

未婚者可否使用人工協助生殖科技？-以台灣家庭、婚姻與生育關係 之社會變遷為中心

Assisted Reproductive Technology for Married Couples Only? --A Study of Taiwan's Social Change in Family, Marriage and Reproduction

中文摘要

人工協助生殖科技為人類帶來福祉，草擬中的人工生殖法草案卻限制現無婚姻關係者使用，由於該規定不只限制了單身者的生育自主權，更涉及我們期待科技在社會中扮演如何的角色，當科技有能力影響社會時，我們希望透過規範，限制科技的使用來服膺傳統價值，還是接受科技為社會關係帶來的改變？故本研究企圖瞭解政府限制無婚姻關係者使用是否有正當理由。

我國傳統文化對於生育向來重視。在憲法第 22 條的架構下，凡未列舉之基本權，在不妨害社會秩序與公共利益的界線下，均受憲法保障。因此在數種生育自主權的學說中，政策自由主義的生育自主權立場認為人民有生育自主權，但政府有強制利益時，可以加以限制的立場，似與我國相當。從而在限制人工協助生殖科技的使用時，也必需考慮政府是否具有如：保護胎兒利、受術者及人工生殖子女利益或避免社會關係改變等強制利益。

我國目前院版人工生殖法草案中，企圖以「受術夫妻」取代「受術者」的用語，間接的限制現無婚姻關係者使用人工協助生殖科技，其立法理由似為保障人工生殖子女之利益及希望人民以周延的、合法的、符合社會規範價值的方式來使用人工協助生殖科技，以維護既有的社會關係。但我們認為限制現無婚姻關係者使用人工協助生殖科技，係對不孕者與現無婚姻關係者生差別待遇的行為，其目的是否正當或其手段是否可以達到其目的，則容有疑義。從大法官會議解釋或民法等現存法律觀察，其雖然重視已經締結的婚姻及家庭的完整圓滿，卻不會對於人民在締結婚姻、組織家庭與生育子女的生涯規劃上為規範或建議；而婚姻與家庭的意義也已經變遷。其兩者對人們的感情功能日漸提升，而制度性功能降低。家庭或為養育子女所必需，但家庭的種類並非只有由婚姻為主體的核心家庭而已，也並非僅有核心家庭可以肩負養育子女的責任。而實際上單親家庭面臨困境的主要因素，係因其單親情狀發生的意外性，使現無婚姻關係者使用人工協助生殖科技，並不會使人工生殖子女蒙受不利益。

實際上，限制無婚姻關係者使用人工協助生殖科技隱含了對於單身者的歧視，同目前絕大多數對於單身者的研究，多係著重於區別單身者不願意進入婚姻的理由

與差異，而非從尊重單身決定並進而以關懷、照顧單身者權益的立場，而為研究或政策決定。若以關懷及促進單身者權益的立場為出發，而立法者所關心的價值係為使受術者必需先經深思熟慮及保護人工生殖子女利益，則可以以評估、諮商及教育等方法來取代全面的禁止，則能以更溫和的方式達成政策目的。

英文摘要

Based on a bill currently drafted by Health Department of Taiwan, married couples are the only group of people allowed access to assisted reproduction technology (ART) in Taiwan. However, only Asian countries limit ART access to married couples in the world. On the contrary, in most western countries, ART can be accessed by any two parties proven to have stable relationship. Although culture probably can explain the different regulation above, whether it can explain Taiwan's regulation under legislation remains to be explored.

In this paper, we will first discuss the contemporary relationships among marriage, family and reproduction in Taiwan, and analyze whether Taiwan's current culture would deny singles' access to ART. Literatures of culture and legal history indicate that reproduction is a crucial matter to the Chinese. However, as social change, we argue that the concept that only married couples are appropriate for reproduction is changing in Taiwan. For decades the core meaning of marriage has evolved into lifelong promises and supports shared by any couple. And reproduction is no longer an inherent product of every marriage. It is undisputed that supports from the families are necessary to a child's growth. However, as divorce rate in Taiwan soars, marriage is no longer a guarantee that children would have company from both of their parents during every stage of their childhood. Under adequate social, economic and mental conditions, new modes of family, such as those built by homosexual partners or single parent, can work as well as traditional family does in terms of raising and educating children.

Therefore, this paper argues that it is out of date to limit singles' access to ART in Taiwan. Instead, legislators should shift their focus to the assessment and disclosure of possible risks in ART.