Should older and postmenopausal women have access to assisted reproductive technology?

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ABSTRACT

In vitro fertilisation and other assisted reproductive technologies (ART) now enable many women to have children, who would otherwise have remained childless. The most obvious application for these technologies is to help physically infertile, but otherwise healthy young women to have children. However, increasingly, other groups are seeking access to ART to conceive, raising ethical questions about who should be allowed to use these technologies to bear children. In particular, the question of access to ART by lesbian couples and single women has roused considerable ethical, legal and public debate.

This paper examines the perhaps less often considered issue of older and postmenopausal women, who are infertile due to age, using ART to conceive. A range of objections have been made to allowing these women access to ART, including concerns about their ability to care for the child, the risk of birth defects and the ‘unnaturalness’ of extending childbearing capacity beyond the menopause. This paper examines these objections and provides some responses.

Introduction

Assisted reproductive technologies (ART) have thrown up a range of ethical issues that challenge our ideas about families, parenting, reproductive choice and infertility. ART have found widespread community acceptance as a solution to the suffering many couples experience in being unable to have children. Indeed, ART now play a role in almost 2% of Australian births.\(^1\) However, ART have not only given physically infertile individuals and couples a chance to have children, for physically fertile people also, they have opened up a range of choices about how and when to have children.\(^2\) As a result, there has been considerable debate in this country over the use of these techniques by people not traditionally regarded as ‘infertile’, notably single women and lesbian couples, among others.\(^3\) One particular aspect of this debate is whether or not the state should allow women who have become infertile due to age, to use these new technologies to become pregnant. Despite the availability of technology to enable such women to conceive, legislative restrictions on this use of ART, based on age, have been put in place in some countries, including Australia.

The availability of ART has altered what we perceive as infertility. Prior to the development of ART, the decline of fertility with age
occurred as a matter of course, and post-menopausal women did not expect to have children. With the introduction of ART, this infertility has become a condition that can be 'cured'. The possibility that women in their 50s and 60s may now bear children requires us to rethink our notions of parenthood, and examine our conception of a right to reproductive autonomy.

It might appear that the issue of older and postmenopausal women wanting to reproduce through ART is something of a 'straw man'; that there will be few cases and there is little to be concerned about. However, this is not the case. Health statistics show that women are increasingly putting off pregnancy until later in life, while the age of women accessing ART is also increasing. It is unlikely that this is a coincidence. In addition, as will be discussed below, women in their 50s and even 60s are already using ART to conceive.

Many European countries already prohibit women from using ART on the basis of age, and these issues have been a matter for media and political debate. In Australia, too, the issue is live. In 2000, the South Australian Council on Reproductive Technology released a report on the issue of older women and ART, recommending access be restricted. Western Australia already has legislation prohibiting treatment of women whose infertility is age-related. Further, in its 1999 review of the legislation, the Western Australian parliamentary Select Committee on the Human Reproductive Technology Act 1991 specifically considered the issue of older women and ART, and recommended that women over 55 be prohibited from conceiving through ART, and access by women between 50 and 55 be subject to assessment by the practitioner. Although the issue of restricting access to ART on the basis of age has been widely debated, while these legislative restrictions remain in place, there is still a need to question their validity, given the strong objections to such limits, as explored in this paper.

Many objections have been raised to older women using ART to conceive, and Australian legislation and guidelines on access appear to exclude these women to some extent. Community opinion also seems to be against older women conceiving. One Australian study reported that 39% of respondents felt the age limit for access to ART should be 40, 31% said 45, 12% said 50 and 3%, 55.

This paper examines whether older women can, and should, be legally restricted from using ART to conceive. It considers a number of objections to older women using ART to conceive, and examines some specific responses. It will be argued that many of the objections to older women becoming pregnant in this way are unfounded, or fail because they are inconsistently applied, and equate to unjustified discrimination. More recently, debate has focused on the use of egg freezing and other newer technologies that enable women to postpone pregnancy until later in life, while avoiding the risks to the child associated with births using older oocytes. While this paper recognises that advances in ART have opened up new issues, such as this one, this paper's goal is to examine the objections to restrictions based on age, and on access to ART generally, which remain in legislative force