'recognised and welcome in the fight for reproductive justice'.[763]

Adopting the term 'pregnant person'[764] in legislation as opposed to the 'pregnant woman'[765] would encompass those who seek an abortion who are born with a biological uterus and either identify as cis-gender women, non-binary, or transgender men, as well as individuals born without a functioning uterus who may gestate following UTx, who may identify as cis-gender women, non-binary, transgender women, or cis-gender men. Reframing abortion discourse and acknowledging that individuals who do not identify as women can gestate has been seen across abortion providers[766] and throughout recent academic literature.[767] Seeing this language used in practice is arguably *more important* than the language used in the law, as

[757] EC Romanis, 'Assisted Gestative Technologies' (n 12); Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[758] EC Romanis, 'Artificial Womb Technology: The Implications for Ectogestation as a Reproductive Choice' (2020) 1062 Bionews.
[759] B Jones and others (n 380) 152; A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301, 304.
[760] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276).
[761] This lack of pressure is potentially due to the role of biological sex in gestation. See, Chapter Four.
[762] BPAS, 'Trans, Non-binary and Intersex People' (n 227).
[763] Allison M Whelan, 'An Inclusive Approach to LGBTQ+ Rights' (*Harvard, Advanced Leadership Initiative, Social Impact Review,* 25 April 2022) https://www.sir.advancedleadership.harvard.edu/articles/an-inclusive-approach-to-lgbtq-abortion-rights accessed 10 May 2023
[764] Jessica Clarke (n 230) 176; EC Romanis, 'Partial Ectogenesis' (n 231).
[765] See, OAPA 1861 s 58, 59, 60; ILPA 1929 s 1(2); AA 1967 s 1, HFEA 1990 (as amended 2008), HCA 2022 s 178.
[766] E.g. BPAS
[767] Jessica Clarke (n 230) 176; EC Romanis, 'Partial Ectogenesis' (n 231).

those seeking abortion care are in contact with providers and may be unlikely to look at the wording of the legislation.[768] However, the BPAS continues to enforce gynocentric language, using the term women throughout their general literature, alongside providing separate tailored material for those who identify otherwise.[769] Woman-centring in the context of an advisory service can be understood to some extent given that the majority of individuals who seek abortions identify as women.[770] It must also be considered alongside criticisms that to not discuss abortion law in the context of patriarchal control makes pursuing feminist aims against abortion law more difficult.[771] However, adopting inclusive language does not mean erasing women of their identity. Given the changing landscape of access to gestation which will arise with the advent of AAPT and UTx, woman-centring becomes ever more out of touch with reality and cannot be justified, especially in the context of the law governing abortion. The contentious nature of abortion law means the language used is important. Whelan presents how it can 'unite or divide'[772] in the fight for reproductive justice and therefore the potential for language reform within the law is vital. Despite not practically altering who can access abortion care in England and Wales, adopting inclusive language in the legislation does have an important signalling effect.[773] It may influence the language adopted by providers, whose discourse is more likely to reach trans and non-binary individuals seeking abortion care and recognise their lived reality, as gestators who do not identify as women.

If abortion remains legally accessible following the advent of AAPT and UTx, the likelihood of which is demonstrated in section 5.4, then AAPT and UTx may put pressure on legislators to reform the language of abortion regulation, as abortion is further separated from

[768] Considering views on abortion in England and Wales, it must be considered that a number of people including those who access abortion care are not aware of the law, not least the specific wording of the legislation. Note that 69% of 2002 individuals who took part in an abortion survey could not identify the correct legal position on abortion. See, ICM, 'Abortion Documentary Survey' (*ICM*, 2017) http://www.icmunlimited.com/wp-content/uploads/2017/10/OlOm-Abortion-Documentary-v1.pdf https://www.independent.co.uk/life-style/health-and-families/health-news/married-man-claims-to-be-five-months-pregnant-801331.html accessed 27 December 2023

[769] See, https://www.bpas.org accessed 27 December 2023

[770] In a US survey with 6,674 participants, 1.1% of respondents reported their gender identity as something other than woman. Doris W Chiu and others, 'As Many as 16% of People Having Abortions Do Not Identify as Heterosexual Women' (*Guttmacher Institute*, 14 June 2023) https://www.guttmacher.org/2023/06/many-16-people-having-abortions-do-not-identify-heterosexual-women accessed 27 December 2023.

[771] See, Helen Lewis, 'The Abortion Debate is Suddenly about "People," Not "Women"' *The Atlantic* (14 May 2022) https://www.theatlantic.com/ideas/archive/2022/05/abortion-rights-debate-women-gender-neutral-language/629863/ accessed 27 December 2023; Irin Carmom, 'You Can Still Say "Woman" But you Shouldn't Stop There' *Intelligencer* (New York, 28 Oct 2021) https://nymag.com/intelligencer/2021/10/abortion-law-trans-inclusive-advocacy.html accessed 3 Jan 2023

[772] Allison M Whelan (n 763).

[773]On the power of law shape understandings and reinforce viewpoints. See, Lucinda M Finley, 'Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning' (1989) 64 Notre Dame Law Review 886, 888.

gender and new avenues into parenthood become available, highlighting the inadequacies of existing legislation. Effective reform would be realised through the adoption of gender-neutral language governing gestation and abortion regulation.

The Potential for Decriminalisation

5.3 Reconsidering the Criminalisation of Abortion

Of fundamental importance to this thesis, is determining whether the impact that novel gestative technologies may have on abortion regulation could go further than simply triggering the adoption of gender-neutral language, and if their advent could set in motion a reconceptualisation of abortion regulation, resulting in decriminalisation. This section will begin by acknowledging the potential restrictions to abortion access that could arise with the advent of AAPT, that have been raised by a number of scholars.[774] However, as this thesis is primarily concerned with how AAPT and UTx could 'de-gender' the process of gestation in social consciousness,[775] it will go on to assess how 'de-gendered' gestation specifically could lead to a reconsideration regarding the criminalisation of abortion and support pre-existing arguments for decriminalisation.

The Impact of AAPT on Abortion

5.4 Restricting access to Abortion with the Advent of AAPT

The use of novel assisted gestative technologies to support the liberalisation of abortion legislation will not be straight-forward, especially as many scholars have illustrated how AAPT may restrict access to abortion care.[776] Scholars have raised arguments that the advent of AAPT changes the morality of abortion by providing gestation that does not compromise the pregnant person's bodily autonomy and that this should be translated into law.[777] This section will address these claims and the impact they may have on abortion access. It will start by laying down the challenges that AAPT brings to abortion access, before explicating these challenges

[774] P Hendricks (n 78); B Blackshaw and D Rodger (n 78).
[775] See, Chapter Four.
[776] P Hendricks (n 78); B Blackshaw and D Rodger (n 78).
[777] See also, C Stratman (n 78).

and how they may operate in relation to current abortion regulation. Namely, the threat of restricted access does not stem from the existing law but comes from political forces advocating for more restrictive abortion regulation in place of the current law.[778] The focus solely on AAPT in this section arises from the fact that this technology raises novel questions surrounding the morality of abortion care which are not raised by UTx, given how these technologies differ in the manner of assisting the process of gestation. Further, this section deals with the continuation of lawful and accessible abortions here briefly as there is not scope to defend abortion in full, and such a defence would not be necessary given that the foundation of this thesis is formed on the viewpoint that abortion care is essential healthcare.[779]

5.4.1 The Challenges AAPT Brings to Abortion Discourse

There have recently been bills in the House of Lords that seek to restrict abortion access. One example of this is the Abortion (Disability Equality) Bills 2016-17 and 2017-19. The Abortion (Disability Equality) Bill 2019 seeks to prohibit abortion on the ground of disability, by limiting s 1(1)(d) to 24 weeks. Limiting this section can be criticised as it would have a significant negative impact on pregnant people's decision-making time regarding abortions where their foetus may have an abnormality.[780] Another Bill which seeks to restrict access includes the Abortion (Foetus Protection) Bill 2017-19 which proposed to reduce the threshold for abortion in s 1(1)(a) AA 1967 from 24 weeks to 12 weeks.[781] This notion to further restrict access to abortion by increasing stricter gestational time limits has the potential to gain traction with the advent of AAPT.[782] The anti-abortion lobby, specifically those who attach moral significance to viability,[783] are likely to use AAPT to argue for a reduction in the gestational time limit[784] under which abortion is permitted. The anti-abortion lobby would point to s 1(1)(a) AA 1967 to argue that a fetus would be viable when sustained in AAPT from an earlier point in gestation,[785] or even support calls for the complete impermissibility of abortion care.

[778] EC Romanis, 'Challenging the 'Born Alive' Threshold: Fetal Surgery, Artificial Wombs, and the English Approach to Legal Personhood' (2020) 28 Medical Law Review 93, 117.
[779] EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7).
[780] Robert Brett Taylor and Adelyn LM Wilson, 'UK Abortion Law: Reform Proposals, Private Members' Bills, Devolution and the Role of the Courts' (2019) 82 Modern Law Review 71, 86-8.
[781] The Abortion (Foetus Protection) Bill 2017-19 https://publications.parliament.uk/pa/bills/lbill/2017-2019/0036/18036.pdf accessed 27 December 2023
[782] EC Romanis, 'Challenging the 'Born Alive' Threshold' (n 778) 117.
[783] A Zaitchik, 'Viability and the Morality of Abortion' (1981) 10 Philosophy & Public Affairs 18.
[784] Currently sits at 24 weeks, AA 1967 s 1(1) (a), as amended by Human Fertilisation and Embryology Act 1990 s 37.
[785] EC Romanis, 'Challenging the "Born Alive" Threshold' (n 778) 117.

5.4.2 The Lawful Nature of Abortion Care Following the Advent of AAPT

AAPT may result in abortion care being more difficult to access, as abortion may be subject to more restrictive circumstances than are currently permitted in the AA 1967, or transfer to AAPT may be mandated in place of an abortion.[786] This shift regarding abortion care provision is possible given the potential impact that ectogestation could have on the viability threshold.[787] This is as, if a gestateling is considered born alive,[788] then a fetus able to be transferred to AAPT would be capable of being born alive, and consequently termed viable.[789] Currently, a viable fetus is 'granted [the] limited right not to be aborted.'[790] Therefore, if the viability threshold is reduced with the advent of AAPT this may make abortion care more difficult to access. The provisions under which abortion is available until 24 weeks[791] currently operates on an implicit viability threshold instilled by the AA 1967 (as amended by the HFEA 1990), consequently if the viability threshold is reduced with the advent of AAPT these provisions may in turn be limited to an earlier gestational age.[792] Cohen illustrates this issue by providing the example that,

> While an eighteen-week-old fetus would not be viable under the traditional definition of viability, we may understand it as viable once transfer to an artificial womb was possible; therefore, the state could prohibit … the abortion at eighteen weeks.[793]

Such a restriction to abortion access is harmful to pregnant people, as it infringes on their 'fair decision-making-time when it comes to abortion.'[794] Viability, whether implicitly[795] or not, should not be enshrined in the law,[796] and the current construction of the AA 1967 opens the law up to potential restrictions following the advent of AAPT which may reduce the time frame

[786] Francesca Mesure, 'The Advent of Artificial Wombs – are we Nearing More Restrictive Abortion Laws in England and Wales?' (CELLS Blog, 3 May 2023) https://www.durham.ac.uk/research/institutes-and-centres/ethics-law-life-sciences/about-us/news/cells-blog/the-advent-of-artificial-wombs/ accessed 14 June 2023
[787] See, EC Romanis, 'Artificial Womb Technology and the Frontiers of Human Reproduction' (n 13); EC Romanis, 'Is "Viability" Viable?' (n 425); EC Romanis, 'Abortion and "Artificial Wombs"' (n 276).
[788] See, Births and Deaths Registration Act 1953, s 41; *C v S* [1987] 1 All ER 1230; EC Romanis, 'Challenging the 'Born Alive' Threshold' (n 778) 114.
[789] J Glover, *Causing Death and Saving Lives* (1st edn, Penguin 1990)
[790] EC Romanis, 'Challenging the 'Born Alive' Threshold' (n 778) 114.
[791] AA 1967, s 1(1).
[792] Samantha Halliday and others, 'The (Mis)use of Fetal Viability as the Determinant of Non-Criminal Abortion in the Netherland and England and Wales' [2023] Medical Law Review 1, 2-3.
[793] ibid
[794] HJ Son, 'Artificial Wombs, Frozen Embryos, and Abortion: Reconciling Viability's Doctrinal Ambiguity' (2005) 14 UCLA Women's LJ 213.
[795] S 1 (1)(a) AA 1967, as amended by the HFEA 1990.
[796] EC Romanis, 'Is "Viability" Viable?' (n 425).

of abortions carried out under s 1 (1)(a). This would be problematic as 98% of abortions are performed under s 1 (1)(a), commonly referred to as the 'social ground' for abortion.[797]

A further restriction to abortion access that could arise with the advent of AAPT is mandating transfer to AAPT in place of providing abortion care, based on the reasoning advocated in the bioethics literature, that there is no right to the death of a foetus.[798] However, legislation operating in this manner would be at odds with the AA 1967, and the AA 1967 will continue to operate following the introduction of AAPT as there is no requirement currently in law that termination be carried out in a certain way.[799] Furthermore, pregnant people will continue to be able to rely on s 1 (1)(a) AA 1967, as s 5 AA 1967 (as amended by the HFEA 1990 s 37), stipulates that 'no offence under the Infant Life (Preservation) Act shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act'.[800] Therefore, it would be immaterial that the fetus would be considered capable of being born alive when the abortion takes place, as long as the termination is carried out in accordance with the provisions of the AA 1967. As the AA 1967 will continue to operate, mandated transfer to AAPT as an alternative to abortion care would require the AA 1967 be repealed. The following section details why amendments to the law resulting in mandated fetal transfer would be extremely unlikely in England and Wales.

5.4.3 The Accessibility of Abortions Following the Advent of AAPT

Not only will abortion care remain lawful, but it will likely also remain accessible following the advent of AAPT.[801] This is as there is strong abortion care infrastructure in place in England and Wales,[802] with many individuals and organisations committed to providing safe abortion care for pregnant people.[803]

Furthermore, mandating AAPT transfer in place of abortion care would be extremely problematic for a number of reasons. Firstly, the procedures themselves are different in nature and would operate under different time frames.[804] In 2021, 89% of abortions were early medical

[797] Department of Health, 'Abortion Statistics for England and Wales: 2020' (*Department of Health*, Oct 2021). https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2020/abortion-statistics-england-and-wales-2020 accessed 27 December 2023
[798] P Hendricks (n 78); B Blackshaw and D Rodger (n 78).
[799] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276) 9.
[800] Abortion Act 1967, s 5.
[801] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276) 11.
[802] ibid
[803] Such as the BPAS.
[804] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276); A Alghrani, 'Regulating the Reproductive Revolution' (n 596).

abortions (EMAs) performed under 10 weeks.[805] EMAs are an extremely safe procedure[806] carried out by taking two tablets (mifepristone and misoprostol), which can be administered at the home of the pregnant person.[807] By contrast, transfer to AAPT would require delivery by caesarean section,[808] between 18 and 24 weeks gestational age[809], given that a fetus must reach a certain point of development to withstand a caesarean section procedure, and the current AAPT design is only to support fetal development at this stage.[810] To require an individual to remain pregnant for an extended period of time and go through an invasive procedure to terminate the pregnancy, as opposed to a non-invasive EMA that can be accessed from as soon as the pregnant person discovers they are pregnant, infringes on bodily autonomy and the right to self-determination. Secondly, practically it would not be feasible to mandate fetal transfer in place of abortion. In 2021, 214,869 abortions were reported in England and Wales.[811] To gestate over 200,000 fetuses in AAPT each year,[812] would be unfeasible due to the likely cost of chambers[813] and the impact on resources for children put up for adoption and into foster care in England and Wales.[814]

Finally, requiring transfer to AAPT in place of abortion care disregards the fact that pregnant people may seek an abortion in order to 'avoid genetic parenthood or a relationship with another progenitor.'[815] Tribe reinforces how important these rights are as he notes having 'a child alive somewhere in the world … to whom one is a stranger is deeply upsetting to many'.[816] It is apparent that abortion care remains a necessary and essential form of healthcare alongside the advent of AAPT,[817] to render abortion care unlawful in place of fetal transfer

[805] Office for Health, 'Abortion Statistics, England and Wales: 2021' (n 37)
[806] EG Raymond and others, 'First-trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review' (2013) 87 Contraception 26; MJ Chen and MD Creinin, 'Mifepristone with Buccal Misoprostol for Medical Abortion: A Systematic Review' (2015) 126 Obstetrics & Gynecology 12.
[807] Abortion Act 1967, s.1(3D) as amended by the Health and Care Act 2022, s.178(4).
[808] JH Schultz (n 23) 886.
[809] Given research on when doctors would be comfortable carrying out c-section procedures, the risks associated with early c-section procedures, alongside the likelihood of increased research into earlier caesarean sections and the potential for doctor outlooks changing if neonatal care is improved. See, Di Stefano and others (n 417); M Brazier and others, 'Critical Care Decisions in Fetal and Neonatal Medicine: Ethical Issues' (n 419).
[810] Max Kozlov (n 3).
[811]Office for Health, 'Abortion Statistics, England and Wales: 2021' (n 37).
[812] Francesca Mesure, 'Artificial Amnion and Placenta Technology: Will it Cause the Collapse of the Viability Threshold, and what will this mean for Abortion Jurisprudence?' (LLB thesis, University of Durham 2022)
[813] C Horn, 'Ectogenesis at Home? Artificial Wombs and Access to Care' (n 345).
[814] Francesca Mesure, 'Artificial Amnion and Placenta Technology' (n 812).
[815] C Horn, 'Gestation Beyond Mother Machine: Legal Frameworks for Artificial Wombs, Abortion and Care' (PhD thesis, Birkbeck University of London 2020) 101, 109.
[816] L Tribe, *Abortion: The Clash of Absolutes* (Norton 1992) 223.
[817] C Horn, 'Gestation Beyond Mother Machine' (n 815).

greatly restricts pregnant people's bodily autonomy and right to self-determination, and would likely be very negatively received by society.

Alongside restrictions which may infringe on the lawful incidence of abortion, arise potential restrictions to access if transfer is a possibility. Namely, conscientious objection to abortion care may increase among providers if the fetus could survive ex utero.[818] Di Stefano found that 41% of doctors agreed that the advent of AAPT would influence their views on abortion performed at 22 weeks.[819] This could have a significant impact, particularly on the accessibility of late term abortions. However, given that the majority of abortions are EMAs (performed under 10 weeks),[820] the advent of AAPT should not have a drastic impact on abortion care providers. Furthermore, it is unlikely that the force of anti-abortion lobbyists utilising AAPT to argue for restricted abortion rights would overcome the strong abortion care infrastructure in England and Wales.[821]

Considering the legal infrastructure and practical effects of reducing abortion access, abortion care will likely remain lawful and accessible following the introduction of AAPT. This leaves space for consideration of whether the advent of AAPT might improve abortion access. It is also necessary to consider in this thesis how UTx may interact with altered discourse surrounding abortion law. Before addressing these questions, it is necessary to understand the contemporary context of calls for abortion law reform, so that an informed analysis can be made regarding how AAPT and UTx may impact on liberalisation or decriminalisation.

Movement Towards Liberalisation and Decriminalisation

5.5 Contemporary Calls to Liberalise and Decriminalise Abortion Regulation

Calls to decriminalise abortion regulation in the House of Commons have been led by Labour MP Dame Diana Johnson. In 2017, Dame Diana Johnson introduced the Reproductive Health (Access to Terminations) Bill 2016-2017.[822] This Bill sought to 'regulate the termination of pregnancies by medical practitioners and to repeal certain criminal offences relating to such

[818] EC Romanis, 'Challenging the 'Born Alive' Threshold' (n 778) 114.
[819] Di Stefano and others (n 417).
[820] Office for Health, 'Abortion Statistics, England and Wales: 2021' (n 37).
[821] See that of the BPAS.
[822] HC Deb 13 March 2017 vol 623, cols 26-33

terminations.'[823] Although this Bill did not progress, Johnson continued her campaign and in the House of Commons 50th anniversary debate on the AA 1967 she called for the full decriminalisation of abortion.[824] She suggested that ss 58 and 59 OAPA 1861 be repealed so as to remove the criminal element of abortion prior to 24 weeks and render s 1(1)(a) AA 1967 redundant.[825] She also sought reform of the role of medical professionals in the abortion decision-making to increase patient autonomy.[826] Taylor and Wilson stated at the time that there was 'no realistic chance of the Bill being enacted into law'[827] due to deficiencies in the Private Members' Bill process. The House of Commons Standing Order 14(1) states that '[s]ave as provided in this order, government business shall have precedence at every sitting.'[828] This means that 'Government Bills' introduced by government Ministers have priority over Private Members' Bills introduced by backbenchers, and the government has been hesitant to introduces Bills regarding abortion given its contentious nature.[829] Consequently, contentious Bills are often introduced by backbenchers and securing their success is 'highly challenging.'[830] Therefore, despite Dame Johnson's efforts, and two successful votes to bring Bills to decriminalise abortion on 13 March 2017 and 23 October 2018,[831] abortion remains a criminally regulated offence in England and Wales.[832] However, such campaigns continue to raise awareness, and reforming abortion law could be integrated into another Bill.[833]

5.5.1 Arguments for the Liberalisation and Decriminalisation of Abortion Regulation

Although attempts to decriminalise abortion in England and Wales have been unsuccessful thus far, there remain pertinent arguments as to why decriminalisation should be pursued. This section will present that the current law regulating abortion is outdated,[834] does not permit autonomous decision-making,[835] and its construction as essential healthcare[836] is at odds with criminal regulation.

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[823] ibid col 26.
[824] HC Deb 6 November 2017, vol 630
[825] ibid
[826] ibid
[827] Robert Brett Taylor and Adelyn LM Wilson (n 780) 83.
[828] House of Commons Standing Orders (2018) Arrangement and Timing of Public and Private Business 14 (1) https://publications.parliament.uk/pa/cm201719/cmstords/1020/body.html accessed 27 December 2023
[829] Robert Brett Taylor and Adelyn LM Wilson (n 780) 77.
[830] ibid 76.
[831] HC Deb 23 July 2019, vol 663
[832] By virtue of the OAPA 1861, ILPA 1929 and AA 1967.
[833] See, HFEA 1990 which reformed abortion law, and Dr Sarah Wollaston suggesting this approach in HC Deb 5 June 2018 vol 642 col 2226
[834] S Sheldon, 'The Decriminalisation of Abortion' (n 208).
[835] E Jackson, 'Abortion, Autonomy and Prenatal Diagnosis' (2000) 9 Social & Legal Studies 463.
[836] EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7).

Abortion regulation is outdated when considering two important matters of context. First, the construction of the familial ideal that the law was influenced by has shifted.[837] Second, the significant advancements in medical technology since the AA was passed in 1967.[838] Chapter One detailed how abortion regulation was influenced by the notion that women were destined to be mothers.[839] Somers has reported that childless women believed that they were viewed negatively on a variety of measures (seen as selfish, abnormal, immature, unfortunate, unnatural, unhappily married, irresponsible, maladjusted, unfulfilled, having a dislike of children). [840] However, this negative view would be often held by others.[841] During a 1996 study into feminine identity and the social role of women, childless women explicitly rejected the view that they were less feminine because they did not have children, with one participant remarking, 'I don't feel any less feminine because I am not a mother. I see women as women, not as mothers. I do not see the two bound up together, although lots of people do'[842] Although the incidence of childlessness has 'remained fairly consistent since the late 1950s',[843] 'the standardised mean age of a mother has been increasing since the mid 1970s and reached a record high of 30.7 years in 2019 and 2020.'[844] Individuals are delaying childbearing and motherhood, which is largely attributed to not only the rise of effective contraception, but also value changes and increases in female education and labour market participation.[845] Consequently, women are no longer viewed solely to be destined for motherhood. This renders the construction of the OAPA 1861 and consequent reliance on the AA 1967 outdated when considering that its construction was informed in part by this perception of motherhood, and suggests it is out of touch with current societal expectations and experiences.[846]

The development of the EMA can also be used to demonstrate that abortion regulation is outdated.[847] The AA 1967 'was not designed with medical abortions in mind; it was passed

[837] Melinda Mills and others 'Why do People Postpone Parenthood? Reasons and Social Policy Incentives' (2011) 17 Human Reproduction Update 848-860.
[838] W Smith, 'Great Britain Second Country to Allow Use of RU-486' (1991) 20 Planned Parenthood in Europe
[839] S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91) 3.
[840] Marsha D Somers, 'A Comparison of Voluntarily Childfree Adults and Parents' (1999) 55 Journal of Marriage and the Family 643-650.
[841] Rosemary Gillespie, 'Voluntary Childness in the United Kingdom' (1999) 7 Reproductive Health Matters 43, 50.
[842] ibid
[843] ONS, Childbearing for Women Born in Different Years, England and Wales: 2020' (*ONS*, 27 January 2022) https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/conceptionandfertilityrates/bulletins/childbearingforwomenbornindifferentyearsenglandandwales/2020#:~:text=The%20lowest%20level%20of%20childlessness,in%201975%20having%20no%20children. accessed 27 December 2023
[844] ibid
[845] Melinda Mills (n 837).
[846] S Sheldon, 'The Decriminalisation of Abortion' (n 208).
[847] EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7).

when the overwhelming majority of abortions were carried out through surgical techniques.'[848] It was not until 1991 that mifepristone was licensed for use in the UK,[849] to be used in accordance with the Medicines Act 1968.[850] Although mifepristone and misoprostol are not licenced for reproductive health uses,[851] they are the recognised and approved drugs of choice for the administration of a medical abortion in the UK. Since the introduction of these drugs, there has been a shift away from surgical abortions towards medical abortions, with 86% of terminations from January to June 2022 being EMAs.[852] England has also seen a shift in practice towards telemedical abortions. In 2018 the home use of misoprostol, the second pill taken to induce an abortion was legalised in England.[853] Home use of mifepristone was then legalised in 2020, during the covid-19 pandemic[854] to ensure abortion care was accessible throughout lockdown. In 2022, this development was made permanent with the introduction of s 1(3D) to the AA 1967.[855] The new provision of at home abortion administration can be considered 'progressive change'[856] enacted in an attempt to modernise an outdated piece of legislation. However, despite this step, the legislation remains overwhelmingly outdated,[857] as it assumes abortion is dangerous.[858] The legislation does not reflect contemporary evidence that abortion medications are very safe[859] and EMAs can be self-managed.[860]

[848] HC Deb 6 November 2017, vol 630
[849] W Smith (n 838).
[850] HL Dev 25 July 1991 vol 531 col 880
[851] MA Friedman, 'Manufacturer's Warning Regarding Unapproved Uses of Misoprostol' (2001) 344 The New England Journal of Medicine 61; NHS, 'Information about the Administration of Mifepristone (Mifegyne)' (*NHS*, 3rd May 2022) https://www.hey.nhs.uk/patient-leaflet/information-about-the-administration-of-mifepristone-mifegyne/ accessed 27 December 2023
[852] Office for Health, 'Abortion Statistics for England and Wales: January to June 2022' (*Gov UK*,, 22 June 2023) https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022 accessed 5 July 2023
[853] Department of Health and Social Care, 'Government Confirms Plans to Approve the Home-use of Early Abortion Pills' (*Gov UK*, 25 August 2018) https://www.gov.uk/government/news/government-confirms-plans-to-approve-the-home-use-of-early-abortion-pills accessed 27 December 2023; JA Parsons, '2017-19 Governmental Decisions to Allow Home Use of Misoprostol for Early Medical Abortion in the UK' (2020) 124 Health Policy 679-983.
[854] Jordan A Parsons and Elizabeth Chloe Romanis, '2020 Developments in the Provision of Early Medical Abortion by Telemedicine in the UK' (n 245) 17-21.
[855] Abortion Act 1967, s.1(3D) as amended by the Health and Care Act 2022, s.178(4); see, M Oppenheim, 'A Vote for Gender Equality' (n 249); JA Parsons and EC Romanis, *Early Medical Abortion, Equality of Access and the Telemedical Imperative* (n 251)
[856] EC Romanis, 'Abortion Access and the Benefits and Limitations of Abortion-*Permissive* Legal Frameworks' (n 125) 378.
[857] S Sheldon, 'The Decriminalisation of Abortion' (n 208).
[858] Note abortion care was considered risky in the 1960s. ibid
[859] EG Raymond and others, 'First-trimester Medical Abortion with Mifepristone 200 mg and Misoprostol' (n 806); MJ Chen and MD Creinin, 'Mifepristone with Buccal Misoprostol for Medical Abortion' (n 806).
[860] JA Parsons and EC Romanis, *Early Medical Abortion, Equality of Access and the Telemedical Imperative* (n 251).

Calls for liberalising change to the AA 1967 also stem from the fact that the legislation does not permit autonomous decision making,[861] due to the requirement for two registered medical practitioners to make the decision of whether the pregnancy can be terminated.[862] This requirement infringes on pregnant people's bodily autonomy,[863] and is outdated when considering how modern medicine seeks to respect patient autonomy by facilitating shared decision-making and the right to freely make choices surrounding medical care.[864] S 1 (1) AA 1967, does not adopt a shared decision-making process and pregnant people are not afforded the right to make the abortion decision, and therefore is 'wholly at odds with modern medical practice.'[865] There are strong recommendations for nurses and midwifes to be permitted to authorise abortions, as they are in contact with the patient.[866] Going a step further, in a survey of 772 healthcare professionals, 90% believed that the pregnant person should be allowed make the abortion decision.[867] Furthermore, a large percentage of the general public believe this to be the current legal position. In a poll conducted by the International Confederation of Midwives in 2017, 69% of the 2,002 people surveyed believed that abortion was currently 'completely legal if the woman requests it', and only 13% correctly identified the legal position in England and Wales that abortion is a 'criminal act unless certain strict conditions are met, outside of which you can face life in prison'.[868] To reflect these views and bring abortion legislation in line with modern medicine it is necessary that abortion regulation be liberalised, and the two-doctor requirement be amended.

Further to liberalisation, there are also pertinent arguments for the decriminalisation of abortion. Recognition of abortion as essential healthcare[869] is at odds with criminal regulation and therefore, the criminal offence should be repealed. This position is supported by international human rights organisations[870] as well as the World Health Organization, who in

[861] E Jackson, 'Abortion, Autonomy and Prenatal Diagnosis' (n 835).
[862] AA 1967, s 1(1).
[863] For a more detailed discussion of s 1(1) AA 1967 and the two-doctor requirement see chapter Two.
[864] Patricia A Lohr and others, 'How Would Decriminalisation Affect Women's Health?' (n 209).
[865] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' in Sally Sheldon and Kaye Wellings (eds) *Decriminalising Abortion in the UK What Would it Mean?* (Policy Press 2020) 57.
[866] K Wellings, 'Abortion Law Should Change to Reflect Current Practice, Study Suggests' (*London School of Hygiene and Tropical Medicine*, 7 March 2023) https://www.lshtm.ac.uk/newsevents/news/2023/abortion-law-should-change-reflect-current-practice-study-suggests accessed 4 June 2023
[867] Matthew Limb, 'The Two Doctors Rule for Authorising Abortion Should be Scrapped, Recommends Review' (2023) 380 BMJ 563.
[868] ICM, 'Abortion Documentary Survey' (n 768).
[869] EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7).
[870] Committee on the Elimination of Discrimination against Women, 'Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Report of the Committee on the Elimination of Discrimination against Women' CEDAW/C/OP-8/GBR/1

2022 made strong recommendations that abortion be decriminalised.[871] Furthermore, healthcare professionals have shown their support for decriminalisation, demonstrating that they viewed abortion as a valuable and essential service when interviewed.[872] The Royal College of Obstetricians and Gynaecologists (RCOG),[873] the British Medical Association (BMA),[874] the Royal College of Midwives (RCM),[875] and the Royal College of General Practitioners (RCGP)[876] have also all shown their support for abortion care as an essential healthcare procedure. The notion that abortion care should be legal if requested was also found in the British Social Attitudes survey conducted by the National Centre for Social Research 2015, the most authoritative source of abortion data in Britain.[877] Here, 70% of participants thought abortion should be permitted if the woman does not want the child from that pregnancy.[878] More liberal attitudes towards abortion may be linked to a decline in religious identity in the West,[879] and the view that abortion is essential healthcare could stem from the increase in EMAs, with most abortions happening in the first trimester.[880] These surveys show there is support for the view that abortion is a form of healthcare and consequently decriminalisation should be sought.

However, this attitude is not reflected by the incidence of prosecutions for the unlawful procurement of a miscarriage seen recently in England and Wales, with four prosecutions occurring in 2023.[881] In the summer of 2023, 45-year-old Carla Foster was prosecuted for unlawfully procuring a miscarriage when she was between 32-34 weeks pregnant. At first instance Foster was sentenced to 28 months imprisonment,[882] although this was subsequently

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[871] World Health Organisation, 'Abortion Care Guideline' (*WHO)* https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf?sequence=1 accessed 31 Oct 2023
[872] Karen Maxwell and others, 'Normalising Abortion: What Role can Health Professionals Play?' (2021) 47 BMJ Sexual & Reproductive Health 32, 35.
[873] Royal College of Obstetricians and Gynaecologists, 'RCOG Backs Decriminalisation of Abortion' (*Royal College of Obstetricians and Gynaecologists*, September 2017) RCOG backs decriminalisation of abortion
[874] British Medical Association, 'The Law and Ethics of Abortion' (*BMA*, July 2021) <The law and ethics of abortion (bma.org.uk)> accessed 1 June 2023
[875] 'Position Statement: Abortion' (*The Royal College of Midwives*, May 2016) abortion-statement.pdf (rcm.org.uk) accessed 31 Oct 2023
[876] Royal College of General Practitioners, 'RCGP to Support Decriminalisation of Abortion' (*Royal College of General Practitioners*, February 2019) RCGP to support decriminalisation of abortion accessed 31 Oct 2023
[877] Ann Marie Gray and Kaye Wellings, 'Is Public Opinion in Support of Decriminalisation' in Sally Sheldon and Kaye Wellings (eds), *Decriminalising Abortion in the UK What Would it Mean?* (Policy Press 2020) 17, 23.
[878] BSA (British Social Attitudes Survey), 'Personal Relationships: Abortion' (*BSA*, 30th edn, 2015) https://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-30/personal-relationships/abortion.aspx accessed 31 October 2023
[879] Ann Marie Gray and Kaye Wellings, 'Is Public Opinion in Support of Decriminalisation' (n 877) 33.
[880] Office for Health, 'Abortion Statistics for England and Wales: January to June 2022' (n 852).
[881] Hannah Al-Othman, 'Fourth Abortion Charge in Eight Months' (n 9).
[882] *R v Foster*, Sentencing Remarks (Crown Court Stoke on Trent, 12 June 2023) https://www.judiciary.uk/wp-content/uploads/2023/06/R-v.-Foster-sentencing-remarks-12.6.23.pdf accessed 31 Oct 2023

reduced to 14 months and suspended by the Court of Appeal.[883] Further to this case, another woman, Bethany Cox, is currently awaiting a trial due to start on the 15th January 2024 on charges under s 58 OAPA 1861, for procuring and administering a poison to procure a miscarriage.[884] An unnamed 25 year old was also charged under s 58 OAPA 1861 in 2022, but the charges were dropped in December almost one year after she gave birth as prosecution was deemed not to be in the public interest.[885] Romanis presents that this increase in prosecutions has arisen following the legalisation of telemedical abortions which 'increases the likelihood of people inadvertently falling foul of the criminal law.'[886] However, such cases should not be considered criminal in nature and should not come before the courts at all.[887] Notably, even if charges are dropped or suspended those prosecuted are put through the immeasurable distress of prosecution following the abortion experience itself which pregnant people are likely to find traumatic, regardless of whether it is their intention to procure a miscarriage or not.[888] The willingness to prosecute individuals with harsh imprisonment sentences exemplifies the 'urgency of decriminalisation,'[889] to prevent unnecessary prosecutions. This thesis has already demonstrated that prosecutions of this nature are not in the public interest and that abortion care should not be regulated by the criminal law, an argument that is only made more pertinent given the incidence of recent prosecutions.

5.5.2 The Impact of Decriminalisation

Discussions surrounding the decriminalisation of abortion have been met with concern that decriminalisation may lead to the unsafe and potentially unethical provision of abortion, as raised by Caulfield in the 2017 House of Commons debate regarding access to terminations.[890] However, this section seeks to dispel those concerns by looking at the likely impact of decriminalisation on the regulation and provision of abortion care. The first consideration is the regulation of abortion following decriminalisation.

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[883] *R v Carla Foster* [2023] EWCA Crim 1196.
[884] Mark Brown, 'Woman in Teesside Accused of Carrying out own Abortion to Appear before Judge' *The Guardian* (13 August 2023) https://www.theguardian.com/uk-news/2023/aug/13/woman-teesside-accused-abortion-poison-judge-court accessed 15 December 2023
[885] Hannah AL-Othman and Megan Agnew, 'Judge "Flabbergasted" at Prosecution of Woman who took Abortion Pills' *The Times* (11 December 2022) https://www.thetimes.co.uk/article/judge-flabbergasted-at-prosecution-of-woman-who-took-abortion-pills-l57qn6zqf accessed 15 December 2023
[886] EC Romanis, '*R v Foster'* (n 10).
[887] See earlier arguments presented for decriminalisation.
[888] E Milne, *Criminal Justice Responses to Maternal Filicide* (n 110) 128.
[889] EC Romanis, '*R v Foster'* (n 10) 7.
[890] HC Deb 13 March 2017, Vol 623

> All healthcare services in England and Wales are subject to significant and detailed regulation – including general requirements of civil and criminal law, licensing requirements and professional norms backed by disciplinary sanction – which foregrounds a concern with ensuring patient safety and promoting best practice.[891]

Consequently, even if criminal prohibitions against abortion were repealed, abortion services would continue to be subject to healthcare regulation; decriminalisation would not mean deregulation.[892] Following decriminalisation, abortion providers would continue to be regulated as per the Care Quality Commission (Registration) Regulations 2009 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The healthcare provided by abortion service providers would also continue to be regulated by the General Medical Council for doctors,[893] and the Nursing and Midwifery Council which regulates the care provided by nurses, midwives, and nursing associates.[894] Decriminalisation would not open the doors to medically unqualified providers administering abortion care.[895] Consequently, the standard of care provided regarding abortions would be maintained despite decriminalisation. Furthermore, abortion care would not be completely outside of the scope of the criminal law. Pregnant people would be protected by the civil and criminal law from negligence as is applicable for all other health services.[896] There is also 'plenty of scope within the current criminal law to deal with cases where a defendant is seeking to terminate a victim's pregnancy without her consent'.[897] This is as decriminalisation would mean that abortion care would be subject to the process of informed consent.[898] Consent can only be given by someone with

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[891] BMA, *How will Abortion be Regulated in the United Kingdom if the Criminal Sanctions for Abortion are Removed?* (London BMA, 2019)
[892] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 57
[893] See the Medical Act 1983 and GMC, '0-18 Years: Guidance for all Doctors' (London GMC, 2007) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/0-18-years accessed 27 December 2023; 'Decision Making and Consent' (London GMC, 2008) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/decision-making-and-consent accessed 27 December 2023; 'Protecting Children and Young People: The responsibility of all Doctors' (London GMC, 2012) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/protecting-children-and-young-people accessed 27 December 2023; 'Good Medical Practice' (London, GMC, 2013a) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice# accessed 27 December 2023; 'Personal Beliefs and Medical Practice' (GMC 2013b).
[894] Nursing and Midwifery Council, 'The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates' (*London NMC*, 2018) https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf accessed 27 December 2023
[895] See, Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 72-74.
[896] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582; *Bolitho v City and Hackney Health Authority* [1998] AC 232; *R v Adomako* [1994] UKHL 6; *R v Misra* [2004] EWCA Crim 2375; *Montgomery v Lanarkshire Health Board* [2015] UKSC 11.
[897] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 71.
[898] ibid 62-63.

capacity, who is acting voluntarily and with sufficient information on the procedure.[899] If ss 58 and 59 OAPA 1861 were to be repealed, non-consensual termination of a pregnancy would still be regulated under, 'the general offences of assault occasioning actual bodily harm',[900] or causing or inflicting grievous bodily harm.[901] Sections 23 and 24 OAPA 1861 would also apply regarding the administration of poison to cause a miscarriage.[902] If abortion care is to be decriminalised in England and Wales, it would continue to be heavily regulated as a healthcare procedure, ensuring the high standard of abortion care is maintained.

Furthermore, the decriminalisation of abortion would not lead to an increase in unsafe abortion practice, instead improving pregnant people's autonomy and health.[903] Although the AA 1967 has caused clandestine abortions to become almost obsolete,[904] abortion care can still be unsafe in England and Wales. For example, in 2010 Catherine Furey passed away when trying to procure a miscarriage by ingesting industrial strength vinegar.[905] Decriminalisation of abortion would likely mitigate the stigma surrounding abortion[906] and consequently individuals may be less likely to seek unsafe methods of procuring an abortion, and alleviate the harmful effects that abortion has on health.[907] Furthermore, the provision of care may be improved as decriminalisation, specifically the removal of the two doctor requirement to authorise abortion care 'would allow use of much better staffing configurations, which would avoid current delays and increase patient satisfaction.'[908] Although the AA 1967 was successful in reducing the harm suffered by patients seeking abortion and reducing mortality following its enactment,[909] decriminalisation would further these health benefits by improving bodily autonomy and

[899] Marc Stauch, 'Consent in Medical Law' (1998) 7 British Journal of Nursing 84.
[900] OAPA 1861, s 47.
[901] OAPA 1861, ss 18, 20.
[902] OAPA 1861, ss 23, 24.
[903] Sally Sheldon and Kaye Wellings (eds), *Decriminalising Abortion in the UK: What Would it Mean?* (n 107) 3.
[904] Patricia A Lohr and others, 'How would Decriminalisation affect Women's Health?' (n 209) 39.
[905] C Urquhart, 'Woman Accidentally Kills Herself after Drinking Vinegar to Abort Pregnancy', *The Guardian*, (6 March 2014) https://www.theguardian.com/uk-news/2014/mar/06/woman-accidentally-kills-herself-drinking-vinegar-abort-pregnancy accessed 27 December 2023
[906] Sandra Salomé Fernández Vázquez and Josefina Brown, 'From Stigma to Pride: Health Professionals and Abortion Policies in the Metropolitan Area of Buenos Aires' (2019) 27 Sexual and Reproductive Health Matters 65-74; Rebecca Cook, 'Stigmatized Meanings of Criminal Abortion Law' in Rebecca Cook, Joanna Erdman, and Bernard Dickens (eds), Abortion Law in Transnational Perspective (University of Philadelphia Press 2014) 347-70.
[907] A Grover, *Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health A/66/254* (2011); M Potts and others, *Abortion* (Cambridge University Press 1977)
[908] Patricia A Lohr and others, 'How would Decriminalisation affect Women's Health?' (n 209) 52.
[909] Decrease in abortion mortality following the introduction of the AA 1967. See, G Lewis, 'The Confidential Enquiry into Maternal and Child Health (CEMACH) Saving Mothers' Lives: reviewing maternal deaths to make motherhood safer 2003–2005. The Seventh Report of the Confidential Enquiries into Maternal Deaths in the UK' (London, CEMACH 2007)

reducing health risks[910] associated with the current requirements that perpetuate stigma,[911] restrict who can carry out abortion care[912] and cause potential delays to treatment.[913]

The decriminalisation of abortion care is also unlikely to impact on the provision of abortion care in England and Wales. This can be highlighted by looking to the provision of abortion care in countries that have decriminalised abortion. For example, in Canada abortion was fully decriminalised[914] with the ruling of *R v Morgentaler* [1988].[915] Following decriminalisation, 'the abortion rate has not risen and remains lower than the current rate in England and Wales.'[916] It also did not impact on the timing of abortions, as abortions beyond 20 weeks gestational age accounted for 0.6% of all abortions in Canada, with over 90% occurring in the first trimester, these statistics remained consistent with those prior to decriminalisation.[917] Furthermore, decriminalisation in Canada did not impact on the incidence of sex-selective abortion,[918] and 'abortion safety has steadily improved'.[919] The provision of care has been 'safely and ethically regulated'[920] by healthcare regulations, which would also be the case in England and Wales.[921] When considering the impact of decriminalisation, Victoria, Australia can also provide insight, as abortion was partially decriminalised there in 2008.[922] The partial decriminalisation of abortion in Victoria is not suggested to have had any impact on 'the abortion rate, the proportion of abortions performed at later gestations, or the use of sex-selective abortion.'[923] Kaye Wellings has presented that 'ultimately, it seems likely that Britain will follow other countries – Ireland, Northern Ireland, Sweden, Australia and Canada',[924] with the potential for England and Wales to entirely decriminalise abortion.

[910] See, Patricia A Lohr and others, 'How would Decriminalisation affect Women's Health?' (n 209) 37-56.
[911] Sandra Salomé Fernández Vázquez and Josefina Brown (n 906); Rebecca Cook (n 906).
[912] AA 1967 s 1.
[913] Patricia A Lohr and others, 'How would Decriminalisation affect Women's Health?' (n 209) 52.
[914] See, ML McConnell, 'Abortion and Human Rights: An Important Canadian Decision' (1989) 38 The International and Comparative Law Quarterly 905-913.
[915] *R v Morgentaler* (1988) 1 SCR 30.
[916] Brooke Ronald Johnson Jr and others (n 743) 104.
[917] Canadian Institute of Health Information, 'Therapeutic Abortion Survey 2010: Notes on Data Quality' (*Canadian Institute of Health Information*, 2012); 'Induced Abortions Performed in Canada in 2012' (*Canadian Institute of Health Information*, 2014); 'Induced Abortions Performed in Canada in 2016' (*Canadian Institute of Health Information*, 2019)
[918] ML Urquia and others, 'Variations in Male-Female Infant Ratios Among Births to Canadian- and Indian-Born Mothers, 1990-2011: A Population-Based Register Study' (2016) 4 Canadian Medical Association Journal Open E116-E123.
[919] Brooke Ronald Johnson Jr and others (n 743) 112.
[920] ibid 114.
[921] See, section 4.5.
[922] Abortion Law Reform Act 2008, s 4.
[923] Brooke Ronald Johnson Jr and others (n 743) 124.
[924] K Wellings, 'Abortion Law Should Change to Reflect Current Practice, Study Suggests' (n 866).

Following these case studies in Canada and Australia it appears unlikely that decriminalisation would impact of the incidence, timing, or safety of abortion care in England and Wales.

This section has sought to alleviate potential concerns regarding the potential decriminalisation of abortion. Although abortion regulation would shift from being governed by criminal sanctions to being regulated by the health care system, it would continue to be tightly regulated by healthcare provisions.[925] This means abortion care would still be safe, and decriminalisation would be unlikely to impact on the incidence and provision of abortion care.[926] Furthermore, decriminalisation could have a positive impact as it would likely 'eliminate fears and stigma associated with potential criminal sanctions while enhancing individuals', autonomy, equality, dignity and privacy.'[927] There are strong arguments for pursuing the decriminalisation of abortion care, and this chapter will now turn to assess how novel assisted gestative technologies AAPT and UTx could bolster this movement towards decriminalisation.

How AAPT and UTx may Assist the Movement Towards Decriminalisation

5.6 Abortion as an Equality Issue: Why AAPT and UTx could Trigger Reconceptualisation

The abortion procedure currently only directly impacts on individuals AFAB, given the biological fact that only those born with a functioning uterus can gestate. However, it is not just biological sex that is inextricably linked to abortion discourse. This thesis has presented, by drawing on historical analysis, that gender-based judgements are able to animate abortion restrictions and have informed the criminalisation of abortion.[928] The influence of gender on the construction of abortion regulation 'calls into question the "benign" justifications conventionally offered for fetal-protective regulation.'[929] Despite this, the criminalisation of abortion persists, and this section seeks to unpack whether this could be challenged by AAPT

[925] See, Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865).
[926] See, Brooke Ronald Johnson Jr and others (n 743).
[927] ibid 125.
[928] Reva B Siegel, 'Abortion as a Sex Equality Right: Its Basis in Feminist Theory' in MA Fineman and I Karpin (eds) *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood'* (New York, Columbia University Press 1995) 43, 68.
[929] ibid

and UTx, given their capability to detach gestation from biological sex,[930] and move towards gestation that is no longer commonly bound to gender. This section begins by assessing how gestation detached from biological sex might influence abortion discourse, before turning to consider how AAPT and UTx may support calls for the decriminalisation of abortion.

5.6.1 The Impact of AAPT and UTx on Abortion Discourse

Abortion discourse is likely to be impacted by the diversification of those who have an interest in the abortion decision. Given the capacity for AAPT and UTx to detach gestation from biological sex assigned at birth,[931] it is necessary to consider the interests that individuals AMAB have when it comes to abortion decision making. Providing new avenues into who or what can gestate has the potential to bring those AMAB into the gestative sphere.[932] Raymond has noted that the introduction of 'collaborative' reproductive technologies, such as IVF and surrogacy, have already heightened the interests of putative fathers regarding the abortion decision.[933] Although non-gestating genetic progenitors remain 'legally impotent',[934] Fox notes that the cases of *Paton v BPAS,*[935] and *C v S,*[936] do not rule out claims of putative fathers in the context of abortion decision making.[937] However, currently, a claim made by a third-party would only succeed if the abortion decision no longer rested on medical judgement, as English law, while acknowledging the vested interest that the pregnant person has in the decision, only affords the legal right of abortion decision making to the doctor.[938] The distinction between the interest afforded to those AMAB and those AFAB is currently justifiable, given the fact that they are differently situated within the abortion sphere; it is only individuals AFAB that can have an abortion.[939] However, as AAPT and UTx have the capacity to detach gestation for assigned biological sex, this may alter the allocation of interests regarding abortion decision-making.

In detaching gestation from assigned biological sex, AAPT and UTx have the potential to alter how the interests of those AFAB and those AMAB are framed within abortion

[930] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[931] ibid
[932] ibid
[933] J Raymond, *Women as Wombs* (San Francisco, Harper Collins 1993)
[934] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276) 2.
[935] *Paton v BPAS* [1978] 2 All ER 987.
[936] *C v S* [1987] 1 All ER 1230.
[937] Marie Fox, 'Abortion Decision-making – Taking Men's Needs Seriously' in Ellie Lee (ed) *Abortion Law and Politics Today* (Macmillan Press, 1998) 198, 204.
[938] AA 1967, s 1(1).
[939] Marie Fox, 'Abortion Decision-making – Taking Men's Needs Seriously' (n 937) 209.

discourse. AAPT will detach gestation from assigned biological sex by permitting gestation ex utero in an ectogenic chamber,[940] and UTx will allow those born without a functioning uterus to gestate.[941] Providing new avenues into who or what can provide gestation has the potential to bring those AMAB into the gestative sphere.[942] Transferring gestative labour to AAPT will permit people AFAB to have biological offspring without carrying out a full term of gestative labour, equalising (either partially or completely)[943] the reproductive process currently experienced by those AMAB.[944] UTx also has the potential to bring individuals AMAB into the gestative sphere, by enabling gestation in individuals AMAB, allowing them to gestate as people AFAB currently do.[945]

The advent of AAPT, which gives rise to the possible 'fundamental equalisation of men's and women's reproductive roles'[946] raises the question of whether the abortion decision should become one for both genetic progenitors.[947] Currently, non-gestating genetic progenitors are 'legally impotent.'[948] However, this position is contested by Räsänen and Brassington who consider the collective nature of reproduction to suggest that the abortion decision should take into account the non-gestating genetic progenitor's wishes.[949] Given the potential for ectogestation to go towards equalising gestative responsibilities, this viewpoint must be given more weight. However, a distinction must be made between partial and complete ectogestation. In cases of partial ectogestation it can be argued that non-gestating genetic progenitors should not be brought into the abortion decision making process. The onus of pregnancy remains on the gestator up until the point of transfer and undertaking this period of gestational labour grants them an interest in the gestateling which should remain following transfer. To permit non-gestating genetic progenitors a legal right over whether a pregnant person should have an abortion, regardless of whether gestation ex utero is a possibility, would open the door to reproductive coercion,[950] and cannot be considered in light of partial

[940] E Partridge and others (n 14).
[941] Mats Brännström and others, 'First Clinical Uterus Transplantation Trial' (n 4).
[942] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[943] Note, this would occur fully for complete ectogestation, but only in part for partial ectogestation.
[944] See, Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35) and E Jackson, 'Degendering Reproduction?' (n 35) 359. Specifically on complete ectogestation.
[945] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29).
[946] E Jackson, 'Degendering Reproduction?' (n 35) 348.
[947] J Räsänen, 'Ectogenesis, Abortion and a Right to the Death of the Fetus' (2017) 31 Bioethics 697-702.
[948] EC Romanis, 'Abortion and "Artificial Wombs"' (n 276) 2.
[949] See, J Räsänen, 'Ectogenesis, Abortion and a Right to the Death of the Fetus' (n 947); I Brassington, 'The Glass Womb' in F Simonstein (ed), *Reprogen-ethics and the Future of Gender* (Springer 2009) 199.
[950] JE Moulton and others, 'Women's Perceptions and Experiences of Reproductive Coercion and Abuse: A Qualitative Evidence Synthesis' (*Plos One*, 2021) https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0261551 accessed 20 March 2023

ectogestation. In contrast, complete ectogestation would radically equalise the role of both genetic progenitors during the gestative process and opens the door to multiple parties being involved in this decision to turn off AAPT, with it being likely that individuals AMAB would be involved in this process. Although currently, turning off AAPT would not be an abortion as such, as abortion refers to the termination of a pregnancy,[951] in the future abortion might come to also refer to ending gestation that is occurring outside of the human body. Consequently, AAPT has the potential to alter abortion discourse given its capacity to equalise the allocation of gestational responsibilities for genetic progenitors, heightening the interests of individuals AMAB in abortion decision-making.

Furthermore, in detaching gestation from assigned biological sex[952] UTx will also bring people AMAB into the abortion sphere. Permitting UTx in individuals AMAB creates the opportunity for cis-men, trans-women, and non-binary individuals AMAB to gestate. Consequently, the possibility arises that these individuals may seek abortion care for which there is currently no appropriate provision.[953]

In creating new avenues for gestation, both AAPT and UTx have the potential to bring individuals AMAB into the abortion decision-making process, whether that be as non-gestating genetic progenitors, or as gestators themselves. It is necessary to consider what impact this may have on the concept of abortion as a criminal matter and arguments for decriminalisation.

5.6.2 How AAPT and UTx might alter the Criminality of Abortion and Support Calls for Decriminalisation

The future of gestation alongside AAPT and UTx means that abortion will no longer be a procedure that is solely carried out on individuals with physiology assigned female at birth.[954] This thesis has already presented that the capacity for AAPT and UTx to change biological facts of gestation may alleviate the preconception that gestation is solely undertaken by women. De-gendering gestation in such a manner has the potential to not only highlight that abortion law does not adequately regulate gestation, but also support calls for the decriminalisation of abortion in England and Wales. A notion which is presented following findings in Chapter Two which detailed how gender-based judgments were able to inform the construction of the law

[951] AA 1967, s 1.
[952] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[953] AA 1967 is not considered appropriate due its use of gendered language.
[954] See, Fran Amery, *Beyond Pro-Life and Pro-Choice: The changing politics of abortion in Britain* (Bristol University Press 2020) 32; S Sheldon, *Beyond Control* (n 84).

regulating abortion,[955] and that the law criminalising abortion perpetuates gender inequality by permitting sex discrimination.[956] The interaction between gender and abortion law has been raised in the House of Commons. In the UK, a third of *women* will have had an abortion by the time they are 45.[957] Kate Green notes that 'had this procedure affected a third of men, it is hard to imagine that we would have debated it in the same way.'[958] This raises the question that if abortion were to concern men, or individuals AMAB, whether this would influence its perception as a matter for the criminal law.

Firstly, gestation undertaken by individuals AMAB may impact on the criminalisation of abortion given the fact that the law distinguishes between bodies AMAB and those AFAB.[959] Namely, the law does not regulate the male body as extensively as it does the female body.[960] Providing gestative opportunities for individuals AMAB, and consequently giving rise to the possibility that AMAB individuals will be regulated by the criminal law in a manner that could infringe on their bodily autonomy and right to self-determination,[961] may lead to increased support for the decriminalisation of abortion in England and Wales. The regulation of individuals AFAB by the law was depicted in Chapter Two;[962] however, the law does not exert control in such a manner over individuals AMAB. Therefore, it is presented that the risk for bodies AMAB to be regulated by the criminal law may trigger increased support and calls for decriminalisation to prevent infringement on their right to bodily autonomy and self-determination. However, support for this movement may be tempered by the fact that AMAB gestators are likely to include trans-gender women, with a smaller minority being cis men. The oppression suffered by trans individuals already at the hands of the law,[963] and the prejudiced views that may arise regarding cis men gestating[964] may impact the extent to which the expansion of gestative opportunities to include those AMAB may support calls for decriminalisation. Despite this, it remains pertinent to note that de-gendering gestation with the

[955] Reva B Siegel, 'Abortion as a Sex Equality Right' (n 928).
[956] K Sekowska-Koxlowska (n 234); J Erdman (n 173); Neil Siegel and Reva Siegel, 'Equality Arguments for Abortion Rights' (n 77).
[957] BPAS, 'Considering Abortion?' (*BPAS*) https://www.bpas.org/abortion-care/considering-abortion/ accessed 10 May 2023
[958] HC Deb 6 November 2017, vol 630
[959] Mary Jane Mossman, 'Feminism and Legal Method: The Difference it Makes' (1987) 3 Wisconsin Women's Law Journal (now Wisconsin Journal of Law, Gender and Society) 147, 154
[960] J Bridgeman and S Millns, (n 154) xix.
[961] Assuming the OAPA 1861 and AA 1967 were to apply to individuals AMAB.
[962] See Chapter Two for details on the law concerning abortion, rape, sterilisation, and prostitution.
[963] See points raised in Chapter Three regarding pregnancy and motherhood. See also, Craig McLean, 'The Growth of the Anti-Transgender Movement in the United Kingdom. The Silent Radicalisation of the British Electorate' (2021) 51 International Journal of Sociology 473-482.
[964] Consider the media surrounding trans-men who have undergone gestation: James Macintyre (n 533); Ellie Cambridge (n 534).

introduction of AAPT and UTx has the potential to give traction to the notion that abortion law overly regulates pregnant people's bodies and bringing individuals AMAB into this sphere will increase those who are impacted by and have an interest in this regulation. This may result in increased dissatisfaction with the current law and support for decriminalisation.

Secondly, bringing men into the sphere of gestation is likely to alter the abortion debate, with the potential to augment calls for decriminalisation, as the law is more receptive to male arguments.[965] Smart highlights the distinction between genders, as 'whilst the law has been slow in responding to equal rights claims by women … men's wishes seem to become the law with remarkable speed.'[966] Although this was 'framed in the discourse of rights'[967] concerning child custody, whereby the father's interests were aligned with those of the foetus, if AMAB gestators were to argue for the right to decriminalised abortion access this may be met with the same receptivity. Consequently, calls for the decriminalisation of abortion have the potential to be more successful if gestation, and by virtue of that, the law criminalising abortion also directly impacted on individuals AMAB may bolster calls for the decriminalisation of abortion.

5.6.3 The Impact of Reconsidering the Criminalisation of Abortion

Reconsidering the criminal nature of abortion law means that criminal regulation would no longer be considered an appropriate manner in which to deal with abortion care. This thesis has consistently stated that decriminalised abortion care would not result in the de-regulation of abortion. Therefore, as AAPT and UTx have the potential to support calls for decriminalisation, a brief exploration of how abortion care may be regulated is necessary.

If decriminalised, abortion care would be legally recognised as essential healthcare.[968] However, this would not necessarily eradicate the equality issue of abortion, which does not solely affect the law, but also healthcare. The UK has been found to have the 12th largest female health gap globally.[969] The white male body is viewed as the default in medical research,[970]

[965] Marie Fox, 'Abortion Decision-making – Taking Men's Needs Seriously' (n 937) 207.
[966] Carol Smart, 'Power and the Politics of Child Custody' in C Smart and S Sevenhuijsen (eds), *Child Custody and the Politics of Gender* (London, Routledge 1989) 178-9.
[967] Marie Fox, 'Abortion Decision-making – Taking Men's Needs Seriously' (n 937) 207.
[968] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 57; See how this is already done in Canada: D Shaw and W Norman, 'When there are No Abortion Laws: A Case Study of Canada (2020) 62 Best Practice and Research in Clinical Obstetrics and Gynaecology 49-60.
[969] Nicole Winchester, 'Women's Health Outcomes: Is there a Gender Gap?' (*House of Lords Library,*1 July 2021) https://lordslibrary.parliament.uk/womens-health-outcomes-is-there-a-gender-gap/ accessed 31 October 2023
[970] C Criado Perez, *Invisible Women* (London Vintage, 2019)

meaning females are having to wait longer for treatment and receive poorer treatment outcomes.[971] It is necessary to acknowledge that such equality issues in healthcare could be impacted if male gestators need to access abortion care. However, this is unlikely to mimic the gender healthcare gap that already exists in the UK, which disadvantages individuals AFAB,[972] as gestators AMAB would make up the minority of gestators and may include transgender individuals. Minority groups and the transgender community also suffer healthcare inequality,[973] specifically when accessing sexual and reproductive health resources.[974] Consequently, the equality issues that may arise within the healthcare spheres, as gestation is no longer bound to people AFAB is likely to be complex. Policy changes are likely to be required to ensure minority groups, whether that be cis-female gestators,[975] cis-male gestators, or transgender gestators do not suffer the adverse effects of healthcare inequality.

Despite the potential for inequality issues to persist with the decriminalisation of abortion care, eradicating criminal sanctions would still be likely to improve outcomes by leading to 'reduced stigma, improved quality of care, and improved access to safe abortion'.[976]

5.7 The Case for Reform as a Result of "De-Gendered" Gestation

The need for reform to abortion legislation following the introduction of novel assisted gestative technologies is evident, as the AA 1967 will no longer be nuanced enough to adequately regulate abortion decisions during gestation. This chapter was specifically concerned with how 'de-gendered' gestation could impact abortion legislation and considered two possible avenues for reform.

1. Reforming the language of the OAPA 1861, ILPA 1929 and AA 1967

The concept of adopting gender neutral language is relatively straightforward and therefore will be briefly addressed. Reforming abortion legislation in this context would involve

[971] Healthwatch, 'We Need to Focus on Inequalities to Address NHS Waiting List' (*Healthwatch*, 9 June 2022) https://www.healthwatch.co.uk/news/2022-06-09/we-need-focus-inequalities-address-nhs-waiting-list accessed 15 April 2023
[972] Nicole Winchester (n 969).
[973] Stephen Morris and others, 'Inequity and Inequality in the Use of Health Care in England: An Empirical Investigation' (20050 60 Social Science & Medicine 1251-66; Laetitia Zeeman and others, 'A Review of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Health and Healthcare Inequalities' (2019) 29 European Journal of Public Health 974-80.
[974]Anna Johnston, 'Spring Budget 2022 Pre-Budget Briefings: Health inequalities and gender' (*Women's Budget Group*, March 2022) https://wbg.org.uk/wp-content/uploads/2022/03/Health-inequalities-and-gender-PBB-Spring-2022.pdf accessed 27 December 2023
[975] Cis-gender females are included here due to gender healthcare inequalities that exist in the UK against women, even as gestative opportunities expand, cis-females will make up the majority of gestators.
[976] Fiona de Londras and others (n 195).

amending legislation that refers to 'pregnant women'[977] to refer instead to 'pregnant people'. This would not practically alter the applicability or operation of the legislation,[978] but it would bring the lived experiences of those who gestate and do not identify as women in line with the law, alongside accounting for the experiences of individuals who may be able to gestate following the introduction of AAPT and UTx.

2. Decriminalising Abortion

This thesis has also presented that 'de-gendering' gestation could support calls for the decriminalisation of abortion in England and Wales. Decriminalisation could encompass complete decriminalisation, decriminalisation and selective recriminalisation, or selective decriminalisation.[979] Complete decriminalisation would entail ss 58 and 59 OAPA 1861 being repealed,[980] which would render the AA 1967 redundant. Consequently, the AA 1967 should also be repealed by statutory reform. Selective decriminalisation could occur if Parliament decided to retain provisions deemed as serving a continued purpose, or Parliament could choose to recriminalise by creating a new criminal offence for abortion. However, if the advent of AAPT and UTx were to trigger a reconsideration of the criminalisation of abortion and demonstrate that abortion should no longer be regulated by the criminal law as has been explored in this chapter, the most likely course of reform would be complete decriminalisation, as was achieved in Canada in 1988.[981] Following any degree of decriminalisation, abortion care would continue to be regulated as a healthcare procedure.[982]

5.8 Conclusion

This chapter has considered the impact that AAPT and UTx may have on abortion regulation in England and Wales as a result of 'de-gendered' gestation. It laid down two avenues by which regulation may be altered: firstly, the rephrasing of regulation to adopt gender neutral language, and secondly, the reconceptualisation of criminal regulation. It was necessary to set these avenues to liberalise and decriminalise abortion in the context of literature that suggests AAPT may hinder abortion access.[983] Therefore, this chapter went on to consider whether abortion

[977] OAPA 1861 s 58, 59, 60; ILPA 1929 s 1(2); AA 1967 s 1, HFEA 1990 (as amended 2008), HCA 2022 s 178.
[978] BPAS, 'Trans, Non-binary and Intersex People' (n 227).
[979] BMA, 'Decriminalisation of Abortion: a Discussion Paper for the BMA' (*BMA*, February 2017) https://www.bma.org.uk/media/1142/bma-paper-on-the-decriminalisation-of-abortion-february-2017.pdf accessed 23 July 2023
[980] Repealed in Northern Ireland in 2019, Fran Amery (n 954) 145.
[981] D Shaw and W Norman (n 968) 51.
[982] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 57.
[983] P Hendricks (n 78); B Blackshaw and D Rodger (n 78).

will remain legal following the advent of AAPT and whether abortion care will be accessible.[984] It was determined that abortion care will likely remain legally accessible alongside the introduction of AAPT. Following this finding, the interaction between AAPT and UTx and their potential to alter the gestational process was explored as a mechanism to support pre-existing calls for decriminalisation.

It was presented that AAPT and UTx have the capacity to support pre-existing calls for liberalisation and decriminalisation. A possibility, due to their ability to detach gestation from gender, which could trigger the reconsideration of the criminal nature of abortion. Bringing individuals AMAB into the abortion sphere by 'de-gendering' gestation may increase dissatisfaction regarding how abortion law overly regulates a pregnant person's body, either by simply drawing attention to the fact that abortion law infringes on an individual AFAB's bodily autonomy, or by providing the potential for abortion law to also regulate bodies AMAB. Given the impact of perceptions of women on the criminalisation of abortion law, AAPT and UTx's ability to 'de-gender' gestation has the potential to reframe perceptions on abortion. The advent of AAPT and UTx may highlight pertinent issues with abortion law that stem from its gendered construction, namely, its over-regulation of the female body.[985] Consequently, this would set in motion what could be the final impetus in the movement to liberalise abortion care and trigger the decriminalisation of abortion in England and Wales.

[984] EC Romanis, 'Challenging the 'Born Alive' Threshold' (n 778); EC Romanis, 'Abortion and "Artificial Wombs"' (n 276) 9.
[985] J Bridgeman and S Millns (n 154) xix.

Chapter VI

Conclusion

6.1 Gestation, Sex and Gender

Biological reproductive functioning means it is a well-established fact that gestation can only be undertaken by an individual with physiology AFAB.[986] This is due to the need for a functioning uterus to sustain a fetus in utero.[987] Therefore, throughout this thesis it has been maintained that the gestational process is currently biologically sexed to individuals AFAB.

Despite being attached to the female biological sex, the gestational process is not bound to a specific gender.[988] The majority of people's assigned sex is consistent with their gender identity, meaning that most people who are assigned AFAB identify as women, and those AMAB identify as men.[989] This has led to the conflation of sex and gender,[990] resulting in the perception that gestation is a gendered process solely undertaken by women.[991] However, gestation is attached to individuals AFAB, not women. Individuals who currently undertake gestation and carry a pregnancy may identify as women, transgender men, non-binary or other.[992] This thesis considered the experiences of transgender men who have undergone gestation to firstly highlight that gestation is not gendered, and then to demonstrate that transgender gestation has not detached the gestational process from gender in social consciousness given the fact that it remains biologically sexed.[993]

This thesis then explored whether gestation detached from biological sex has the potential to sever the conflation of sex and gender with regards to the gestational process, and highlight the fact that gestation is not contingent on a specific gender. AAPT and UTx will alter current biological facts of gestation, by permitting gestation that is not solely reliant on individuals AFAB.[994]

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[986] E Jackson, 'Degendering Reproduction?' (n 35) 347.
[987] Camille Sallée and others (n 59).
[988] See examples of transmasculine gestation. Thomas Beatie, Freddy McConnell and Hayden Cross.
[989] Office for National Statistics, 'Gender identity, England and Wales: Census 2021' (n 737).
[990] National Academies of Sciences, Engineering and Medicine, *Measuring Sex, Gender Identity and Sexual Orientation* (Washington DC, The National Academies Press 2022)
[991] Anna Smajdor, 'The Moral Imperative for Ectogenesis' (n 35) 337.
[992] See, Olivia Fischer (n 542)
[993] FR White and others (n 529).
[994] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

AAPT will give rise to gestation ex utero, reliant on an artificial placenta to sustain the gestative process.[995] This will either be partial[996] or complete ectogestation,[997] both of which will somewhat relieve individuals AFAB from their current position as the sole facilitators of gestation. Furthermore, UTx will permit individuals without a functioning uterus,[998] and those born AMAB to undergo the gestational process[999] following a transplant procedure. Both AAPT and UTx will permit gestation that is no longer biologically sexed female, by providing alternative avenues into parenthood which alleviate gestational labour from solely relying on individuals AFAB.[1000]

Detaching the gestational process from biological sex will likely go towards dispelling the perception that the gestational process is gendered.[1001] Accordingly, the advent of AAPT and UTx will alter the gestational landscape to the point in which sex will no longer be inextricably linked to gestation, and consequently, the gestational process is unlikely to be viewed as gendered. This will likely highlight the inadequacies of abortion legislation in England and Wales, specifically concerning gender, with the potential to bolster arguments calling for reform.

6.2 The Inadequacies of Abortion Legislation

The changing landscape of gestation given the advent of AAPT and UTx has the potential to exacerbate the inadequacies of abortion legislation. This thesis considered the historical formulation of abortion law and contextualised the current climate of abortion regulation to make informed judgements regarding how AAPT and UTx may impact on the criminalisation of abortion in England and Wales. The OAPA 1861, ILPA 1929 and AA 1967 were criticised as outdated pieces of legislation in need of modernisation.[1002] It drew on developments in the medical sphere,[1003] and shifts in the familial ideal[1004] to reason that the law is outdated. Future

[995] E Partridge and others (n 14).
[996] Gestation occurring initially in the human womb before being transferred to AAPT. E Kingma and S Finn, 'Neonatal Incubator or Artificial Womb?' (n 2) 356.
[997] Fertilisation occurring in vitro, and the entirety of gestation occurring ex utero. JH Schultz (n 23) 877.
[998] Currently UTx is only available to cis females. N Hammond-Browning, 'UK Criteria for Uterus Transplantation: A Review' (n 27).
[999] A Alghrani, 'Uterus Transplantation in and Beyond Cisgender Women' (n 29) 301, 304.
[1000] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[1001] See, Chapter Four.
[1002] S Sheldon, 'The Decriminalisation of Abortion' (n 208) 334; EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7).
[1003] Given the introduction of early medical abortions. See, EC Romanis and others, 'The Excessive Regulation of Early Abortion Medication in the UK' (n 7); HC Deb 6 November 2017, vol 630
[1004] On ideals surrounding motherhood. See, S Sheldon, *Beyond Control* (n 84); A Ward, 'If Woman's Personhood Is Truly Respected by the Law, then she must also be the Ultimate Source of Both the Decision to

advancements within the medical sphere and expanding familial avenues into gestation, alongside the advent of AAPT and UTx, will only serve to magnify these already prevalent inadequacies in abortion law.

Furthermore, abortion legislation was criticised throughout this thesis given its interaction with sex and gender.[1005] Firstly, it was presented that the construction of abortion law was largely influenced by perceptions of women at the time, their destiny for motherhood, and lack of decision-making autonomy was considered to have impacted on the construction of abortion law.[1006] This thesis also considered that the law regulates bodies AFAB differently to those AMAB, drawing on laws concerning prostitution, rape and abortion to detail the over regulation of the female body by the law.[1007] The over-regulation of the female body is particularly concerning in the context of abortion law given that criminalising abortion care infringes on the pregnant person's bodily autonomy and right to self-determination,[1008] and the right to access healthcare.[1009] This landscape has the potential to change given the capacity of AAPT and UTx to detach gestation from assigned biological sex.[1010] This thesis refuted arguments that abortion care may become harder to access in the face of 'un-sexed' gestation.[1011] Instead, presenting the opportunity for language of the legislation and that used by abortion care providers to be reformed to better reflect gestative opportunities.[1012]

Finally, abortion law was framed as inadequate given its criminal nature.[1013] This thesis instead presented that abortion should be decriminalised in favour of its regulation as a healthcare procedure.[1014] The increased number of prosecutions in England and Wales recently demonstrate that the criminal regulation of abortion remains a pertinent issue.[1015] Concerns surrounding decriminalisation can be eased when looking to jurisdictions[1016] where abortion has been decriminalised to maintain that abortion care would continue to be regulated as a

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Abort, and the Meaning given to that Decision. Discussion with Reference to UK Abortion Law' (2016) Bristol Law Review 113, 114.

[1005] Seen in its construction, S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91); and seen in its gendered language, OAPA 1861, ILPA 1929, AA 1967.

[1006] See, S Sheldon, 'Who is the Mother to Make the Judgement?' (n 91).

[1007] See, Chapter Two.

[1008] Lynne Newhall (n 199).

[1009] WHO, 'Constitution of the World Health Organization' (*WHO*, 7 April 1948) https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf accessed 27 December 2023

[1010] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).

[1011] See, section 5.4.

[1012] See, section 5.2.

[1013] S Sheldon, 'The Decriminalisation of Abortion' (n 208) 334

[1014] Jonathan Herring and others, 'Would Decriminalisation mean Deregulation' (n 865) 57

[1015] EC Romanis, '*R v Foster'* (n 10).

[1016] E.g. Canada. See, ML McConnell (n 914).

healthcare procedure. Decriminalisation would not impact on the regulation of abortion care, it is unlikely to negatively affect the incidence, timing, safety, or provision of abortion care,[1017] and has the potential to improve outcomes and reduce abortion stigma.[1018] Therefore, this thesis considered how AAPT and UTx may bolster pertinent pre-existing calls for decriminalisation.

6.3 The Future of Regulating Abortion alongside AAPT and UTx

The interaction between sex, gender and abortion law was detailed throughout this thesis. However, the advent of AAPT and UTx will ultimately dispel this interaction, by detaching the gestative process from biological sex,[1019] and consequently easing the notion that gestation is a gendered process. By both 'un-sexing' and 'de-gendering' gestation, AAPT and UTx have the potential to interfere with the ideals that abortion law operates under, and not only highlight the inadequacies of abortion law, but also support calls for decriminalisation. Un-sexed gestation will bring individuals AMAB into the abortion sphere and this thesis presented how this could impact on the regulation of abortion, including decision-making rights and its criminal status. As AAPT and UTx give rise to the possibility that the criminal law may infringe on the bodily autonomy and right to self-determination of individuals AMAB, this would likely lead to increased support for decriminalisation to avoid the over-regulation of bodies AMAB,[1020] which has the potential to be responded to with increased receptivity.[1021]

Supporting calls for the decriminalisation of abortion are currently extremely pertinent given that four prosecutions under the OAPA 1861 have occurred in 2023,[1022] and AAPT and UTx in changing the landscape of gestation may be integral in the trajectory towards decriminalisation, with the potential to be framed as the final impetus for decriminalisation.

[1017] Brooke Ronald Johnson Jr and others (n 743) 124.
[1018] Sandra Salomé Fernández Vázquez and Josefina Brown (n 906).
[1019] Elizabeth Chloe Romanis, *Biotechnology, Gestation, and the Law: A comparative review from England and Wales* (n 11).
[1020] See, section 5.6.3.
[1021] Carol Smart, 'Power and the Politics of Child Custody' (n 966).
[1022] Hannah Al-Othman, 'Fourth Abortion Charge in Eight Months' (n 9).

Bibliography

-- 'Charge of Procuring Abortion' [1938] 2 The British Medical Journal 199

-- ‘Maternal Deaths’ (1966) 2 British Medical Journal 319

-- ‘NHS Faces Criticism for Using the Phrase ‘Pregnant People’ (The New Feminist, 8 July 2021) https://www.thenewfeminist.co.uk/2021/07/nhs-faces-criticism-for-using-the-phrase-pregnant-people/ accessed 13 October 2023

-- ‘Stella Creasy’s amendment’ Public Order Act 2023, Report Stage, NC11 https://bills.parliament.uk/bills/3153/stages/16631/amendments/10002351 accessed 1 June 2023

Abecassis M, ‘Artificial Wombs: The Third Era of Human Reproduction” and the Likely Impact on French and U.S. Law’ (2016) 27 Hastings Women’s Law Journal 3

Abrams P, ‘The Bad Mother: Stigma, Abortion and Surrogacy’ (2015) 43 Journal of Law, Medicine & Ethics 179

Adamczyk A and others, ‘Examining Public Opinion about Abortion: A Mixed-methods Systematic Review of Research over the Last 15 Years’ (2020) 90 Sociological Inquiry 920

Adkins V, ‘Impact of Ectogenesis on the Medicalisation of Pregnancy and Childbirth.’ (2021) 47 Journal of Medical Ethics 239

Aiken ARA and Bloomer F, ‘Abortion Decriminalised in Norther Ireland’ [2019] British Medical Journal 367

-- and others, ‘Effectiveness, Safety and Acceptability of No-test Medical Abortion (Termination of Pregnancy) Provided via Telemedicine: A National Cohort Study’ (2021) BJOG 1464

Alghrani A, ‘The Legal and Ethical Ramifications of Ectogenesis’ (2007) 2 Asian Journal of WTO and International Health Law and Policy 189

-- ‘Regulating the Reproductive Revolution: Ectogenesis – A Regulatory Minefield? in M Freeman (ed), Law and Bioethics: Volume 11 (1st edn, OUP 2008) 327

-- ‘Yes, Uterus Transplants Should be Publicly Funded!’ (2016) 42 British Journal of Medical Ethics 566

-- Regulating Assisted Reproductive Technologies: New Horizons (Cambridge University Press, 2018)

-- ‘Uterus Transplantation in and Beyond Cisgender Women: Revisiting Procreative Liberty in Light of Emerging Reproductive Technologies’ (2018) 5 Journal of Law and the Biosciences 301

Al-Othman H, ‘Fourth Abortion Charge in Eight Months – After Only Three Trials in the Past 160 Years’ The Times (13 August 2023) https://www.thetimes.co.uk/article/fourth-abortion-charge-in-eight-months-after-only-three-trials-in-the-past-160-years-vxmksngc3> accessed 15 December 2023

-- and Agnew M, ‘Judge “Flabbergasted” at Prosecution of Woman who took Abortion Pills’ The Times (11 December 2022) https://www.thetimes.co.uk/article/judge-flabbergasted-at-prosecution-of-woman-who-took-abortion-pills-l57qn6zqf accessed 15 December 2023

Amery F, Beyond Pro-Life and Pro-Choice: The Changing Politics of Abortion in Britain (Bristol University Press 2020) 32

Anleu SLR, ‘Reinforcing Gender Norms: Commercial and Altruistic Surrogacy’ (1990) 33 Acta Sociologica 63

Appleby JB and Bredenoord AL, ‘Should the 14-day Rule for Embryo Research become the 28-day Rule?’ (2018) 10 EMBO Molecular Medicine

Aristarkhova I, ‘Man as Hospitable Space: The Male Pregnancy Project’ (2009) 14 Performance Research 25

Baars G, ‘Queer Cases Unmake Gendered Law, or, Fucking Law’s Gendering Function’ (2019) 45 Australian Feminist Law Journal 41

Baker CN and Thomsen C, ‘The Importance of Talking About Women in the Fight Against Abortion Bans’ (Ms. Magazine, 23 June 2022) https://msmagazine.com/2022/06/23/women-abortion-bans-inclusive-language-pregnant-people/ accessed 13 October 2023

Balayla J and others, ‘The Montreal Criteria and Uterine Transplants in Transgender Women’ (2021) 35 Bioethics 326

Bard J, ‘Immaculate Gestation? How Will Ectogenesis Change Current Paradigms of Social Relationships and Values?’ in Scott Gelfand and John Shook (eds), Ectogenesis: Artificial Womb Technology and the Future of Human Reproduction (Rodopi 2006) 149

Bayefsky MJ and Berkman BE, ‘The Ethics of Allocating Uterine Transplants’ (2016) 25 Cambridge Quarterly of Healthcare Ethics 350

BBC News, ‘Womb Transplants given UK Go-ahead’ BBC News (30 Sep 2015) https://www.bbc.co.uk/news/health-34397794> accessed 14 Dec 2022

Beatie T, Labor of Love: The Story of One Man’s Extraordinary Pregnancy (Berkeley, CA Seal Press 2009)

Beauvoir S, The Second Sex (H.M Parsley (tr), Vintage London 1997 [1949])

Berer M, 'Whatever Happened to a Woman's Right to Choose?' (1988) 29 Feminist Review 24

Blackless M and others, 'How Sexually Dimorphic Are We? Review and Synthesis' (2000) 12 American Journal of Human Biology 151

Blackshaw BP and Rodger D, 'Ectogenesis and the Case Against the Right to the Death of the Foetus' (2019) 33 Bioethics 76

-- 'Why we Should Not Extend the 14-day Rule' (2021) 47 Journal of Medical Ethics 712

Blyth E and Golding B, 'Egg Sharing: A Practical and Ethical Option in IVF?' (2008) 3 Expert Review in Obstetrics & Gynecology 465

Booth R, 'Trans Man Loses UK Legal Battle to Register as his Child's Father' The Guardian (16 Nov 2020) https://www.theguardian.com/society/2020/nov/16/trans-man-loses-uk-legal-battle-to-register-as-his-childs-father accessed 13 December 2022

Brännström M and Dahm-Kähler P, 'Uterus Transplantation, Current State and Future Perspectives' (2017) 9 Journal of Endometriosis and Pelvic Pain Disorders

Brännström M and others, 'First Clinical Uterus Transplantation Trial: A Six-month Report' (2014) 1010 Fertility and Sterility 1288

-- 'Uterus Transplantation: A Rapidly Expanding Field' (2018) 102 Transplantation 569

Brassington I, 'The Glass Womb' in F Simonstein, ed, Reprogen-ethics and the Future of Gender (Springer 2009) 199

Brazier M and others, 'Critical Care Decisions in Fetal and Neonatal Medicine: Ethical Issues' (Nuffield Council on Bioethics, 2006) 67. https://www.nuffieldbioethics.org/assets/pdfs/Critical-care-decisions.pdf accessed 21 April 2023

Bridgeman J and Millns S, Law & Body Politics Regulating the Female Body (Dartmouth Publishing Co Ltd, 1955)

Brilliant Beginnings, 'How Much Can a UK Surrogate get Paid? (Brilliant Beginnings) <https://brilliantbeginnings.co.uk/how-much-can-a-uk-surrogate-get-paid/> accessed 21 Nov 2022

Bristowe, 'The Hospitals.' in Judith R Walkowitz, Prostitution and Victorian Society (Cambridge University Press, 1980) 58

British Medical Association, 'Decriminalisation of Abortion: A Discussion Paper for the BMA' (BMA, February 2017) https://www.bma.org.uk/media/1142/bma-paper-on-the-decriminalisation-of-abortion-february-2017.pdf accessed 23 July 2023

-- How will Abortion be Regulated in the United Kingdom if the Criminal Sanctions for Abortion are Removed? (London BMA, 2019)

-- 'The Law and Ethics of Abortion' (BMA, July 2021) <The law and ethics of abortion (bma.org.uk)> accessed 1 June 2023

-- 'Integrated Care Systems (ICSs)' (14 Nov 2022) https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/integration/integrated-care-systems-icss accessed 11 April 2022

British Pregnancy Advisory Service, 'Back Off' (BPAS) https://bpas-campaigns.org/campaigns/backoff/ accessed 1 June 2023

-- 'Considering Abortion?' (BPAS) https://www.bpas.org/abortion-care/considering-abortion/ accessed 10 May 2023

-- Government Pledges to End IVF Policies which Discriminate Against Same-sex Female Couples' (BPAS, 20 July 2022) <https://www.bpas.org/about-our-charity/press-office/press-releases/government-pledges-to-end-ivf-policies-which-discriminate-against-same-sex-female-couples/> accessed 15 April 2023

-- 'Trans, Non-binary and Intersex People'(BPAS) https://www.bpas.org/abortion-care/considering-abortion/trans-non-binary-and-intersex-people/ accessed 10 May 2023

British Social Attitudes Survey, 'Personal Relationships: Abortion' (BSA, 30th edn, 2015) https://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-30/personal-relationships/abortion.aspx accessed 31 October 2023

Brooke S, '"A New World for Women"? Abortion Law Reform in Britain during the 1930s' (2001) 106 The American Historical Review 43

Brown A, 'Trans Parenthood and the Meaning of 'Mother, 'Father' and 'Parent' – R (McConnell and YY) v Registrar General for England and Wales [2020] EWCA Civ 559' (2021) 29 Medical Law Review 157

Brown M, 'Woman in Teesside Accused of Carrying out own Abortion to appear before Judge' The Guardian (13 August 2023) https://www.theguardian.com/uk-news/2023/aug/13/woman-teesside-accused-abortion-poison-judge-court accessed 15 December 2023

Bruno B and Arora KS, 'Uterus Transplantation: The Ethics of Using Deceased vs. Living Donors' (2018) 18 American Journal of Bioethics 6

Bryon-Dodd K, 'NHS Cutbacks Worsen IVF "Postcode Lottery'"in England' (BioNews, 14 Aug 2017) https://www.progress.org.uk/nhs-cutbacks-worsen-ivf-postcode-lottery-in-england/ accessed 15 April 2023

Brysk A and Yang R, 'Abortion Rights Attitudes in Europe: Pro-Choice, Pro-Life, or Pro-Nation? [2023] Social Politics: International Studies in Gender, State & Society, jxac047 <https://doi.org/10/1093/sp/jxac047 1> accessed 13 May 2023

Burrell C and O'Connor H, 'Surrogate Pregnancy: Challenging the Legal Definition of Motherhood' (2014) 121 BJOG: An International Journal of Obstetrics and Gynaecology 308

Cambridge E, 'First Man to Give Birth in the U.K Warns Others Not to Try it Because it's 'Really Hard'. The Sun (9 Jan 2019) https://www.thesun.co.uk/news/8152999/first-man-give-birth-uk-warns-really-hard/ accessed 22 Nov 2022

Canadian Institute of Health Information, 'Therapeutic Abortion Survey 2010: Notes on Data Quality' (2012)

-- 'Induced Abortions Performed in Canada in 2012' (2014)

-- 'Induced Abortions Performed in Canada in 2016' (2019)

Carmom I, 'You Can Still Say "Woman" But you Shouldn't Stop There' Intelligencer (New York, 28 Oct 2021) https://nymag.com/intelligencer/2021/10/abortion-law-trans-inclusive-advocacy.html accessed 3 Jan 2023

Carroll R, 'Abortion Services in Northern Ireland almost Non-existent despite Legalisation' The Guardian (4 May 2022) https://www.theguardian.com/world/2022/may/04/abortion-services-in-northern-ireland-almost-nonexistent-despite-legalisation accessed 6 May 2023

Castanos R and others, 'The Ethics of Uterus Transplantation' (2011) 27 Bioethics 65

Cavaliere G, 'A 14-day Limit for Bioethics: The Debate over Human Embryo Research' (2017) 18:38 BMC Medical Ethics 1

Chappell SG, 'Transgender: A Dialogue,' Aeon <https://aeon.co/essays/transgender-identities-a-conversation-between-two-philosophers> (last accessed 2 November 2022)

Charter R and others, 'The Transgender Parent: Experiences and Constructions of Pregnancy and Parenthood for Transgender Men in Australia' (2018) 19 International Journal of Transgenderism 64

Chen MJ and Creinin MD, 'Mifepristone with Buccal Misoprostol for Medical Abortion: A Systematic Review' (2015) 126 Obstetrics & Gynecology 12

Chiu DW and others, 'As Many as 16% of People Having Abortions DO Not Identify as Heterosexual Women' (*Guttmacher Institute*, 14 June 2023) https://www.guttmacher.org/2023/06/many-16-people-having-abortions-do-not-identify-heterosexual-women accessed 27 December 2023.

Clarke J, 'Pregnant People?' (2019) 119 Columbia Law Review 173

Clarke L, 'Abortion: A Rights Issue?' in R Lee and D Morgan, (eds) Birthrights: Law and Ethics at the Beginning of Life (London and New York Routledge, 1990)

Cohen G, 'Artificial Wombs and Abortion Rights' (2017) 47 Hastings Center Report
Cook E and others, Between two absolutes: Public opinion and the politics of abortion (Boulder CO, Westview 1992)

Colgrove N, 'Subjects of Ectogenesis: Are 'Gestatelings' Fetuses, Newborns or Neither?' (2019) 45 Journal of Medical Ethics 723

Committee on the Elimination of Discrimination against Women, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women : report of the Committee on the Elimination of Discrimination against Women' (2018) CEDAW/C/OP-8/GBR/1 https://digitallibrary.un.org/record/1480026/files/CEDAW_C_OP-8_GBR_1-EN.pdf?ln=en accessed 31 Oct 2023

Cook R, 'Stigmatized Meanings of Criminal Abortion Law' in Rebecca Cook, Joanna Erdman, and Bernard Dickens (eds), Abortion Law in Transnational Perspective (University of Philadelphia Press 2014) 347

Cookson C, 'Artificial Womb Development Raises Hope for Premature Babies' (The Financial Times, 25 April 2017) https://www.ft.com/content/7407d008-28ef-11e7-bc4b-5528796fe35c accessed 21 March 2022

Currah P, 'Expecting Bodies: The Pregnant man and Transgender Exclusion from the Employment Non-Discrimination' (2008) 36 Women's Studies Quarterly 330

Czarny HN, 'Association Between Mode of Delivery and Infant Survival at 22 and 23 weeks of Gestation' (2021) 3 American Journal of Obstetrics and Gynecology Maternal-Fetal Medicine

D'Ambrosio A, 'More Hospitals Offering Uterus Transplant' MedPage Today (22 October 2020, updated 23 October 2020) https://www.medpagetoday.com/obgyn/infertility/89274 accessed 15 May 2023.

Daolio J and others, 'Uterine Transplantation and IVF for Congenital or Acquired Uterine Factor Infertility: A Systematic Review of Safety and Efficacy Outcomes in the First 52 Recipients' (2020) 15 PlosOne.

Dass M, 'Consent and Caesarean Section' (2005) 15 Current Obstetrics & Gynaecology 60

Davidson T and others, 'The Costs of Human Uterus Transplantation: A Study Based on the Nine cases of the Initial Swedish Live Donor Trial' (2021) 36 Human Reproduction 358

Davies DS, 'Child-killing in English law' (1937) 1 Modern Law Review 203

De Wert G and others, 'ESHRE Task Force on Ethics and Law 23: Medically Assisted Reproduction in Singles, Lesbian and Gay Couples and Transsexual People' (2014) 29 Human Reproduction 1859

DeCecco JP and others, 'A Critique and Synthesis of Biological Essentialism and Social Constructionist Views of Sexuality and Gender' (1993) 24 Journal of Homosexuality 1

Dempsey B and others, 'Exploring Providers' Experience of Stigma Following the Introduction of More Liberal Abortion Care in the Republic of Ireland' (2021) 104 Contraception 414

Department of Health, 'Abortion Statistics for England and Wales: 2020' (Gov UK, Oct 2021). https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2020/abortion-statistics-england-and-wales-2020 accessed 27 December 2023

Department of Health and Social Care, 'Government Confirms Plans to Approve the Home-use of Early Abortion Pills' (Gov UK, 25 August 2018) https://www.gov.uk/government/news/government-confirms-plans-to-approve-the-home-use-of-early-abortion-pills accessed 27 December 2023

Devlin N and Parkin D, 'Funding Fertility: Issues in the Allocation and Distribution of Resources to Assisted Reproduction Technologies' (2003) 6 Human Fertility

Dewar J, 'The Normal Chaos of Family Law' (1998) 61 Modern Law Review 467

Di Stefano and others, 'Ectogestation Ethics: The Implications of Artificially Extending Gestation for Viability, newborn resuscitation and abortion' (2019) 34 Bioethics 371

Drafting Techniques Group of the Office of the Parliamentary Counsel, Office of the Parliamentary Counsel: Drafting Guidance (June 2020) https://assets.publishing.service.gov.uk/media/5ee77d1486650c03ec4762ec/OPC_drafting_guidance_June_2020-1.pdf accessed 31st Oct 2023

Dunne P, 'Transgender Sterilisation Requirements in Europe,' (2017) 25 Medical Law Review 554

Dyer C, 'Abortion in Northern Ireland is Decriminalised' [2019] British Medical Journal 367

Edwards SM, Female Sexuality and the Law: A Study of Constructs of Female Sexuality as They Inform Statute and Legal Procedure (Oxford M Robertson, 1981)

Elenis E and others, 'Access to Infertility Evaluation and Treatment in Two Public Fertility Clinics and the Reasons for Withholding it: A Prospective Survey Cohort Study of Healthcare Professionals' (2020) 10 BMJ Open 1

Ellis SA and others, 'Conception, Pregnancy and Birth Experiences of Male and Gender Variant Gestational Parents: It's How We Could Have a Family' (2014) 60 Journal of Midwifery Women's Health 62

Erdman J, 'The Gender Injustice of Abortion Laws' (2019) 27 Sexual and Reproductive Health Matters 4

Faye S, The Transgender Issue: An Argument for Justice, (Allen Lane 2021)

FDA, '24 Hour Summary of the Pediatric Advisory Committee, Artificial Womb Technology' (FDA, 19 Sept 2023) https://www.fda.gov/media/172441/download?attachment accessed 10 December 2023

Finley LM, 'Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning' (1989) 64 Notre Dame Law Review

Firestone S, The Dialectic of Sex (William Morrow and Company 1970)

Fischer O, 'Non-binary Reproduction: Stories of Conception, Pregnancy, and Birth' (2021) 22 International Journal of Transgender Health 77

Flyckt R and others, 'Deceased Donor Transplantation' (2017) 107 Fertility and Sterility e13

Fox M, 'Abortion Decision-making – Taking Men's Needs Seriously' in Ellie Lee (ed) Abortion Law and Politics Today (Macmillan Press, 1998) 198

-- 'The Human Fertilisation and Embryology Act 2008: Tinkering at the Margins' (2009) 17 Feminist Legal Studies, 333

Francome C and Freeman E, 'British General Practitioners' Attitudes Toward Abortion' (2002) 32 Family Planning Perspectives 189

Friedman MA, 'Manufacturer's Warning Regarding Unapproved Uses of Misoprostol' (2001) 344 The New England Journal of Medicine 61

Fuentes A, 'Biological Science Rejects the Sex Binary, and That's Good for Humanity' (Sapiens, 2022) https://www.sapiens.org/biology/biological-science-rejects-the-sex-binary-and-thats-good-for-humanity/ accessed 15 September 2023

Fyfe W, 'Abortion Acts: 1803-1967' in S Franklin, C Lury and J Stacey, (eds) Off-centre: Feminism and Cultural Studies (London Harper Collins Academic, 1991) 160

Fynes A, 'A Comparative Approach to Transgender Legislation in the UK and Ireland' (2014) 4 King's Inns Student Law Review 31

General Medical Council, 0-18 Years: Guidance for all Doctors (London GMC, 2007) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/0-18-years accessed 27 December 2023

-- Decision Making and Consent London GMC, 2008) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/decision-making-and-consent accessed 27 December 2023

--- Protecting Children and Young People: The responsibility of all Doctors (London GMC, 2012) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/protecting-children-and-young-people accessed 27 December 2023

-- Good Medical Practice (London, GMC, 2013a) https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice# accessed 27 December 2023

-- Personal Beliefs and Medical Practice (GMC 2013b)

George J, 'Vitara Biomedical Raises $25M to Advance its Artificial Womb Technology for Premature Babies' (Philadelphia Business Journal, 2022) <https://www.bizjournals.com/philadelphia/news/2022/08/09/vitara-biomedical-philadelphia-artificial-womb.html> accessed 14 October 2022

Gilbert SF, Developmental Biology (6th edn, Sinauer Associates 2000)

Gillespie R, 'Voluntary Childness in the United Kingdom' (1999) 7 Reproductive Health Matters 43

Glover J, Causing Death and Saving Lives (1st edn, Penguin 1990)

Goldbeck-Wood S and others, 'Criminalised Abortion in UK Obstructs Reflective Choice and Best Care' (2018) 362 BMJ 1

Gonzalez-Salzberg D, 'An Improved Protection for the (Mentally Ill) Trans Parent: A Queer Reading of AP, Garçon and Nicot v France,' (2018) 81 Modern Law Review 526

Graves DC, '"…in a Frenzy While Ravin Mad": Physicians and Parliamentarians Define Infanticide in Victorian England' in B H Bechtold and D C Grave (eds.) Killing Infants: Studies in the Worldwide Practice of Infanticide (Lewiston, Edwin Mellen Press 2006)

Gray AM and Wellings K, 'Is Public Opinion in Support of Decriminalisation' in Sally Sheldon and Kaye Wellings (eds) Decriminalising Abortion in the UK What Would it Mean? (Policy Press 2020) 17

Green D, 'The Abortion Act 1967' (1968) 8 The British Journal of Criminology 82

Greenwood V and Young J, Abortion in Demand (London, Pluto 1976)

Griffin B, The Politics of Gender in Victorian Britain (Cambridge Cambridge University Press, 2012)

Griffiths DA, 'Shifting Syndromes: Sex Chromosome Variations and Intersex Classifications' (2018) 48 Social Studies of Science 125

Gross J and Vostroknutov A, 'Why do People Follow Social Norms?' (2022) 44 Current Opinion in Psychology 1

Grover A, Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health A/66/254 (2011)

Grubb A, The New Law of Abortion: Clarification or Ambiguity? (1991) Crim LR 659

Halliday S and others, 'The (Mis)use of Fetal Viability as the Determinant of Non-criminal Abortion in the Netherlands and England and Wales' [2023] Medical Law Review 1

Hammond-Browning N, 'A New Dawn: Ectogenesis, Future Children and Reproductive Choice' (2018) 14 Contemporary Issues in Law 349

-- 'UK Criteria for Uterus Transplantation: A Review' (2019) 126 BJOG: An International Journal of Obstetrics & Gynaecology 1320-1326

-- 'Uterus Transplantation: Five Years on from the World's First Birth' (Nov 2019) Bionews 1022 https://www.bionews.org.uk/page_145998 accessed 27 December 2023

HC Deb 22 July 1996, vol 732, col. 1092

HC Deb 1967 vol 749, col 931

HC Deb 13 March 2017, vol 623, cols 26-33.

HC Deb 6 November 2017, vol 630

HC Deb 5 June 2018, vol 642 col 2226

HC Deb 23 July 2019, vol 663

Healthwatch, 'We Need to Focus on Inequalities to Address NHS Waiting List' (Healthwatch, 9 June 2022) https://www.healthwatch.co.uk/news/2022-06-09/we-need-focus-inequalities-address-nhs-waiting-list accessed 15 April 2023

Heath C, 'Government Announces Huge Shake-up to NHS IVF Rules' (Women's Health, 22 July 2022) <https://www.womenshealthmag.com/uk/health/female-health/a40666693/same-sex-ivf-nhs/> accessed 15 April 2023

Heaton-Harris C, Northern Ireland Update, Statement made on 24 October 2022, Statement UIN HCWS341' (2022) https://questions-statements.parliament.uk/written-statements/detail/2022-10-24/HCWS341 accessed 7 May 2023

Hekkert P and others, 'The Mere Exposure Effect for Consumer Products as a Consequence of Existing Familiarity and Controlled Exposure' (2013) 144 Acta Psychologica 411

Henderson L, 'Law's Patriarchy' (1991) 25 Law & Society Review 411

Hendricks P, 'There is No Right to the Death of the Fetus' (2018) 32 Bioethics 395

Herring J and others, 'Would Decriminalisation mean Deregulation' in Sally Sheldon and Kaye Wellings (eds) Decriminalising Abortion in the UK What Would it Mean? (Policy Press 2020)

Hewson B, 'Reproductive Autonomy and the Ethics of Abortion' (2001) 27 Journal of Medical Ethics

Hindell K and Simms M, Abortion Law Reformed (London, Peter Owen 1971)

HL Deb 25 July 1991, vol 531 col 880

HM Government, 'Register a Birth' (Gov UK) https://www.gov.uk/register-birth/who-can-register-a-birth accessed 2 Jan 2023

-- 'Surrogacy: Legal Rights of Parents and Surrogates' (Gov UK) https://www.gov.uk/legal-rights-when-using-surrogates-and-donors/become-the-childs-legal-parent accessed 17 May 2023

Holm S, 'The Medicalization of Reproduction – A 30 year Retrospective' in F Simonstein (ed), Reprogen-ethics and the Future of Gender (Dordrecht: Springer 2009) 33

Hooton V and Romanis EC, 'Artificial Womb Technology, Pregnancy, and EU Employment Rights' [2022] Journal of Law and the Biosciences 1

Horgan P and others, 'Termination of Pregnancy Services in Irish General Practice from January 2019 to June 2019' (2021) 104 Contraception 50

Horsey K and Sheldon S, 'Still Hazy After All These Years: The Law Regulating Surrogacy' (2012) 20 Medical Law Review 67

Horn C, 'Artificial Womb Development Raises Hope for Premature Babies' (The Financial Times, 25 April 2017) https://www.ft.com/content/7407d008-28ef-11e7-bc4b-5528796fe35c accessed 21 March 2022

-- 'Ectogenesis at Home? Artificial Wombs and Access to Care' (2020) Medical Humanities Blog <https://blogs.bmj.com/medical-humanities/2020/03/03/ectogenesis-at-home-artificial-wombs-and-access-to-care/> accessed 21 Feb 2022

-- 'Gestation Beyond Mother Machine: Legal Frameworks for Artificial Wombs, Abortion and Care' (PhD thesis, Birkbeck University of London 2020)

House of Commons, Standing Orders (2018) 'Arrangement and Timing of Public and Private Business' 14 https://publications.parliament.uk/pa/cm201719/cmstords/1020/body.html accessed 27 December 2023

Human Fertilisation and Embryology Authority, Code of Practice (1st ed, London: HFEA 1991) paras 3.16 and 3.19

-- Code of Practice (7th ed, London: HFEA 2007) para G.3.3.2

-- ‘Costs and Funding’ (HFEA_ https://www.hfea.gov.uk/treatments/explore-all-treatments/costs-and-funding/ accessed 11 April 2023

-- ‘Donation’ (HFEA, Oct 2022) https://www.hfea.gov.uk/donation/ accessed 31 December 2022

-- ‘Surrogacy’ (HFEA) https://www.hfea.gov.uk/treatments/explore-all-treatments/surrogacy/ accessed 31 October 2023

ICM, ‘Abortion Documentary Survey’ (ICM Unlimited, 2017) http://www.icmunlimited.com/wp-content/uploads/2017/10/OlOm-Abortion-Documentary-v1.pdf accessed 27 December 2023

InterAct, ‘What is Intersex?’ (InterAct Advocates, last updated 26th Jan 2021) https://interactadvocates.org/faq/#fertility accessed 1 May 2023

Jackson E, ‘Degendering Reproduction?’ (2018) 16 Medical Law Review 346

Jackson E, ‘Abortion, Autonomy and Prenatal Diagnosis’ (2000) 9 Social & Legal Studies 463

-- Regulating Reproduction: Law, Technology and Autonomy (Hart Publishing 2001)

-- ‘Conception and the Irrelevance of the Welfare Principle’ (2002) 65 The Modern Law Review 176

James-Abra S and others, ‘Trans People's Experiences with Assisted Reproduction Services: A Qualitative Study’ (2015) 6 Human Reproduction 1365

Johanson R and others, ‘Has the Medicalisation of Childbirth Gone Too Far?’ (2002) 324 British Medical Journal 892

Johnson Jr BR and others, ‘What Would be the Likely Impact of Decriminalisation on the Incidence, Timing, Provision and Safety of Abortion?’ in Sally Sheldon and Kaye Wellings (eds) Decriminalising Abortion in the UK What Would it Mean? (Policy Press 2020) 99

Johnston A, ‘Spring Budget 2022 Pre-Budget Briefings: Health Inequalities and Gender’ (Women’s Budget Group, March 2022) https://wbg.org.uk/wp-content/uploads/2022/03/Health-inequalities-and-gender-PBB-Spring-2022.pdf accessed 27 December 2023

Jones B and others, ‘Uterine Transplantation in Transgender Women’ (2019) 126 BJOG 152

Kan A, ‘Classical Cesarean Section’ (2020) 6 The Surgery Journal S98-S103

Kendal E, Equal Opportunity and the Case for State-Sponsored Ectogenesis (Basingstoke: Palgrave Macmillan 2015)

Kenney DJ, ‘Thalidomide – A Catalyst to Abortion Reform’ (1963) 5 Arizona Law Review 105

Kennedy R and others, ‘Implementation of the NICE Guideline – Recommendations from the British Fertility Society for National Criteria for NHS Funding of Assisted Conception’ (2006) 9 Human Fertility 181

Keown J, Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982 (Cambridge University Press 1988)

Khilay S, ‘Changing Perceptions’ (2012) LSE Blogs https://blogs.lse.ac.uk/equityDiversityInclusion/2012/10/changing-perceptions/#:~:text=Engagement%20with%20others%20within%20the,play%20in%20a%20given%20situation accessed 27 December 2023

Kim CR and others, ‘Enabling Access to Quality Abortion Care: WHO’s Abortion Care Guideline’ (2022) 10 The Lancet Global Health e467

Kingma E and Finn S, ‘Neonatal Incubator or Artificial Womb? Distinguishing Ectogestation and Ectogenesis using the Metaphysics of Pregnancy’ (2020) 34 Bioethics 354

Kisu I and others, ‘Risks for Donors in Uterus Transplantation’ (2013) 20 Reproductive Sciences 1406

-- ‘Comment on “Birth of a Healthy Baby 9 years after a Surgically Successful Deceased Donor Uterus Transplant”’ (2022) 3 Annals of Surgery Open 172

Kleeman J, Sex Robots & Vegan Meat: Adventures at The Frontier of Birth, Food, Sex & Death (Picador 2019)

Knott J, ‘Why are Maternal Requests for Caesarean Sections Not Always Granted? (Curtis Law 23 August 2018) https://curtislaw.co.uk/latest-news/why-are-maternal-requests-for-caesarean-sections-not-always-granted/ accessed 31 Oct 2023

Kozlov M, ‘Human Trials of Artificial Wombs Could Start Soon. Here’s What you Need to Lnow’ (Nature, 14th Sept 2023) <https://www.nature.com/articles/d41586-023-02901-1> accessed 26 September 2023

Kuhnle U and Krahl W, ‘The Impact of Culture on Sex Assignment and Gender Development in Intersex Patients’ (2002) 45 Perspectives in Biology and Medicine 85

Lampe N and others, ‘Continuity and Change in Gender Frames: The Case of Transgender Reproduction’ (2019) 33 Gender and Society 865

The Law Commission and Scottish Law Commission, Building Families through Surrogacy: A New Law Volume II: Full Report (Law Com No 411) https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2023/03/2.-Surrogacy-full-report.pdf accessed 31st Oct 2023

Lee E and others, 'Assessing Child Welfare under the Human Fertilisation and Embryology Act 2008: A Case Study in Medicalisation?' (2014) 36 Sociology Health & Illness 500

Lee JY and others, 'Does Ectogestation have Oppressive Potential?' [2023] Journal of Social Philosophy 1

Lee RG and Morgan D, Human Fertilisation and Embryology: Regulating the Reproduction Revolution (Oxford: Blackstone Press, 2001)

Lefkowitz A and others, 'Ethical Considerations in the Era of the Uterine Transplant: An Update of the Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (2012) 100 Fertility & Sterility 924

-- 'The Montreal Criteria for the Ethical Feasibility of Uterine Transplantation' (2012) 25 Transplant International 439

Levels M and others, 'A Review of Abortion Laws in Western-European Countries. A Cross-national Comparison of Legal Developments between 1960 and 2010' (2014) 118 Health Policy 95

Lewis G, 'The Confidential Enquiry into Maternal and Child Health (CEMACH). Saving Mothers' Lives: Reviewing Maternal Deaths to make Motherhood Safer 2003–2005. The Seventh Report of the Confidential Enquiries into Maternal Deaths in the UK' (London: CEMACH, 2007)

Lewis H, 'The Abortion Debate Is Suddenly About "People," Not "Women"' The Atlantic (May 14 2022) https://www.theatlantic.com/ideas/archive/2022/05/abortion-rights-debate-women-gender-neutral-language/629863/ accessed 27 December 2023

Lewis S, Full Surrogacy Now: Feminism against family (London U.K., Verso Books 2019)

Light AD and others, 'Transgender Men who Experienced Pregnancy After Female-to- Male Gender Transitioning' (2014) 124 Obstetrics and Gynecology 1120

Liljestrand J, 'Reducing Perinatal and Maternal Mortality in the World: The Major Challenges' (2005) 106 BJOG: An International Journal of Obstetrics and Gynaecology 877

Limb M, 'The Two Doctors Rule for Authorising Abortion Should be Scrapped, Recommends Review' (2023) 380 BMJ 563

Lohr PA and others, 'How would Decriminalisation affect Women's Health?' in Sally Sheldon and Kaye Wellings (eds) Decriminalising Abortion in the UK What Would it Mean? (Policy Press 2020) 44

Londras FD and others, 'The Impact of Criminalisation on Abortion-related Outcomes: A Synthesis of Legal and Health Evidence' (2022) 7 BMJ Global Health 1

Lowe P, '(Re)imaging the 'Backstreet': Anti-abortion Campaigning Against Decriminalisation in the UK' (2019) 24 Sociological Research Online 203

Luker K, Abortion and the Politics of Motherhood (Berkley CA, University of California Press 1984)

Macintyre J, 'Married 'Man' Claims to Be Five Months Pregnant' The Independent (27 March 2008) https://www.independent.co.uk/life-style/health-and-families/health-news/married-man-claims-to-be-five-months-pregnant-801331.html accessed 27 December 2023

MacKay K, 'The 'Tyranny of Reproduction': Could Ectogenesis Further Women's Liberation?' (2020) 34 Bioethics 346

Macklin R, 'Bioethics, Vulnerability, and Protection' (2003) 17 Bioethics 472

Mahmoud Z and Romanis EC, 'On Gestation and Motherhood' (2022) 31 Medical Law Review 109

Margaria A, 'Trans Men Giving Birth and Reflections on Fatherhood: What to Expect?' (2020) International Journal of Law, Policy and The Family 34 225

Maron DF, 'How a Transgender Woman Could Get Pregnant' (Scientific American, 15 June 2016) https://www.scientificamerican.com/article/how-a-transgender-woman-could-get-pregnant/ accessed 2 Jan 2023

Marsh S, 'IVF Cut Back in 13 Areas of England to Save Money, New Data Shows' The Guardian (6 August 2017) https://www.theguardian.com/society/2017/aug/06/ivf-cut-back-in-13-areas-of-england-in-bid-to-save-money-new-data-shows accessed 15 April 2023

Maxwell K and others, 'Normalising Abortion: What Role can Health Professionals Play?' (2021) 47 BMJ Sexual & Reproductive Health 32

McConnell F, 'A Brief History of the 'Pregnant Man!' (2021) Vice https://www.vice.com/en/article/n7vybb/a-brief-history-of-the-pregnant-man accessed 5 December 2022

-- 'Why I'm Sharing Everything About My Experience as a Pregnant Dad' (2021) Vice https://www.vice.com/en/article/y3g59m/what-its-like-to-be-pregnant-trans-man accessed 5 December 2022

McConnell ML, 'Abortion and Human Rights: An Important Canadian Decision' (1989) 38 The International and Comparative Law Quarterly 905

McCully S, ‘The Time has Come to Extend the 14-day Limit’ (2021) 47 Journal of Medical Ethics

McLean C, ‘The Growth of the Anti-Transgender Movement in the United Kingdom. The Silent Radicalisation of the British Electorate’ (2021) 51 International Journal of Sociology 473

McLeod C and Ponese J, ‘Infertility and Moral Luck: The Politics of Women Blaming Themselves for Infertility’ (2008) 1 International Journal of Feminist Approaches to Bioethics 126

McVeigh E, ‘Abortions Are Legal in Northern Ireland, but That Doesn’t Make Them Easy to Access’ Novara Media (21 October 2022) https://novaramedia.com/2022/10/21/abortions-are-legal-in-northern-ireland-but-that-doesnt-make-them-easy-to-access/ accessed 14 March 2023

Means Jr CC, ‘The Phoenix of Abortional Freedom: Is Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty’ (1971) 17 New York Law Forum 335

MedlinePlus, ‘Mayer-Rokitansky-Küster-Hauser syndrome’ (Medline Plus, last updated 23 June 2022) https://medlineplus.gov/genetics/condition/mayer-rokitansky-kuster-hauser-syndrome/ accessed 1 April 2023

Mesure F, ‘Artificial Amnion and Placenta Technology: Will it Cause the Collapse of the Viability Threshold, and what will this mean for Abortion Jurisprudence?’ (LLB thesis, University of Durham 2022)

-- ‘The Advent of Artificial Wombs – are we Nearing more Restrictive Abortion Laws in England and Wales?’ (CELLS Blog, 3 May 2023) https://www.durham.ac.uk/research/institutes-and-centres/ethics-law-life-sciences/about-us/news/cells-blog/the-advent-of-artificial-wombs/ accessed 14 June 2023

Mills M and others ‘Why do People Postpone Parenthood? Reasons and Social Policy Incentives’ (2011) 17 Human Reproduction Update 848

Milne E, ‘Putting the Fetus First – Legal regulation, Motherhood and Pregnancy’ (2020) 27 Michigan Journal of Gender & Law 149

-- Criminal Justice Responses to Maternal Filicide: Judging the Failed Mother (Emerald Publishing Limited 2021)

Mladovsky P and Sorenson C, ‘Public Financing of IVF: A Review of Policy Rationales’ (2010) 18 Health Care Analysis: HCA: journal of Health Philosophy and Policy 113

Montgomery HE and others, ‘The Future of UK Healthcare: Problems and Potential Solutions to a System in Crisis’ (2017) 28 Annals of Oncology 1751

Moore FD, ‘Ethical Problems Special to Surgery: Surgical Teaching, Surgical Innovation, and the Surgeon in Managed Care’ (2000) 135 Archives of Surgery 14

Morgenroth T and others, ‘Defending the Sex/Gender Binary: The Role of Gender Identification and Need for Closure’ (2021) 5 Social Psychological and Personality Science 731

Morris S and others, ‘Inequity and Inequality in the use of Health Care in England: An Empirical Investigation’ (20050 60 Social Science & Medicine 1251

Mossman MJ, ‘Feminism and Legal Method: The Difference it Makes’ (1987) 3 Wisconsin Women's Law Journal (now Wisconsin Journal of Law, Gender and Society) 147

Moseson H and others, ‘The Imperative for Transgender and Gender Nonbinary Inclusion: Beyond Women's Health’ (2020) 135 Obstetrics and Gynecology 1059

Moulton JE and others, ‘Women’s Perceptions and Experiences of Reproductive Coercion and Abuse: A Qualitative Evidence Synthesis’ (Plos One, 2021) https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0261551 accessed 20 March 2023

Mullally A and others, ‘Working in the Shadows, under the Spotlight – Reflections on Lessons Learnt in the Republic of Ireland after the First 18 months of more Liberal Abortion Care’ (2020) 102 Contraception 305

Murphy J, ‘Is Pregnancy Necessary: Feminist Concerns about Ectogenesis,’ in Scott Gelfand and John Shook (eds), Ectogenesis: Artificial Womb Technology and the Future of Human Reproduction, (Rodopi 2006)

Murphy TF, ‘Assisted Gestation and Transgender Women’ (2015) 29 Bioethics 389

Nasaw D, ‘Pregnant Man’ Thomas Beatie and Wife Nancy Expecting Second Child.’ The Guardian (13 Nov 2008) https://www.theguardian.com/world/2008/nov/13/gayrights-usa-thomas-beatie-pregnant accessed 28th Nov 2022

National Academies of Sciences, Engineering and Medicine, Measuring Sex, Gender Identity and Sexual Orientation (Washington DC, The National Academies Press 2022)

National Institute for Health and Care Excellence, ‘Fertility Problems: Assessment and Treatment’ Guideline: 1.11.1.3 (NICE, 20 Feb 2013, last updated 06 Sept 2017) https://www.nice.org.uk/guidance/cg156/chapter/recommendations#access-criteria-for-ivf accessed 15 April 2023

National Health Service, ‘What are Integrated Care Systems?’ (NHS) https://www.england.nhs.uk/integratedcare/what-is-integrated-care/ accessed 11 April 2023

-- “Overview: Abortion’ (NHS, last reviewed 24 April 2020) https://www.nhs.uk/conditions/abortion/#:~:text=you%20can%20self%2Drefer%20by,and%20services%20in%20your%20area accessed 4 May 2023

-- ‘IVF’ (NHS, last reviewed 18 October 2021) <https://www.nhs.uk/conditions/ivf/> accessed 31 Oct 2023

-- ‘Information about the Administration of Mifepristone (Mifegyne)’ (NHS, 3rd May 2022) https://www.hey.nhs.uk/patient-leaflet/information-about-the-administration-of-mifepristone-mifegyne/ accessed 31 Oct 2023

Nebel K and Hurka S, ‘Abortion: Finding the Impossible Compromise’ in C Knill, C Adam and S Hurka (eds) On the Road to Permissiveness? Change and Convergence of Moral Regulation in Europe (Oxford, Oxford University Press 2015)

Newhall L, ‘Women in Law – Bodily Autonomy ‘The Entombed Womb’ Within the Realm of ‘Body Politics’ it could be argued that the Law Fails to Support and Protect Women’s Bodily Autonomy’ (2011) 43 Bracton Law Journal

NGA Law, ‘Surrogacy in the UK (UK Law)’ (NGA Law) https://www.ngalaw.co.uk/knowledge-centre/uk-surrogacy-law/ accessed 21 December 2022

NICE, ‘Caesarean Birth’ (NICE, 31 March 2021, last updated 6 September 2023) https://www.nice.org.uk/guidance/ng192/resources/caesarean-birth-pdf-66142078788805 9 December 2023

Nursing and Midwifery Council, The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates (London NMC, 2018) https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf accessed 27 December 2023

O’Donovan L, ‘Pushing the Boundaries: Uterine Transplantation and the Limits of Reproductive Autonomy’ (2018) 32 Bioethics 489

-- ‘Why Uterine Transplantation Requires us to Rethink the Role of the Pre-conception Welfare Principle’ (2022) 9 Journal of Law and the Biosciences 1

-- and others, ‘Ethical and Policy Issues Raised by Uterus Transplants’ (2019) 131 British Medical Bulletin 19

Obedin-Maliver J and Makadon HJ, ‘Transgender Men and Pregnancy’ (2016) 9 Obstetric Medicine 4

Office for Health, Improvement & Disparities, ‘Abortion Statistics, England and Wales: 2021’ (Gov UK, last updated 2 October 2023) https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2021/abortion-statistics-england-and-wales-2021 accessed 5 Oct 2023

-- ‘Abortion Statistics for England and Wales: January to June 2022’ (Gov UK, last updated 22 June 2023) https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022 accessed 5 July 2023

Office for National Statistics, 'Household Wealth by Ethnicity, Great Britain: April 2016 to March 2018' (ONS, 23 November 2020) <https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/articles/householdwealthbyethnicitygreatbritain/april2016tomarch2018> accessed 1April 2023

-- Childbearing for Women born in Different Years, England and Wales: 2020' (ONS, 27 January 2022) https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/conceptionandfertilityrates/bulletins/childbearingforwomenbornindifferentyearsenglandandwales/2020#:~:text=The%20lowest%20level%20of%20childlessness,in%201975%20having%20no%20children accessed 31 Oct 2023

Office for National Statistics, 'Gender identity, England and Wales: Census 2021' (ONS, 6 January 2023) https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/genderidentity/bulletins/genderidentityenglandandwales/census2021#:~:text=A%20total%20of%2045.4%20million,their%20sex%20registered%20at%20birth. accessed 27 December 2023

Oppenheim M, "A Vote for Gender Equality': MPs Vote to Permanently Allow at Home Early Medical Abortions in England' The Independent (March 2022) https://www.independent.co.uk/news/uk/home-news/abortions-telemedicine-vote-commons-b2047496.html accessed 27 December 2023

-- 'First Womb Transplant Takes Place in UK After Sister Donates Uterus' The Independent (23 August 2023) https://www.independent.co.uk/news/uk/home-news/womb-transplant-first-uk-sister-b2397460.html# accessed 27 December 2023

Oxford University Hospitals, 'First Womb Transplant Performed in the UK' (Oxford University Hospitals NHS, 23rd Aug 2023) https://www.ouh.nhs.uk/news/article.aspx?id=1975 accessed 27 December 2023

Parliamentary Assembly, PACE Resolution 2239 'Private and Family Life: Achieving Equality Regardless of Sexual Orientation' (10 October 2018) https://pace.coe.int/en/files/25166/html accessed 31 Oct 2023

Parsons JA, '2017-19 Governmental Decisions to Allow Home Use of Misoprostol for Early Medical Abortion in the UK' (2020) 124 Health Policy 679

-- and Romanis EC, '2020 Developments in the Provision of Early Medical Abortion by Telemedicine in the UK' (2021) 125 Health Policy

-- Early Medical Abortion, Equality of Access and the Telemedical Imperative (Oxford University Press, 2021) 31

Partridge E and others, 'An Extra-uterine System to Physiologically Support the Extreme Premature Lamb' (2017) 8 Nature Communications 1

Perez CC, Invisible Women (London Vintage, 2019)

Potts M and others, Abortion (Cambridge, Cambridge University Press 1977)

Räsänen J, 'Ectogenesis, Abortion and a Right to the Death of the Fetus' (2017) 31 Bioethics 697

Ray S, 'India Bans Commercial Surrogacy to Stop 'Rent a Womb' Exploitation of Vulnerable Women' The Telegraph (Delhi, 20 December 2018) https://www.telegraph.co.uk/news/2018/12/20/india-bans-commercial-surrogacy-stop-rent-womb-exploitation/ accessed 12 March 2023

Raymond EG and others, 'First-trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review' (2013) 87 Contraception 26

Raymond J, Women as Wombs (San Francisco, Harper Collins 1993)

Reuters, 'Swedish Woman World's First to Give Birth after Womb Transplant' (Reuters Healthcare & Pharmaceuticals, 2014) https://www.reuters.com/article/us-sweden-transplant-idUSKCN0HT0GC20141004 accessed 31 Oct 2022

RFSL, Legal Parenthood (RFSL, 12th April 2022) https://www.rfsl.se/en/organisation/familj/att-bli-och-vara-foralder/legal-parenthood-assisted-fertilization/ accessed 31 Oct 2023

Richards C and others, 'Non-binary or Genderqueer Genders' (2016) 28 International Review of Psychiatry 95

Richards EG and others, 'Uterus Transplantation: State of the Art in 2021 (2021) 38 Journal of Assisted Reproduction and Genetics 2251

Richie C, 'What Would an Environmentally Sustainable Reproductive Technology Industry Look Like? (2015) 41 Journal of Medical Ethics 383

Roberts S, Killing the Black Body: Race, Reproduction, and the Meaning of Liberty (New York: Vintage Books 2017) 248

Romanis EC, 'Artificial Womb Technology and the Frontiers of Human Reproduction: Conceptual Differences and Potential Implications' (2018) 44 Journal of Medical Ethics 751.

-- 'Artificial Womb Technology and the Significance of Birth: Why Gestatelings are Not Newborns (or fetuses)' (2019) 45 Journal of Medical Ethics 727

-- Why the Elective Caesarean Lottery is Ethically Impermissible' (2019) 27 Health Care Analysis 249

-- ‘Artificial Womb Technology: The Implications for Ectogestation as a Reproductive Choice’ (2020) 1062 Bionews

-- ‘Challenging the “Born Alive” Threshold: Fetal Surgery, Artificial Wombs, and the English Approach to Legal Personhood’ (2020) 28 Medical Law Review 93

-- ‘Is “Viability” Viable? Abortion, Conceptual Confusion and the Law in England and Wales and the United States’ (2020) 7 Journal of Law and the Biosciences

-- ‘Partial Ectogenesis: Freedom, Equality and Political Perspective’ (2020) 46 Journal of Medical Ethics

-- ‘Abortion and “Artificial Wombs”: Would ‘Artificial Womb’ Technology Legally Empower Non-Gestating Genetic Progenitors to Participate in Decisions about how to Terminate a Pregnancy in England and Wales?’ (2021) 8 Journal of Law and the Biosciences 1

-- ‘Assisted Gestative Technologies’ (2022) 48 Journal of Medical Ethics

-- ‘Abortion Access and the Benefits and Limitations of Abortion-Permissive Legal Frameworks: Lessons from the United Kingdom’ [2023] Cambridge Quarterly of Healthcare Ethics 1

-- ‘R v Foster: Exemplifying the Urgency of the Decriminalisation of Abortion’ [2023] Medical Law Review 1.

-- ‘The Equality-enhancing Potential of Novel Forms of Assisted Gestation: Perspectives of Reproductive Rights Advocates’ (2023) 37 Bioethics 637

-- Biotechnology, Gestation, and the Law: A comparative review from England and Wales, (Oxford University Press 2024)

-- Horn C, ‘Artificial Wombs and the Ectogenesis Conversation: A Misplaced Focus? Technology, Abortion and Reproductive Freedom’ (2020) 13 International Journal of Feminist Approaches to Bioethics 174

-- and Parsons JA, ‘Directed and Conditional Uterus Donation’ (2022) 48 Journal of Medical Ethics 810

-- and others, ‘The Excessive Regulation of Early Abortion Medication in the UK: The Case for Reform’ (2022) 20 Medical Law Review

Rough E, ‘Abortion in Northern Ireland: Recent Changes to the Legal Framework’ (House of Commons Library, 6 Feb 2023) https://commonslibrary.parliament.uk/research-briefings/cbp-8909/ accessed 6 May 2023

Royal College of General Practitioners, ‘RCGP to Support Decriminalisation of Abortion’ (Royal College of General Practitioners, February 2019) https://www.rcgp.org.uk/representing-you/policy-

areas/abortion#:~:text=The%20RCGP%20has%20called%20for,same%20way%20as%20other%20healthcare accessed 31 Oct 2023

Royal College of Midwives, 'Position Statement: Abortion' (The Royal College of Midwives, May 2016) <abortion-statement.pdf (rcm.org.uk)> last accessed 31 Oct 2023

Royal College of Obstetricians and Gynaecologists, 'RCOG Backs Decriminalisation of Abortion' (Royal College of Obstetricians and Gynaecologists, September 2017) https://www.rcog.org.uk/media/ly1lmvge/rcog-fsrh-joint-decrim-abortion-position-statement-august-2022.pdf accessed 31 Oct 2023

Rubio-Marín R, 'The (Dis)establishment of Gender: Care and Gender Roles in the Family as a Constitutional Matter' (2016) 13 (4) International Journal of Constitutional Law 787

Sallée C and others, 'Uterine Factor Infertility, a Systematic Review' (2022) 11 Journal of Clinical Medicine 1

Samuel L, 'With Uterus Transplants a Reality, Transgender Women Dare to Dream of Pregnancies' STAT (7 March 2016) https://www.statnews.com/2016/03/07/uterine-transplant-transgender/ accessed 2 Jan 2023

Savio LD and Cavaliere G, 'The Problem with Commercial Surrogacy. A Reflection on Reproduction, Markets and Labour' (2016) 2 Biolaw Journal 73

Scheunemann LP and White DB, 'The Ethics and Reality of Rationing Medicine' (2011) 140 Chest 1625

Schultz JH, 'Development of Ectogenesis: How will Artificial Wombs affect the legal status of a Fetus or Embryo? (2010) 84 Chicago Kent Law Review 877

Segers A, 'The Path Towards Ectogenesis: Looking Beyond the Technical Challenges' (2021) 22 BMC Medical Ethics 1

Sekowska-Koxlowska K, 'A Tough Job: Recognizing Access to Abortion as a Matter of Equality. A Commentary on the Views of the UN Human Rights Committee in the Cases of Mellet v Ireland and Whelan v Ireland. Reproductive Health Matters.' (2018) 26 Taylor & Francis Online

Shapiro D, 'Should Pregnancy be Considered a (Temporary) Disability?' (2018) 11 International Journal of Feminist Approaches to Bioethics 91

Shaw D and Norman W, 'When there are No Abortion Laws: A Case Study of Canada (2020) 62 Best Practice and Research in Clinical Obstetrics and Gynaecology 49

Sheldon S, 'Who is the Mother to Make the Judgement?': The constructions of woman in English abortion law' [1993] 1 Feminist Legal Studies

-- Beyond Control: Medical Power and Abortion Law' (Pluto Press, 1997)

-- ‘The Abortion Act 1967: a Critical Perspective’ in Ellie Lee (eds) Abortion Law and Politics Today (London, Palgrave Macmillan 1998)

-- ‘The Decriminalisation of Abortion: An Argument for Modernisation’ (2016) 36 Oxford Journal of Legal Studies 334

-- and Lord J, ‘Care Not Criminalisation: Reform of British Abortion Law is Long Overdue’ (2023) 49 Journal of Medical Ethics 523

-- and Wellings K, (eds), Decriminalising Abortion in the UK: What Would It Mean? (Policy Press 2020),

-- and others, ‘Supportive Parenting’, Responsibility and Regulation: The Welfare Assessment under the Reformed Human Fertilisation and Embryology Act (1990)’ (2015) 78 The Modern Law Review 461

-- and others, ‘Too Much, too Indigestible, too Fast’? The Decades of Struggle for Abortion Law Reform in Norther Ireland (2020) 83 The Modern Law Review 761

Siegel R, ‘Abortion as a Sex Equality Right: Its Basis in Feminist Theory’ in MA Fineman and I Karpin (eds) Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood’ (New York, Columbia University Press 1995) 43

Siegel N and Siegel R, ‘Equality Arguments for Abortion Rights’ (2013) 60 UCLA Law Review Discourse 160

Simms M, ‘Abortion Law and Medical Freedom’ (1974) 14 The British Journal of Criminology 118

-- ‘Legal Abortion in Great Britain’ in H Homans (ed), The Sexual Politics of Reproduction (Gower, 1985) 94.

Smajdor A, ‘The Moral Imperative for Ectogenesis’ (2007) 16 Cambridge Quarterly of Healthcare Ethics 336

-- ‘In Defense of Ectogenesis’ (2012) 21 Cambridge Quarterly of Healthcare Ethics 90

Smart B, Michel Foucault (London, Tavistock 1985)

Smart C, Feminism and the Power of Law, (Routledge 1989)

-- ‘Power and the Politics of Child Custody’ in C Smart and S Sevenhuijsen (eds), Child Custody and the Politics of Gender (London, Routledge 1989)

Smith W, ‘Great Britain Second Country to Allow Use of RU-486’ (1991) 20 Planned Parenthood in Europe

Somers MD, ‘A Comparison of Voluntarily Childfree Adults and Parents’ (1999) 55 Journal of Marriage and the Family 643

Son HJ, 'Artificial Wombs, Frozen Embryos, and Abortion: Reconciling Viability's Doctrinal Ambiguity' (2005) 14 UCLA Women's L.J. 213

Son S, 'Thomas Beatie, World's First Pregnant Man, Describes Social, Legal Challenges' The Daily Northwestern (24 Feb 2013) https://dailynorthwestern.com/2013/02/24/campus/thomas-beatie-worlds-first-pregnant-man-describes-social-legal-challenges/ accessed 22 Nov 2022

Sparrow R, 'Is it 'Every Man's Right to Have Babies if He Wants Them? Male Pregnancy and the Limits of Procreative Liberty' (2008) 18 The Kennedy Institute of Ethics Journal 275

Stauch M, 'Consent in Medical Law' (1998) 7 British Journal of Nursing 84

Stratman C, 'Ectogestation and the Problem of Abortion' (2020) 34 Philosophy and Technology 683

Swigert VL, 'Review: [Untitled]' Reviewed Work: Female Sexuality and the Law: A Study of Constructs of Female Sexuality as They Inform Statute and Legal Procedure by Susan M Edwards (1982) 11 Contemporary Sociology

Taylor RB and Wilson ALM, 'UK Abortion Law: Reform Proposals, Private Members' Bills, Devolution and the Role of the Courts' (2019) 82 Modern Law Review 71

TFP Fertility UK, 'What is Gestational Surrogacy?' (TFP Fertility UK, 25 April 2021) https://tfp-fertility.com/en-gb/blog/gestational-surrogacy accessed 27 Dec 2023

TGEU, 'Trans Rights Europe & Asia Map 2020' (TGEU, 10 May 2020) https://tgeu.org/wp-content/uploads/2020/05/MapB_TGEU2020_PRINT-1.pdf accessed 7 November 2022

The Ethics Committee of the American Society for Reproductive Medicine, 'Access to Fertility Treatment by Gays, Lesbians, and Unmarried Persons: A Committee Opinion' (2013) 6 Fertility and Sterility 1524

The Thalidomide Trust, 'History of Thalidomide' (The Thalidomide Trust) https://www.thalidomidetrust.org/about-us/history-of-thalidomide/ accessed 27 Dec 2023

Tippett A, 'Reproductive Rights Where Conditions Apply: An Analysis of Discriminatory Practice in Funding Criteria Against Would-be Parents Seeking Funded Fertility Treatment in England' (2023) 26 Human Fertility 483

Tongue Z, 'Telemedical and Self-managed Abortion: A Human Rights Imperative? (2023) 30 European Journal of Health Law 158

Tornello SL and Bos H, 'Parenting Intentions Among Transgender Individuals' (2017) 4 LGBT Health 115

Tribe L, Abortion: The Clash of Absolutes (Norton 1992)

Urquhart C, ‘Woman Accidentally Kills Herself after Drinking Vinegar to Abort Pregnancy’ The Guardian, (6 March 2014) https://www.theguardian.com/uk-news/2014/mar/06/woman-accidentally-kills-herself-drinking-vinegar-abort-pregnancy accessed 27 December 2023

Urquia ML and others, ‘Variations in Male-female Infant Ratios among Births to Canadian- and Indian- Born Mothers, 1990-2011: a population-based register study’ (2016) 4 Canadian Medical Association Journal Open E116

Usuda H and others, ‘Successful Maintenance of Key Physiological Parameters in Preterm Lambs Treated with Ex Vivo Uterine Environment Therapy for a Period of 1 week’ (2017) 217 American Journal of Obstetrics and Gynecology 457

-- ‘Successful Use of an Artificial Placenta to Support Extremely Preterm Ovine Fetuses at the Border of Viability’ (2019) 221 American Journal of Obstetrics and Gynecology 69

Vakdes F, ‘Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins’ (1996) 8 Yale Journal of Law & the Humanities 161

Vali S and others, ‘Uterine Transplantation: Legal and Regulatory Implication in England’ (2021) 129 BJOG: An International Journal of Obstetrics & Gynaecology 590

Vázquez SSF and Brown J, ‘From Stigma to Pride: Health Professionals and Abortion Policies in the Metropolitan Area of Buenos Aires’ (2019) 27 Sexual and Reproductive Health Matters 65

Wai CCW, ‘Policy change vs social change: It’s a question of power’ (LSE Blogs 5 March 2021 https://blogs.lse.ac.uk/socialpolicy/2021/03/05/policy-change-vs-social-change-its-a-question-of-power/ accessed 31 Aug 2023

Walkowitz JR, Prostitution and Victorian Society (Cambridge University Press, 1980) 58

Ward A, ‘If Woman's Personhood Is Truly Respected by the Law, then she must also be the Ultimate Source of Both the Decision to Abort, and the Meaning given to that Decision. Discussion with Reference to UK Abortion Law’ (2016) Bristol Law Review 113

Ware SM, ‘Confessions of a Black Trans Dad’ in Oparah JC, and Bonaparte A (eds), Birthing Justice: Black Women, Pregnancy and Childbirth (New York, Routledge 2015)

Watson J, ‘Does the Mental Capacity Act 2005 Adequately Protect Persons with Learning Difficulties Against Needless Non-Consensual Sterilisation?’ (2015) 7 Plymouth Law and Criminal Justice Review 167

Waxman S, ‘Applying the Preconception Welfare Principle and the Harm Threshold: Doing More Harm than Good?’ (2017) 17 Medical Law International 134

Weinstein MC, ‘Should Physicians be Gatekeepers of Medical Resources?’ (2001) 27 Journal of Medical Ethics 268

Weisman CS and others, ‘Abortion Attitudes and Performance Among Male and Female Obstetrician-Gynecologists’ (1986) 18 Family Planning Perspectives 67

Wellings K, ‘Abortion Law Should Change to Reflect Current Practice, Study Suggests’ (London School of Hygiene and Tropical Medicine, 7 March 2023) https://www.lshtm.ac.uk/newsevents/news/2023/abortion-law-should-change-reflect-current-practice-study-suggests accessed 4 June 2023

Whelan AM, ‘An Inclusive Approach to LGBTQ+ Rights’ (25 April 2022) https://www.sir.advancedleadership.harvard.edu/articles/an-inclusive-approach-to-lgbtq-abortion-rights accessed 10 May 2023

White FR and others, ‘Embodies Experiences of Trans Pregnancy’ (2021) Body and Society

Wilkinson S, ‘The Exploitation Argument Against Commercial Surrogacy’ (2003) 17 Bioethics 169

-- and Williams NJ, ‘Should Uterus Transplants be Publicly Funded?’ (2016) 42 Journal of Medical Ethics 559

Williams N, ‘Should Deceased Donation be Morally Preferred in Uterine Transplantation Trials?’ (2016) 30 Bioethics 415

Winchester N, ‘Women’s Health Outcomes: Is there a Gender Gap? (House of Lords Library, 1 July 2021) https://lordslibrary.parliament.uk/womens-health-outcomes-is-there-a-gender-gap/ accessed 31 Oct 2023

Wise J, ‘NICE Calls for End to “Postcode Lottery” of Fertility Treatment’ (2014) 349 British Medical Journal 1

Womb Transplant UK, ‘Everything You Need To Know about Uterine Transplantation’ (Womb Transplant UK, 30 Sep 2015) https://wombtransplantuk.org/everything-you-need-to-know-about-uterine-transplantation accessed 24 December 2022

WHO, ‘Constitution of the World Health Organization’ (WHO, 7 April 1948) https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf accessed 27 December 2023

-- United Nations Children's Fund (UNICEF) Revised 1990 estimates of maternal mortality: a new approach by WHO and UNICEF. (Geneva, WHO.int, 1996) https://apps.who.int/iris/bitstream/handle/10665/63597/WHO_FRH_MSM_96.11.pdf accessed 31 Oct 2023

-- ‘Caesarean Sections Should Only be Performed When Medically Necessary’ (WHO.int, 9 April 2016) https://www.who.int/news/item/09-04-2015-caesarean-sections-should-only-be-performed-when-medically-necessary accessed 10 Dec 2023

-- Abortion Care Guideline (Geneva, WHO.int, 2022) https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf?sequence=1 accessed 31 Oct 2023

Zaitchik A, ‘Viability and the Morality of Abortion’ (1981) 10 Philosophy & Public Affairs 18

Zajonc RB, ‘Mere Exposure: A Gateway to the Subliminal’ (2001) 10 Current Directions in Psychological Science 224

-- ‘Feeling and Thinking: Preferences Need No Inferences’ (2008) 35 American Psychologist 117

Zeeman L and others, ‘A Review of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Health and Healthcare Inequalities’ (2019) 29 European Journal of Public Health 974

Zhang R and others, ‘Immunosuppression in Uterine Transplantation’ (2020) 63 Transplant Immunology