

State should not deny child's need for a father

Under new plans, lesbians and single mothers will be able to have NHS fertility treatment Picture: Alamy

Opinion Focus

Proposed changes in fertility law have sexist imbalance and could put parents' interests over children's, writes Calum MacKellar

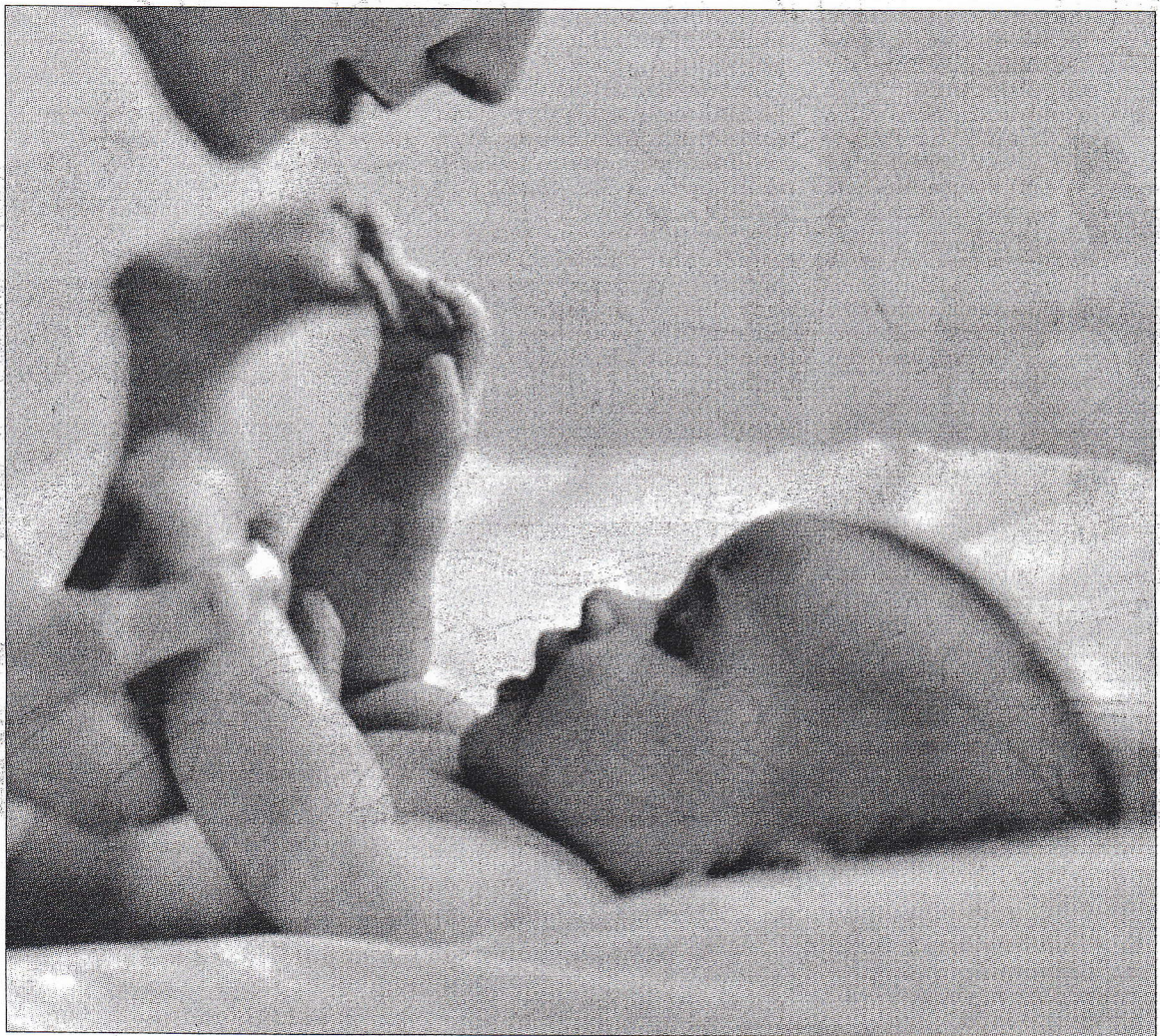
IN NEW legislation being proposed by the UK Department of Health, the requirement for fertility clinics to consider the need for a father when deciding whether to offer treatment is to be discontinued.

This will mean that lesbians and single mothers will now be able to have children without clinics being able to deny treatment since the legislation was seen as discriminatory for unconventional families.

This is supported by the UK Human Fertilisation and Embryology Authority which indicated in 2005 that: "Studies over the past decade suggest that, despite initial concerns, children born to lesbian couples compare well with other assisted conception children in terms of emotional, behavioural and gender development."

However, many commentators disagree with such a statement. This is because the studies undertaken so far are incomplete and have often only examined pre-adolescent children. These may not be as concerned about their identity or their family circumstances as when they grow older. It is possible that these children may only become aware of any psychological problems when they become adults, or consider having children of their own later on in life.

Indeed, in 2005, the UK Department of Health indicated that: "research shows children brought up in one-parent families tend to score worse on a range of indices than children brought up by a mother and a father".



In the normal process of human reproduction, persons will generally decide for themselves the context in which they choose to have a child, such as their partners and the specific point in time when they want a child.

However, as soon as a person or couple is prevented from having a child in a "private" manner because of natural limitations and seeks assistance from the state to overcome these limitations, it might be argued, as recently stated by the House of Commons Science and Technology Committee, that "the mere fact of third-party involvement is enough to render the be-

haviour in question public rather than private".

In other words, when society is asked (through its healthcare professionals) to assist a person or couple to create a child, it then also has an inherent responsibility to make sure that the welfare of the child is taken into account through providing conditions that will best protect the child from certain risks or harm. And in the context of human reproduction, this may mean that a father and a mother should be present in the ethical creation of children. This is the important difference with respect to couples who

conceive naturally, in which case the state does not interfere.

In this regard, there does seem to be a discrepancy in the law. Indeed, in the Human Fertilisation and Embryology Act 1990, the child's welfare should only be taken into "account" before treatment is offered.

However, this contrasts with the Adoption and Children Act 2002, in which the welfare of the child is considered to be the "paramount consideration of the court or adoption agency" when making decisions about the care of a child. In this case, describing welfare as paramount means that

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all other considerations, including the wishes of the prospective adoptive parents, are of secondary importance to the best interests of the child concerned.

The relevant question, therefore, is why do people want children in the first place. Do they want a child primarily for themselves or do they also want a child for the child's sake (or both)?

If parents want children primarily for themselves and seek to obtain these children in order to address personal needs or wishes, then it is indeed difficult to see how the welfare of the child could take priority. Instead, the autonomy and the wishes of the persons wanting to have a child would be the main factor in the decision and the interests of the child will always come second.

If, on the other hand, the child is made a priority, then the welfare of the child to be created should be paramount to the prospective parents. In this case, the child would be considered in a similar way to those children being considered for adoption, that is, their welfare would be paramount and come first.

In adoption, of course, children already exist, whereas in reproduction children are being created. But would the creation of children without a father or mother be an ethical act totally devoid of psychological risks? Is this in the best interests of the child?

As a possible response to these questions, fertility treatment law should indeed be changed to address the sexist imbalance, which states that account should only be taken for the "need of that child for a father" - but this should be replaced by "the need of the child for a father and a mother".

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