



**States of Reproduction:
The Co-production of Queer and Trans Parenthood in Three
European Countries**

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Abstract

Achieving parenthood with the help of assisted reproductive technologies (ART) remains a fraught business, particularly for queer and trans people who want to use sperm donation, egg donation, procedures involving surrogates, or other ARTs. This is because the regulation of fertility treatment and associated issues such as the documentation of parenthood in birth certificates and passports varies across countries, including across European countries, in terms of who is considered an appropriate prospective parent, what kind of treatment they should be allowed, and what documented parent status they are entitled to. Elaborating Engeli and Rothmayr Allison's (2017) continuum model of classifying countries according to their relatively permissive or restrictive ART regulations, we argue that other criteria of assessment than their's need to be used if the focus is on queer and trans people. We compare Estonia, Austria and the UK in terms of LGBTIQ people's opportunities of access to ART and documentation of parenthood. Jasanoff's (2005a, 2005b) concept of 'ontological surgery' regarding the regulation of biotechnology in different states suggests ways of thinking about differences in ART access and parenthood status both within and across countries for LGBTIQI people seeking to form families and to create new kinds of kinship.

Keywords: ART, queer, trans, ART regulation, parenthood status

Introduction

Transgender man pregnant by his female transgender partner as couple admit ‘the process to get here was complex’. (Shammas, 2015)

The rise of trans gender, not least in public discourses and debates, together with advances in biotechnology, has led to new discussions about gender identity and parenthood. Thus headlines such as the one above, which point to the increasing numbers of trans people going public with their reproductive experiences, have become more commonplace as changes in biotechnology and in public attitudes towards trans people have encouraged greater openness about their lives. Nevertheless, as the line ‘the process to get here was complex’ indicates, trans reproduction, rather like reproduction by queer people, is not without obstacles, and especially when assisted reproductive technologies (ART) are utilized. In this article we explore why ART-based reproduction is particularly fraught for trans people and for LGBTQI people more generally. We explore this issue in relation to the regulation of ART and the regulation of claims to parenthood. In particular we ask how regulatory frameworks operate to enable certain kinds of parenthood but not others. Here we draw inspiration from Sheila Jasanoff’s (2005b: 153) assertion that ‘comparison enlarges our awareness of alternative possible worlds’, but also suggest that the problematics created by nationally internally and cross-nationally contradictory framings regarding access to ART and possibilities of documented parenthood express both local ambivalences concerning new forms of kinship, and constitute forms of social ordering. In this article, then, we discuss how regulations related to biotechnology serve to ‘keep at bay. . . novel constellations of social life’ (Jasanoff, 2005b: 147) through a process of ‘ontological surgery’ (Jasanoff, 2011: 67).

ART regulation as ‘ontological surgery’

Access to ART and to documented parenthood status is regulated quite differently across diverse European countries as we shall discuss below with reference to three countries: Austria, Estonia and the UK. These countries have been chosen because they exemplify the diversity of regulation we deal with across Europe. This diversity produces an ‘ontological surgery’, here understood metaphorically as the way in which

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3 ‘new entities’, in this instance queers and trans people¹ who want to become parents, are
4 sorted into ‘ethically manageable categories’ through regulation (Jasanoff, 2011: 77).
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6 We want to explore why three European countries have come to ‘substantially different
7 conclusions’ (Jasanoff, 2005b: 141) regarding ART access and parenthood status
8 despite being part of the European Union and constituting developed industrial
9 countries. We draw on and extend Isabell Engeli and Christine Rothmayr Allison’s
10 (2017) continuum model of classifying countries according to their ART policies as
11 permissive or restrictive to ask how different regulations around ART access and the
12 documentation of parenthood status impact on individual countries’ status as permissive
13 or restrictive. We suggest that a somewhat different set of criteria than the ones used by
14 Engeli and Rothmayr Allison is needed if we focus on queer and trans people. Engeli
15 and Rothmayr Allison’s model regarding access to ART applies mainly to heterosexual
16 and same-sex couples, single and older cis² women, rather than to queer and trans
17 people. The latter do not fit within a heteronormative framework. But, for example, the
18 question of whether or not same-sex marriage or civil partnership is permissible in a
19 country - a criterion not used by Engeli and Rothmayr Allison and which extends their
20 model -, is critical for analysing queer and trans people’s access to ART and
21 possibilities of parenthood. This is because in many countries marriage (whether
22 heteronormative or same-sex) creates better opportunities for accessing ART and for
23 parenthood recognition. This also points to a further important issue: the regulation of
24 ART access extends far beyond the question of what ARTs are permissibly and to
25 whom, since such regulations can be countered by related regulations concerning, for
26 example, the relation between marital status and ART access. If ART is legally
27 constructed as the domain of married, heterosexual couples only, then even a very
28 liberal form of ART regulation (for instance allowing the use of surrogates) will do
29 nothing for queer and trans people. This means that biotechnological regulation is
30 strongly implicated in family law and other associated regulations which structure
31 parenting opportunities along scientific as well as socio-cultural dimensions.

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51 In classifying individual countries as restrictive, intermediate, or permissive Engeli
52 and Rothmayr Allison’s model asked three questions: ‘(1) To what extent should the
53 field of ARTs be left to self-regulation by the medical community? (2) What kind of
54 parental model(s) should be promoted? (3) Should the state finance ART treatment or
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3 should it be left to private financial resources?’ (88) Self-regulation by medical staff, the
4 first issue, is not helpful in considering queer and trans issues, as it can individualize
5 decision-making regarding queer and trans reproduction. Instead, we are interested in
6 the systematic ways in which that reproduction is en- or disabled. Therefore we replaced
7 self-regulation with considering what kinds of ART procedures are allowed for (what
8 kinds of) queer and trans people. The second question raised by Engeli and Rothmayr
9 Allison regarding parental models is useful in considering queer and trans people’s
10 possibilities for parenthood; we analyse it here in terms of opportunities for legal
11 parenthood registration, and more practically, regarding the parenthood terminology
12 used on birth certificates. We retained Engeli and Rothmayr Allison’s third question of
13 the ART funding possibilities for queer and trans people since it plays a significant role
14 in the social stratification of (queer and trans) reproduction, as it is frequently only
15 white middle-class queer and trans people who can afford to pay for ART privately. In
16 relation to Engeli and Rothmayr Allison’s model, we thus do two things: we modify
17 their questions to generate greater explicitness regarding how queer and trans people are
18 affected in their quest for ART use and parenthood status, and we suggest that
19 individual states are not systematically restrictive or permissive in their regulations
20 regarding ART access and parenthood.
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33 Jasanoff (2005a: 147) suggests that in their ART regulations states perform a kind of
34 ontological surgery, or ontological ordering. That ordering is different in diverse
35 countries’ national regulations concerning the same scientific issues. Thus in different
36 ways nations try to draw a line around what they regard as ethically and politically
37 legitimate processes for reproducing human beings. Ontological surgery is the process
38 through which categories are settled and ethical principles fixed; in terms of ART,
39 ontological surgery ‘sort[s] out, classif[ies], or reclassify[ies] key elements of human
40 reproduction in accordance with the felt rightness of a legal order’ (Jasanoff and
41 Metzler, 2018: 6).
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52 **ART regulation and queer and trans people**

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3 The definition of ART varies across different contexts but according to the World
4 Health Organization, ART ‘includes the in vitro handling of both human oocytes and
5 sperm, or embryos for the purpose of establishing pregnancy’ (Zegers-Hochschild *et al.*,
6 2009: 2685). As queer and transgender people are able to form non-genetically and
7 genetically related families and kinship relations, ARTs now afford the possibility of a
8 ‘new reproductive logic’ (Solinger, 2013: 100). This new logic has given rise to the
9 concept of reproductive rights to combat discrimination in access to ART, in parenting
10 legislations and the right to decide about reproduction (Galpern, 2007). Reproductive
11 technologies have enabled changes to how we think about family and kinship
12 (Strathern, 1992, 2004; Franklin, 1997; Edwards, 2014). The British Medical
13 Association, for example, has insisted on the term ‘pregnant people’ to replace
14 ‘pregnant women’ (Siddique, 2017). This allows for the inclusion of pregnant trans or
15 intersex men in relevant documentation.
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19 Julie McCandless (2012a, 2012b) has called for a change of legal interpretations of
20 parenthood in UK law to take account of new forms of parenthood. However, the UK’s
21 Human Fertilisation and Embryology Act (HFEA) 2008 stipulates that only a cis
22 woman giving birth can be recorded as the ‘mother’ on the birth certificate and a second
23 (cis or trans) female parent in the case of lesbian parenthood as ‘parent’ (Government
24 UK, 2008). The challenge in the UK for someone like transman Thomas Beatie is that
25 he is not a woman giving birth, ‘but the wording in the legislation specifies that the
26 status of legal mother is granted to “the woman” who gives birth’ (McCandless, 2012a:
27 n.p.). To achieve legal parenthood Thomas and his partner would have to adopt of their
28 own child with considerable state involvement, as Thomas’ female partner would also
29 not be able to claim parental status because he is not considered the legal mother of the
30 child. In the HFEA 2008, same-sex and other kinds of parenthood are effectively
31 ‘assimilated into the traditional family model’ (McCandless, 2012a, n.p.).
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35 However, not only is there a question of how diverse identities or bodily states of
36 designation (e.g. transman) impact on claims to parenthood status and official kin-
37 making; the related documentation is also an issue. Here the appropriate terminology
38 identifying kinship is crucial as identity papers are routinely required in many contexts,
39 including most prominently in any form of national border-crossing. The case of the
40 married cis mother who kept her maiden name and was stopped and interrogated at a
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3 UK airport because her cis daughter did not have the same surname as her is only one
4 relevant example (Griffiths, 2017). The adjustment of legal documents to current ways
5 of family and kinship building has yet to occur.
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8 For most queer and transgender parents reproduction turns out to be a legal maze.
9 Discriminatory ART regulations in many European states mean that they can access
10 these technologies often only in another state than the one they live in. The socially
11 imagined ideas of cis mother- and fatherhood routinely underlying laws on
12 biotechnologies, family and parenthood as a form of cultural production (Melhuus,
13 2009) are context specific. This means that the differences across the various European
14 states pose diverse challenges for queer and trans people's reproductive opportunities.
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20 Below we therefore compare the regulation of ART for queer and transgender people
21 in three purposely selected European countries: Austria, Estonia, the UK. These
22 countries represent the centre, east and west of Europe. Their ART policies and
23 LGBTQI rights vary widely: the UK is very progressive regarding LGBTQI rights and
24 ART use, Austria and Estonia are more restrictive but in quite different ways and for
25 different reasons. Austria is a Catholic country with heteronormative family attitudes,
26 partly derived from its religious context. Estonia is very pro-natalist, but more
27 restrictive regarding LGBTQI rights. These differences mean that the ontological
28 surgeries they perform are somewhat different. It should also be noted here that to date,
29 most research on queer and transgender use of ART and their regulation is done in
30 English-speaking, western European countries, much less in central European ones, and
31 virtually none in eastern European countries.
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41 In the following, we focus on two aspects of queer and transgender rights and ART
42 use: first, on gender and sexuality issues in the legal regulations of marriage and
43 partnership, and second, on possibilities for queer and trans reproduction, and
44 parenthood and gender recognition in birth documents (Melhuus, 2009). The aim is to
45 outline which reproductive challenges queer and transgender people face in Estonia,
46 Austria, and the UK respectively, and what ontological surgeries these challenges
47 involve. We discuss partnership regulations first since these frequently form the basis
48 for regulating ART access. Second, we discuss how ontological surgery concerning
49 ART access and parenthood status for LGBTIQ people is effected in each country. As
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3 part of this we analyse, third, what laws exist regarding parental filiation for queer and
4 transgender people, and how ART may be accessed (i.e. how it is financed). We focus
5 on each country in turn in order of their relative restrictivity regarding regulations
6 around queer and trans partnerships and marriage (see Table 1).
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15 Table 1 shows that the UK is the least restrictive country regarding queer and trans
16 people's possibilities for formal partnership recognition whilst Estonia is the most
17 restrictive. We therefore discuss Estonia first.
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20 21 22 **Estonia: Effecting ontological surgery through restrictions and grey zones**

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24 In Estonia a registered partnership for same-sex couples with limited rights is
25 theoretically allowed, but not yet implemented. The Registered Partnership Act (RPA)
26 2014 entered into force in 2016, but in the same year the full implementation of the law
27 was still being discussed. The opposition Centre Party tried to repeal the RPA 2014, but
28 was not successful (ILGA-Europe, 2017, p. 87). There is no constitutional restriction on
29 marriage. Hence, legally it would be easy to introduce same-sex marriage, but the
30 Estonian Propatria and Res Publica Union Party (IRL) announced in 2016 that they plan
31 'to propose a constitutional amendment to define marriage as a union only between men
32 and women'. However, no further action has been taken to date (ILGA-Europe, 2017, p.
33 87). In April 2018, the Supreme Court clarified that the RPA was valid and the Court
34 saw no need to review the law because of possible gaps in its implementation. The lack
35 of political will to adapt the legislation to implement the RPA better is useful for foreign
36 same-sex married couples and problematic for local couples as there is a lack of clarity
37 regarding the formal establishment of their partnership status (Vaigé, 2018).
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49 Until 2016, the Family Law Act allowed adoption only for married couples and
50 single people above 25 years of age. Co-parental recognition was not possible for same-
51 sex couples according to the Family Law Act, 2009, §148: 150 (Riigi Teataja, 2009;
52 Rainbow Europe, 2017a). Since 2016, intra-family adoption for cohabiting couples has
53 become possible, and in March 2016 the first official queer adoption took place: a cis
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lesbian couple mutually adopted their children, conceived with anonymous donors (ERR, 2016).

In Estonia three different laws regulate LGBTQI and ART issues: the Penal Code (PL) from 1994, amended in 2007, which prohibits surrogacy; the Patents Act (CA) from 1994, amended in 2004; and finally the Assisted Fertilization and Protection of Embryo Act 1997 (AFPEA), amended 2003. The latter allows the use of donor-eggs, -sperm and -embryos, only if pregnancy is impossible in another manner, and without commercial intermediaries (§23-24). Medically assisted insemination is legal solely for queer singles. According to the AFPEA, ARTs are accessible to all adult women up to 50 years of age (§4(2)). The law does not explicitly exclude queer women, but there is a distinction between married and unmarried women. Unmarried women have access to artificial insemination with anonymous donor sperm or with sperm from a known person (§21-22; Uibo, 2016: 2).

Queer people's reported experience of access to ARTs in Estonia varies. Strömpl *et al.* (2008) found that exclusion from ART was the norm because queer people did not feel included in the heteronormative administrative forms and attitudes of the medical staff. Legally the birth mother is the only registered mother (Uibo, 2016: 2). However, a more recent study reported that artificial insemination 'is unrestricted for lesbian couples and . . . widely used as a means to complement the family' (Meiorg and Grossthal, 2012: 23). The different findings in these two studies might be due to a) one being published four years later, but b) also a function of their cohorts: Strömpl *et al.* interviewed 30 Estonian LGBTQI-people, while Meiorg and Grossthal relied solely on two telephone interviews, one with an Estonian ILGA-Europe member and the other with a public Estonian trans woman who got political asylum in Belgium in 2000.

Most queer people do not have access to state-financed ART and have to pay privately. Since 2008 pro-natalist Estonia has paid for unlimited IVF attempts and embryo transfers (Tonsiver *et al.*, 2013: 7) for cis women up to age 40 with valid health insurance and medical indications. But without medical indications, queer women have to pay privately for ART.

Gestational surrogacy is criminalized in the Penal Code (§132). However, in October 2015 the Social Affairs Committee of the Parliament decided that surrogacy should be

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2 allowed for non-commercial use under certain medical conditions (Sotsiaalkomisjon,
3 2015; Uibo, 2016: 4).

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6 Trans people may marry a person of the other gender. But during the political
7 struggle around the RPA 2014 (ILGA-Europe, 2017: 85), public opinion regarding
8 LGBTQI rights also became less accepting. According to a survey by the market
9 research company Turu-Uuringute AS (2016), the opposition to LGBTQI people has
10 increased. 60% of the participants, compared to 54% in 2015, were opposed to
11 registered partnerships for same-sex couples. In the new study 77% were also opposed
12 to adoption by same-sex couples (ILGA-Europe, 2017: 88).

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15 In Estonia the ontological surgery regarding ART-assisted parenthood for queer and
16 trans people is effected through partnership regulations and their impact on potential
17 parenthood. This means that LGBTQI people have to navigate a grey zone where the
18 requirement for singledom to access ART contradicts the possibility of same-sex
19 registered partnerships. However, LGBTQI acceptance by the general population has
20 recently declined, possibly indicating rising conservatism. The situation in Austria is
21 more progressive, and LGBTQI acceptance by the population is slightly better.

22 23 24 **Austria's ontological surgery: Between restrictivity and progressiveness**

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26 In Austria same-sex marriage became possible in 2019. Registered partnerships with
27 similar rights to marriage had existed since 2010. Joint adoption (legal since 2015) and
28 second-parent adoption (2013) are possible, and so is automatic co-parent recognition
29 (ILGA-Europe, 2016). The forced divorce of trans people was stopped in 2006 as was
30 sterilization in 2009 (TransX, n.d.).

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32 Since 2015 lesbian couples have been allowed to use medically assisted
33 insemination with semen from a third person, but not single cis women, because
34 medically assisted reproduction (MAR) is solely allowed in marriage, in a registered
35 partnership or in co-habitation (Fortpflanzungsmedizinrechts-Änderungsgesetz, 2015,
36 §2(1), 2(2)3., and §3(2)). Financial Aid (70% of costs) for IVF is possible under certain
37 conditions (age limits for both partners, both must have health insurance in Austria, be
38 Austrian, or EU citizens or have a valid permit of residence, and must have one of three
39 different medical infertility reasons). Surrogacy continues to be banned and the child
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1 belongs to the birth mother ('madre cierta est'). Thus, the child of a foreign mother does
2 not automatically acquire Austrian citizenship, for example; instead, the intended
3 mother has to be Austrian, or the child has to have an Austrian father, or there must be
4 the danger that the child will be stateless without Austrian citizenship. This means that
5 in the case of surrogacy undertaken abroad, the birthmother and, if existing, her partner,
6 have to sign a contract giving up their parental rights (Palmer, 2013). As adoption for
7 same-sex couples has been allowed since 2016, gay male couples can make use of
8 surrogacy abroad and the non-biological father can legalise his parent status in Austria
9 through adoption (Tempfer, 2017).
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11 A clause in the new reproductive medicine law, relevant for trans people, is the
12 entitlement to store semen, egg cells and testicular or ovarian tissue for future MAR, if a
13 given medical treatment poses a serious threat to pregnancy through sexual intercourse
14 (Fortpflanzungsmedizinrechts-Änderungsgesetz, 2015: §2b (1)). The question remains
15 if hormonal treatment and/or surgery which threaten their fertility count as medical
16 treatment, since gender dysphoria is no longer considered a mental disorder.
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18 Austria, under pressure from the European Court of Human Rights, has slightly
19 liberalized its legal regulation of ART use, and is in that sense a little more open to
20 certain LGBTQI-rights than Estonia. In Austria the Catholic Church and the restrictive
21 conservative party (ÖVP) blocked the liberalisation of reproductive laws for decades
22 (Griessler and Hager, 2016: 68). Most notably in the 20 years between the first ART
23 law and its amendment, public attitudes towards LGBTQI, family and ART had shifted
24 (Seidl, 2013). A change in political culture also meant that citizens could express their
25 discontent through appeals to the Austrian Supreme Court, the Constitutional Court and
26 the European Court for Human Rights (ECHR) (Griessler, 2012: 53; Griessler and
27 Hager, 2016: 72). LGBTQI rights tend to be implemented through appealing to national
28 and international courts, as happened with the recognition of same-sex unions (Knill *et*
29 *al.*, 2014: 285 ff). The ECHR also pressured the Austrian government to review the
30 ART law, and after a lesbian couple appealed to the national court in 2012, the
31 Constitutional Court repealed several clauses as unconstitutional
32 (Verfassungsgerichtshof, 2013; Griessler and Hager, 2016: 72).
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56 **The UK: The ontological surgery of relative permissiveness**

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LGBTQI family structures in the UK are enabled through marriage equality in England, Wales (since 2013) and Scotland (since 2014) and registered partnerships since 2004, as well as the possibility of joint adoption, allowed since 2005 in the Adoption and Children Act, Sect. 50 (Government UK, 2002), in Northern Ireland only since 2013 after a court ruling. Second-parent adoption was also allowed in the Human Fertilisation and Embryology Act (HFEA) 2008, Sect. 54, in Northern Ireland from 2013. Automatic co-parent recognition is possible according to HFEA 2008, Sect. 42 (Government UK, 2008).

HFEA (2008) allows medically assisted insemination for couples and singles. For same-sex female couples three conditions apply: first, they must be married or in a civil partnership before conception; second, the donation has to be done by artificial insemination; third, the non-birth parent has to consent to the insemination if both lesbian parents are to be registered on the birth documents without adoption or the use of a clinic (HFEA 2008, Sect. 42, 45). Donor anonymity was abolished in 2005 and donor information should be available to the offspring (Richards, 2014, pp. 36–38). ART is allowed for same-sex partners and single people.

The extension of legal parenthood to a second female from the moment of birth is a benefit of the HFEA 2008, since having to adopt a child as a same-sex couple is considered second-best to ‘real’ parenthood. To become the legal parents after a surrogacy process, a parental order is necessary, ‘a type of fast-track adoption’. The 2008 Act also allows same-sex couples with a partial genetic link to the child and ‘in an enduring family relationship’ to apply for a parental order (HFEA 2008, Sect. 54(2)(c); McCandless, 2013: 143).

However, the overall effect of these measures is still a legal assimilation of female couples’ position to straight couples. Only one mother and a father or female parent count as parents on the birth certificate. There are no formal options for two mothers or two female parents. These options and terminology would make the two parents more equal than having one partner as ‘female parent’, whilst the other is the ‘mother’. Two fathers are also not possible, as a male same-sex couple can only apply for a parental order following surrogacy (McCandless, 2013: 147). Commercial surrogacy is not legal (Government UK, 1985). However, a relationship based on surrogacy is recognized

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2 under Section 30, HFEA 2008. Nonetheless, the surrogate mother remains the legal
3 mother of the child without a parental order or adoption.
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6 McCandless highlights four ways in which parents of the same gender have different
7 legal roles, e.g. ‘mother’ (= birth mother) and ‘female parent’ because of the 2008 Act:

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9 first, by reserving legal motherhood as a status exclusive to the birth mother,
10 whether or not she is the genetic mother...; second, by insisting that the second
11 female parent is a ‘parent’ rather than a ‘mother’; third, by attributing female
12 parenthood on grounds which closely parallel those by which men achieve
13 fatherhood...; and fourth, by explicitly prohibiting the attribution of motherhood
14 and female parenthood on the basis of the genetic link..., rendering the gestational
15 connection as holding significance per se, rather than as a marker of the mother’s
16 genetic link (McCandless, 2013: 148).
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23 Here ontological surgery occurs through assimilation to the straight (two of different
24 sexes), gender-binary parental model through the refusal to view motherhood as also
25 grounded in genetic connection. Motherhood is constructed ‘as a nurturing rather than
26 also a generative activity’ (Ibid.). Furthermore, section 47 prohibits female parenthood
27 on the basis of the genetic link, which is thus not equal to fatherhood, as the latter can
28 be attributed through a genetic link (Ibid: 139). This is in contrast to the situation where
29 a partner in a female same-sex couple gives her egg to the other partner who becomes
30 the (gestating) and birth mother. Here the child is genetically linked to the first, egg-
31 donating woman. However, legally the egg-donor has only the status of a female parent
32 and explicitly does not obtain parenthood status through the genetic link. She can only
33 achieve legal parenthood status through being the civil or married partner of the birth
34 mother, or through procedures that are similar for non-genetic fathers (McCandless,
35 2013: 148 f). McCandless therefore warns that the silencing of the female genetic
36 contribution signals a more precarious position for genetic mothers (compared to
37 fathers) and privileges genetic fatherhood in family law (Collier and Sheldon, 2008;
38 McCandless and Sheldon, 2014: 69).
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51 A different challenge exists for trans people who since 2004 have been able to
52 change their name in legal documents without sex reassignment surgery, and to marry a
53 person of the other gender according to the Gender Recognition Act, Sect. 11, Schedule
54 4 (Government UK, 2004; Rainbow Europe, 2017b). Their problem is that solely the
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birth mother has the status of the legal mother, and both a transman giving birth and his partner must adopt their own child. This is due to the HFEA's heteronormative parenthood definitions. McCandless (2012b) therefore argues for a gender-neutral status regarding legal parenthood. This would also be helpful for non-binary trans people (White, 2018: 4)

The ontological surgery effected by the HFEA shows that queer and trans wishes for reproduction are recognised, but LGBTIQ reproductive possibilities, and legal queer and trans parenthood are not fully achievable because underlying HFEA's regulations are heteronormative assumptions of reproduction and parenthood.

The problematics of ontological surgeries in 3 EU-states: a comparison

ART and parenthood status regulations produce problems for queer and trans people both transnationally, and within one state. This is most evident in the contradictions between laws regulating partnership and parenthood status relative to laws regulating access to ART. Both the more permissive and the restrictive dimensions of family policies and ART laws even within individual countries are associated with the imbrication of such policies in the broader national political cultures. Thus the dominance of the Catholic Church in Austria, for example, compared to the relative secularity of the UK means that questions of formal partnership recognition have been dealt with more liberally in the UK than in Austria. This, however, does not automatically imply restrictivity or permissiveness on all fronts within the same country. The most restrictive of the three countries in this study, Estonia, still allows certain forms of surrogacy whilst Austria does not.

Given these complexities we suggest that Isabell Engeli's and Christine Rothmayr Allison's comparison of different ART policies (2017) and their analytical dimensions do not adequately capture the reproductive opportunities and challenges queer and trans people face. In our comparison, we looked at the regulations for queer and trans ART-based reproduction in Austria, Estonia and the UK. Based on this we modified Engeli and Rothmayr Allison's model to consider 1) the laws concerning queer and transgender kinship (e.g. legal registration of parents and children); 2) LGBTIQI access to ART; and 3) the funding possibilities for ART treatment. Table 2 below summarizes our findings. It shows, differently from Engeli's and Rothmayr Allison's results, that Austria has

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become more permissive due to its recent, more progressive legislation regarding queer and trans people. It also points to an important issue we wish to highlight: the regulations we are concerned with change over time. This means that Engeli and Rothmayr Allison's model has valence only at a specific point in time; political shifts can mean shifts in the permissiveness or restrictivity of a given legislation. Second, the same specificity applies to the regulations regarding ART access and parenthood status. Thus the permissiveness of one regulation may be cancelled out by the restrictivity of another, and, to paraphrase Jasanoff (2011: 77), it is when queer and trans people's desire for parenthood surfaces that the "'joints" of biotechnologically manipulated nature stand publicly revealed.' Hence the ontological surgery done to legislate ART and parenthood becomes exposed when we look at queer and trans access to reproductive technologies and parenthood.

[Insert Table 2 here]

Conclusions

In this article we have argued that ontological surgery of queer and trans reproduction with ART is effected both through ART access regulation and through the regulation of partnership and parenthood status. Thus, in more restrictive countries such as Estonia, vague laws concerning LGBTIQ people's access to ART and un-implemented partnership and kinship regulations make legal discrimination not obviously visible in the laws themselves. This can leave queer and transgender people in limbo as they seek to legalise their family structures in official documents. This challenge exists in restrictive countries, and in intermediate countries such as Austria where same-sex marriage became only legal in 2019.

More permissive countries such as the UK may use heteronormative family structures as the basis for enabling different forms of legal kinship. This creates its own difficulties, as it does not necessarily reflect the reproductive realities of queer and transgender people. It also promotes differences between being 'mother' and being 'parent', which produce differences in status between these entities. It is clearly necessary to rethink gender, sexuality and kinship (e.g. the importance of genetic links) and utilize more up-to-date definitions of gender, sexuality and kinship as the basis for legal ART and parental regulations.

Here we want to suggest that while some European state legislations have become increasingly progressive regarding formal partnership recognition, this is not the case for formal parenthood recognition. This is partly because this scenario involves legal adults *and* a child or children, legal minors. Further, there is a basic question which also divides diverse members of the LGBTIQ community regarding how different participants in the procreation process (donors, surrogates, birth mothers, social parents) should be recognized, indeed *if* they should be recognized. Discussions around these issues often centre on the various parents' interests (see Griffin, 2017), potentially erasing the resultant child's perspective. As Crawshaw et al. (2017: 1) have argued: 'Current birth registration systems fail to serve adequately the interests of those born as a result of gamete and embryo donation and surrogacy. In the UK, changes to the birth registration system have been piecemeal, reactive and situation-specific and no information is recorded about gamete donors. Birth registration has thereby become a statement of legal parentage and citizenship only, without debate as to whether it should serve any wider functions. This sits uneasily with the increasingly accepted human right to know one's genetic and gestational as well as legal parents, and the duty of the State to facilitate that right.' And, beyond

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3 this, the prospective parents'/donors'/surrogate's desire for involvement with the child may not
4 only be at variance from the desires of the child but also from those of the other co-procreators.
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6 And, even more complexly, these desires may change over time, both for the co-procreators and
7
8 for the child.
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10 One solution regarding this dilemma might be to make the procreative process transparent and
11 accountable by registering every co-procreator on the birth certificate which might then list the
12 sperm donor, the egg donor, the surrogate, the social parent/s. The child might also be entitled to
13 information (more or less extensive) about these co-procreators on maturity, for example. To
14 safeguard privacy, this might take the form of two different documents: a birth certificate that
15 simply attests to that fact, its place and date, and the name of the born person, and a second
16 certificate containing the co-procreators' details. Crawshaw et al. argue, not dissimilarly, for a
17 document indicating legal parentage, and another recording genetic and gestational parentage.
18 Such dual documentation is necessary given that surrogacy, egg and sperm donation remain
19 taboo in some countries even as they practise commercial ART support in extensive ways.
20 Nonetheless, inclusive ART legislation and regulation requires that a formula is found that
21 addresses all ART users in like fashion.
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34 **References**

35
36 Bundeskanzleramt Österreich (2015) VwGH Ro 2015/01/0011 - Erkenntnis (Volltext): RDB
37 Rechtsdatenbank https://rdb.manz.at/document/ris.vwght.JWT_2015010011_20151215J00
38 (accessed 27/2/2018).
39

40 Collier, R. and Sheldon, S. (2008) *Fragmenting Fatherhood*. Oxford: Hart Publishing.

41
42 Crawshaw, M., Blyth, E. D., and Feast, J. (2017) Can the UK's birth registration system better
43 serve the interests of those born following collaborative assisted reproduction?, *Reproductive*
44 *Biomedicine and Society Online* 4, pp. 1-4.
45

46
47 Edwards, J. (2014) Undoing kinship, in: T. Freeman, S. Graham *et al.* (Eds) *Relatedness in*
48 *Assisted Reproduction*. Cambridge: Cambridge UP. 44-60.
49

50 Engeli, I. and Rothmayr Allison, C. (2017) Governing new reproductive technologies across
51 western Europe, in: M. Lie, and N. Lykke (Eds) *Assisted Reproduction Across Borders*. New
52 York: Routledge. 87-99.
53
54
55
56
57
58
59
60

- 1
2
3 Enke, A.F. (2012) The education of little cis: cisgender and the discipline of opposing genders.
4 In A. Enke, ed. *Transfeminist Perspectives in and beyond Transgender and Gender Studies*.
5 Philadelphia: Temple UP. 60-77.
6
- 7 *ERR* (2016) Eestis Lapsendas Esimene Samasooline Paar Kaks Last, March 29. At
8 <https://www.err.ee/557008/eestis-lapsendas-esimene-samasooline-paar-kaks-last> (accessed
9 14/11/2017).
10
11
- 12 Franklin, S. (1997) *Embodied Progress: A Cultural Account of Assisted Conception*. New York:
13 Routledge.
14
- 15 Government UK (1985) *Surrogacy Arrangements Act*. At
16 <http://www.legislation.gov.uk/ukpga/1985/49> (accessed 18/1/2018).
17
- 18 Government UK (2002) *Adoption and Children Act*. At
19 <https://www.legislation.gov.uk/ukpga/2002/38/contents> (accessed 17/1/2018).
20
- 21 Government UK (2004) *Gender Recognition Act*. At
22 <https://www.legislation.gov.uk/ukpga/2004/7/contents> (accessed 22/1/2018).
23
- 24 Government UK (2008) *Human Fertilisation and Embryology Act*. At
25 <https://www.legislation.gov.uk/ukpga/2008/22/contents> (accessed 17/1/2018).
26
- 27 Griessler, E. (2012) ‘Selbstbestimmung’ versus ‘Kind als Schaden’ und ‘Familie’, *Reihe*
28 *Soziologie* 98 (Vienna: Institute for Advanced Studies). At
29 <https://www.ihs.ac.at/publications/soc/rs98.pdf> (accessed 2/1/2018).
30
31
- 32 Griessler, E. and Hager, M. (2016) Changing direction: The struggle of regulating assisted
33 reproductive technology in Austria, *Reproductive Biomedicine & Society Online* 3: 68–76.
34
- 35 Griffin, G. (2017) Erasing mother, seeking father: biotechnological interventions, anxieties over
36 motherhood and donor offspring’s narratives of self, in: G. Rye et al. (Eds) *Motherhood in*
37 *Literature and Culture*. London: Routledge. 85-95.
38
- 39 Griffiths, S. (2017) Both parents’ name on child passports, *The Sunday Times*, October 15. At
40 <http://newspaperspdf.com/country/the-sunday-times-uk-15-october-2017/> (accessed 4/11/2017).
41
42
- 43 ILGA-Europe (2016) *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual,*
44 *Trans and Intersex People in Europe 2016*. At [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf)
45 [europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf) (accessed
46 20/11/2017).
47
- 48 ILGA-Europe (2017) *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual,*
49 *Trans and Intersex People in Europe 2017*. At [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf)
50 [europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf) (accessed 3/1/2018).
51
52
- 53 Jasanoff, S. (2005a) *Designs on Nature: Science and Democracy in Europe and the United*
54 *States*. Princeton: Princeton UP.
55
56
57
58
59
60

- 1
2
3 Jasanoff, S. (2005b) In the democracies of DNA: Ontological uncertainty and political order in
4 three states, *New Genetics and Society*, 24(2): 139–156.
5
6 Jasanoff, S. (Ed) (2011) *Reframing Rights: Bioconstitutionalism in the Genetic Age*. Cambridge,
7 MA: MIT Press.
8
9 Jasanoff, S. and Metzler, I. (2018) Borderlands of life: IVF embryos and the law in the United
10 States, United Kingdom, and Germany, *Science, Technology, & Human Value*, published online
11 January 29, 1-37.
12
13 Knill, C., Preidl, C., *et al.* (2014) Die katholische Kirche und Moralpolitik in Österreich:
14 Reformdynamiken in der Regulierung von Schwangerschaftsabbrüchen und der Anerkennung
15 gleichgeschlechtlicher Partnerschaften, *Österreichische Zeitschrift für Politikwissenschaft*, 43(3):
16 275–292.
17
18 McCandless, J. (2012a) Transgender parenting and the law, *British Politics and Policy at LSE*.
19 At <http://blogs.lse.ac.uk/politicsandpolicy/parenthood-laws-family/> (accessed 1/11/2017).
20
21 McCandless, J. (2012b) Who's the daddy? At
22 <http://www.lse.ac.uk/researchAndExpertise/researchHighlights/Law/HFEA.aspx> (accessed
23 22/1/2018).
24
25 McCandless, J. (2013) Cinderella and her cruel sisters: parenthood, welfare and gender in the
26 Human Fertilisation and Embryology Act 2008, *New Genetics and Society*, 32(2): 135–153.
27
28 McCandless, J. and Sheldon, S. (2010) The Human Fertilisation and Embryology Act (2008) and
29 the tenacity of the sexual family form, *Modern Law Review*, 73(2): 175–207.
30
31 McCandless, J. and Sheldon, S. (2014) Genetically challenged: The determination of legal
32 parenthood in assisted reproduction, in: T. Freeman, S. Graham, F. Ebtehaj and M. Richards
33 (Eds) *Relatedness in Assisted Reproduction*. Cambridge: Cambridge UP. 61-78.
34
35 Meiorig, M. and Grossthal, K. (2012) *Monitoring Implementation of The Council of Europe*
36 *Recommendation to Member States on Measures to Combat Discrimination on Grounds of*
37 *Sexual Orientation or Gender Identity*, Estonia Compliance Documentation Report. At
38 [https://www.ilga-
39 europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_reco
40 mmdation_-_compliance_documentation_report_-_5_12.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_recommendation_-_compliance_documentation_report_-_5_12.pdf) (accessed 14/11/2017).
41
42 Melhuus, M. (2009) Conflicting notions of continuity and belonging: assisted reproduction, law,
43 and practices in Norway, *Social Analysis: The International Journal of Social and Cultural*
44 *Practice*, 53(3): 148–162.
45
46 Palmer, E. (2013) *Austria: Reform of Citizenship Law*. At [//www.loc.gov/law/foreign-
47 news/article/austria-reform-of-citizenship-law/](http://www.loc.gov/law/foreign-news/article/austria-reform-of-citizenship-law/) (accessed 2/11/2017).
48
49 Parlament (2015) 445 d.B. (XXV. GP) - Fortpflanzungsmedizinrechts-Änderungsgesetz –
50 *FmedRÄG*. At https://www.parlament.gv.at/PAKT/VHG/XXV/II/I_00445/index.shtml (accessed
51 22/2/2018).
52
53
54
55
56
57
58
59
60

- 1
2
3 Parliament (2007) House of Lords Debates, Vol. 696, col 672-3, 19 November. At
4 <https://publications.parliament.uk/pa/ld200708/ldhansrd/index/071119.html> (accessed
5 11/3/2018).
6
7 Rainbow Europe (2017a) Rainbow Europe Map: Estonia. At [https://rainbow-](https://rainbow-europe.org/#8631/0/0)
8 [europe.org/#8631/0/0](https://rainbow-europe.org/#8631/0/0) (accessed 2/1/2018).
9
10 Rainbow Europe (2017b) Rainbow Europe Map: UK. At <https://rainbow-europe.org/#8666/0/0>
11 (accessed 22/1/2018).
12
13 Riigi Teataja (2009) *Family Law Act*. At
14 <https://www.riigiteataja.ee/en/eli/506062016002/consolide> (accessed 14/11/2017).
15
16 Seidl, C. (2013) Umfrage: Mehrheit will Ehe und Adoptionsrecht für Homosexuelle, *Der*
17 *Standard*, November 3. At [https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-](https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-Adoption-fuer-Homosexuelle)
18 [Adoption-fuer-Homosexuelle](https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-Adoption-fuer-Homosexuelle) (accessed 1/2/2018).
19
20 Shammass, J. (2015) Transgender man pregnant by his female transgender partner as couple
21 admit ‘the process to get here was complex’, *The Mirror*, 21 Dec. At
22 [https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-](https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-7050883)
23 [7050883](https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-7050883) (accessed 25/3/2018).
24
25 Siddique, H. (2017) UK lobbies for trans rights in UN treaty but allows term ‘pregnant women’,
26 *The Guardian*, October 23. At [http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-](http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term)
27 [trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term](http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term) (accessed 26/10/2017).
28
29 Solinger, R. (2013) *Reproductive Politics: What Everyone Needs to Know*. Oxford: Oxford UP.
30
31 Sotsiaalkomisjon (2015). *Sotsiaalkomisjon Kaalus Ekspertidega Asendusemaduse Seadustamist*
32 (Press Release, October 15). At [http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-](http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist)
33 [et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist](http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist) (accessed 11 November
34 2018).
35
36 Stonewall (2015) *Surrogacy*. At [http://www.stonewall.org.uk/help-advice/parenting-](http://www.stonewall.org.uk/help-advice/parenting-rights/surrogacy-1)
37 [rights/surrogacy-1](http://www.stonewall.org.uk/help-advice/parenting-rights/surrogacy-1) (accessed 24 January 2018).
38
39 Strathern, M. (1992) *Reproducing the Future*. Manchester: Manchester UP.
40
41 Strathern, M. (2004) *Partial Connections*. Series Nr. 3. Walnut Creek: AltaMira Press.
42
43 Strömpl, J., Alvela, A. et al. (2008) *GLBT-Inimeste Ebavõrdne Kohtlemine Eestis*. At
44 <http://www.digar.ee/arhiiv/nlib-digar:18716> (accessed 3/11/2018).
45
46 Tálos, E. and Kittel, B. (2001) *Gesetzgebung in Österreich*. Vienna: WUV-Universitätsverlag.
47
48 Tempfer, P. (2017) Mutterleib auf Miete, *Wiener Zeitung*, January 14. At
49 http://www.wienerzeitung.at/nachrichten/oesterreich/politik/867598_Mutterleib-auf-Miete.html
50 (accessed 31/1/2018).
51
52
53
54
55
56
57
58
59
60

1
2
3 Tonsiver, T., Ehrenberg, A., *et al.* (2013) *Kehavälise Viljastamise Efektiivsus ja Kulud Eestis*,
4 Tervisetehnoloogia Hindamise Raport TTH04 (Tartu Ülikool, Tervishoiu Instituut). At
5 <http://www.etag.ee/wp-content/uploads/2015/12/TTH-keskus-raport-4.pdf> (accessed
6 11/11/2017).

7
8
9 TransX, n.d. Rechtsgrundlagen. At <http://transx.at/Pub/Rechtsentwicklung.php> (accessed
10 20/11/2017).

11
12 Uibo, R. (2016) *Where Do Babies (of Queer Parents) Come From?* Unpubl. PhD, *LGBTQ*
13 *People in Estonia Doing Close Relationships*, Södertörn University.

14
15 Vaigé, L. (2018) *Cross Border Recognition of Formalized Same-Sex Union*, PhD in progress,
16 Uppsala University.

17
18 Verfassungsgerichtshof (2013). *G16/2013 ua.* At
19 [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_1](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_13G00016_00)
20 [3G00016_00](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_13G00016_00) (accessed 2/1/2018).

21
22 White, F.R. (2018) *Trans Pregnancy: An International Exploration of Transmasculine Practices*
23 *of Reproduction. Law and Policy Review United Kingdom.* University of Westminster. Available
24 at [https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-](https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-policy-review-UK.pdf)
25 [policy-review-UK.pdf](https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-policy-review-UK.pdf) (accessed 25 September 2018).

26
27 Whittle S. (2006) Foreword, in: S. Stryker and S. Whittle (Eds) *The Transgender Studies Reader*,
28 pp. xi-xvi (New York: Routledge).

29
30 Zegers-Hochschild, F., Adamson, G.D., *et al.* (2009) The International Committee for
31 Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organization
32 (WHO) Revised Glossary on ART Terminology, *Human Reproduction* 24(11): 2683–2687.

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37 ¹ We use queer here as an umbrella term for LGBTQI people and others such as intersex people
38 who self-define as queer, even as we acknowledge that not all lesbians and gays, for example,
39 identify as queer. Transgender or trans is someone ‘who does not feel comfortable in the gender
40 role they were attributed at birth, or who has a gender identity at odds with the labels “man” or
41 “woman” credited to them by formal authorities’ (Whittle, 2006: xi).

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44 ² Cis (or cisgendered) designates staying within the parameters for normative gendered
45 behaviour (Enke, 2012: 61), and functions as a binary opposition to a term such as trans (or
46 transgendered). In doing this, a cis person ostensibly stays in line instead of crossing the line, ‘as
47 though we agree upon what and where that line may be as well as on what constitutes male and
48 female’ (73).

States of Reproduction:

The Co-production of Queer and Trans Parenthood in Three European Countries

Journal: Journal of Gender Studies

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Abstract

Achieving parenthood with the help of assisted reproductive technologies (ART) remains a fraught business, particularly for queer and trans people who want to use sperm donation, egg donation, procedures involving surrogates, or other ARTs. This is because the regulation of fertility treatment and associated issues such as the documentation of parenthood in birth certificates and passports varies across countries, including across European countries, in terms of who is considered an appropriate prospective parent, what kind of treatment they should be allowed, and what documented parent status they are entitled to. Elaborating Engeli and Rothmayr Allison's (2017) continuum model of classifying countries according to their relatively permissive or restrictive ART regulations, we argue that other criteria of assessment than their's need to be used if the focus is on queer and trans people. We compare Estonia, Austria and the UK in terms of LGBTIQ people's opportunities of access to ART and documentation of parenthood. Jasanoff's (2005a, 2005b) concept of

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3 'ontological surgery' regarding the regulation of biotechnology in different states
4 suggests ways of thinking about differences in ART access and parenthood status both
5 within and across countries for LGBTIQI people seeking to form families and to create
6 new kinds of kinship.
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12 **Keywords:** ART, queer, trans, ART regulation, parenthood status
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For Peer Review Only

Introduction

Transgender man pregnant by his female transgender partner as couple admit ‘the process to get here was complex’. (Shammas, 2015)

The rise of trans gender, not least in public discourses and debates, together with advances in biotechnology, has led to new discussions about gender identity and parenthood. Thus headlines such as the one above, which point to the increasing numbers of trans people going public with their reproductive experiences, have become more commonplace as changes in biotechnology and in public attitudes towards trans people have encouraged greater openness about their lives. Nevertheless, as the line ‘the process to get here was complex’ indicates, trans reproduction, rather like reproduction by queer people, is not without obstacles, and especially when assisted reproductive technologies (ART) are utilized. In this article we explore why ART-based reproduction is particularly fraught for trans people and for LGBTQI people more generally. We explore this issue in relation to the regulation of ART and the regulation of claims to parenthood. In particular we ask how regulatory frameworks operate to enable certain kinds of parenthood but not others. Here we draw inspiration from Sheila Jasanoff’s (2005b: 153) assertion that ‘comparison enlarges our awareness of alternative possible worlds’, but also suggest that the problematics created by nationally internally and cross-nationally contradictory framings regarding access to ART and possibilities of documented parenthood express both local ambivalences concerning new forms of kinship, and constitute forms of social ordering. In this article, then, we discuss how regulations related to biotechnology serve to ‘keep at bay. . . novel constellations of social life’ (Jasanoff, 2005b: 147) through a process of ‘ontological surgery’ (Jasanoff, 2011: 67).

ART regulation as ‘ontological surgery’

Access to ART and to documented parenthood status is regulated quite differently across diverse European countries as we shall discuss below with reference to three countries: Austria, Estonia and the UK. These countries have been chosen because they exemplify the diversity of regulation we deal with across Europe. This diversity produces an ‘ontological surgery’, here understood metaphorically as the way in which

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3 ‘new entities’, in this instance queers and trans people¹ who want to become parents, are
4 sorted into ‘ethically manageable categories’ through regulation (Jasanoff, 2011: 77).
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6 We want to explore why three European countries have come to ‘substantially different
7 conclusions’ (Jasanoff, 2005b: 141) regarding ART access and parenthood status
8 despite being part of the European Union and constituting developed industrial
9 countries. We draw on and extend Isabell Engeli and Christine Rothmayr Allison’s
10 (2017) continuum model of classifying countries according to their ART policies as
11 permissive or restrictive to ask how different regulations around ART access and the
12 documentation of parenthood status impact on individual countries’ status as permissive
13 or restrictive. We suggest that a somewhat different set of criteria than the ones used by
14 Engeli and Rothmayr Allison is needed if we focus on queer and trans people. Engeli
15 and Rothmayr Allison’s model regarding access to ART applies mainly to heterosexual
16 and same-sex couples, single and older cis² women, rather than to queer and trans
17 people. The latter do not fit within a heteronormative framework. But, for example, the
18 question of whether or not same-sex marriage or civil partnership is permissible in a
19 country - a criterion not used by Engeli and Rothmayr Allison and which extends their
20 model -, is critical for analysing queer and trans people’s access to ART and
21 possibilities of parenthood. This is because in many countries marriage (whether
22 heteronormative or same-sex) creates better opportunities for accessing ART and for
23 parenthood recognition. This also points to a further important issue: the regulation of
24 ART access extends far beyond the question of what ARTs are permissibly and to
25 whom, since such regulations can be countered by related regulations concerning, for
26 example, the relation between marital status and ART access. If ART is legally
27 constructed as the domain of married, heterosexual couples only, then even a very
28 liberal form of ART regulation (for instance allowing the use of surrogates) will do
29 nothing for queer and trans people. This means that biotechnological regulation is
30 strongly implicated in family law and other associated regulations which structure
31 parenting opportunities along scientific as well as socio-cultural dimensions.

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51 In classifying individual countries as restrictive, intermediate, or permissive Engeli
52 and Rothmayr Allison’s model asked three questions: ‘(1) To what extent should the
53 field of ARTs be left to self-regulation by the medical community? (2) What kind of
54 parental model(s) should be promoted? (3) Should the state finance ART treatment or
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3 should it be left to private financial resources?’ (88) Self-regulation by medical staff, the
4 first issue, is not helpful in considering queer and trans issues, as it can individualize
5 decision-making regarding queer and trans reproduction. Instead, we are interested in
6 the systematic ways in which that reproduction is en- or disabled. Therefore we replaced
7 self-regulation with considering what kinds of ART procedures are allowed for (what
8 kinds of) queer and trans people. The second question raised by Engeli and Rothmayr
9 Allison regarding parental models is useful in considering queer and trans people’s
10 possibilities for parenthood; we analyse it here in terms of opportunities for legal
11 parenthood registration, and more practically, regarding the parenthood terminology
12 used on birth certificates. We retained Engeli and Rothmayr Allison’s third question of
13 the ART funding possibilities for queer and trans people since it plays a significant role
14 in the social stratification of (queer and trans) reproduction, as it is frequently only
15 white middle-class queer and trans people who can afford to pay for ART privately. In
16 relation to Engeli and Rothmayr Allison’s model, we thus do two things: we modify
17 their questions to generate greater explicitness regarding how queer and trans people are
18 affected in their quest for ART use and parenthood status, and we suggest that
19 individual states are not systematically restrictive or permissive in their regulations
20 regarding ART access and parenthood.
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33 Jasanoff (2005a: 147) suggests that in their ART regulations states perform a kind of
34 ontological surgery, or ontological ordering. That ordering is different in diverse
35 countries’ national regulations concerning the same scientific issues. Thus in different
36 ways nations try to draw a line around what they regard as ethically and politically
37 legitimate processes for reproducing human beings. Ontological surgery is the process
38 through which categories are settled and ethical principles fixed; in terms of ART,
39 ontological surgery ‘sort[s] out, classif[ies], or reclassify[ies] key elements of human
40 reproduction in accordance with the felt rightness of a legal order’ (Jasanoff and
41 Metzler, 2018: 6).
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52 **ART regulation and queer and trans people**

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The definition of ART varies across different contexts but according to the World Health Organization, ART ‘includes the in vitro handling of both human oocytes and sperm, or embryos for the purpose of establishing pregnancy’ (Zegers-Hochschild *et al.*, 2009: 2685). As queer and transgender people are able to form non-genetically and genetically related families and kinship relations, ARTs now afford the possibility of a ‘new reproductive logic’ (Solinger, 2013: 100). This new logic has given rise to the concept of reproductive rights to combat discrimination in access to ART, in parenting legislations and the right to decide about reproduction (Galpern, 2007). Reproductive technologies have enabled changes to how we think about family and kinship (Strathern, 1992, 2004; Franklin, 1997; Edwards, 2014). The British Medical Association, for example, has insisted on the term ‘pregnant people’ to replace ‘pregnant women’ (Siddique, 2017). This allows for the inclusion of pregnant trans or intersex men in relevant documentation.

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Julie McCandless (2012a, 2012b) has called for a change of legal interpretations of parenthood in UK law to take account of new forms of parenthood. However, the UK’s Human Fertilisation and Embryology Act (HFEA) 2008 stipulates that only a cis woman giving birth can be recorded as the ‘mother’ on the birth certificate and a second (cis or trans) female parent in the case of lesbian parenthood as ‘parent’ (Government UK, 2008). The challenge in the UK for someone like transman Thomas Beatie is that he is not a woman giving birth, ‘but the wording in the legislation specifies that the status of legal mother is granted to “the woman” who gives birth’ (McCandless, 2012a: n.p.). To achieve legal parenthood Thomas and his partner would have to adopt of their own child with considerable state involvement, as Thomas’ female partner would also not be able to claim parental status because he is not considered the legal mother of the child. In the HFEA 2008, same-sex and other kinds of parenthood are effectively ‘assimilated into the traditional family model’ (McCandless, 2012a, n.p.).

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However, not only is there a question of how diverse identities or bodily states of designation (e.g. transman) impact on claims to parenthood status and official kin-making; the related documentation is also an issue. Here the appropriate terminology identifying kinship is crucial as identity papers are routinely required in many contexts, including most prominently in any form of national border-crossing. The case of the married cis mother who kept her maiden name and was stopped and interrogated at a

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2 UK airport because her cis daughter did not have the same surname as her is only one
3 relevant example (Griffiths, 2017). The adjustment of legal documents to current ways
4 of family and kinship building has yet to occur.
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7 For most queer and transgender parents reproduction turns out to be a legal maze.
8 Discriminatory ART regulations in many European states mean that they can access
9 these technologies often only in another state than the one they live in. The socially
10 imagined ideas of cis mother- and fatherhood routinely underlying laws on
11 biotechnologies, family and parenthood as a form of cultural production (Melhuus,
12 2009) are context specific. This means that the differences across the various European
13 states pose diverse challenges for queer and trans people's reproductive opportunities.
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16 Below we therefore compare the regulation of ART for queer and transgender people
17 in three purposely selected European countries: Austria, Estonia, the UK. These
18 countries represent the centre, east and west of Europe. Their ART policies and
19 LGBTQI rights vary widely: the UK is very progressive regarding LGBTQI rights and
20 ART use, Austria and Estonia are more restrictive but in quite different ways and for
21 different reasons. Austria is a Catholic country with heteronormative family attitudes,
22 partly derived from its religious context. Estonia is very pro-natalist, but more
23 restrictive regarding LGBTQI rights. These differences mean that the ontological
24 surgeries they perform are somewhat different. It should also be noted here that to date,
25 most research on queer and transgender use of ART and their regulation is done in
26 English-speaking, western European countries, much less in central European ones, and
27 virtually none in eastern European countries.
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30 In the following, we focus on two aspects of queer and transgender rights and ART
31 use: first, on gender and sexuality issues in the legal regulations of marriage and
32 partnership, and second, on possibilities for queer and trans reproduction, and
33 parenthood and gender recognition in birth documents (Melhuus, 2009). The aim is to
34 outline which reproductive challenges queer and transgender people face in Estonia,
35 Austria, and the UK respectively, and what ontological surgeries these challenges
36 involve. We discuss partnership regulations first since these frequently form the basis
37 for regulating ART access. Second, we discuss how ontological surgery concerning
38 ART access and parenthood status for LGBTIQ people is effected in each country. As
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3 part of this we analyse, third, what laws exist regarding parental filiation for queer and
4 transgender people, and how ART may be accessed (i.e. how it is financed). We focus
5 on each country in turn in order of their relative restrictivity regarding regulations
6 around queer and trans partnerships and marriage (see Table 1).
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15 Table 1 shows that the UK is the least restrictive country regarding queer and trans
16 people's possibilities for formal partnership recognition whilst Estonia is the most
17 restrictive. We therefore discuss Estonia first.
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20 21 22 **Estonia: Effecting ontological surgery through restrictions and grey zones**

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24 In Estonia a registered partnership for same-sex couples with limited rights is
25 theoretically allowed, but not yet implemented. The Registered Partnership Act (RPA)
26 2014 entered into force in 2016, but in the same year the full implementation of the law
27 was still being discussed. The opposition Centre Party tried to repeal the RPA 2014, but
28 was not successful (ILGA-Europe, 2017, p. 87). There is no constitutional restriction on
29 marriage. Hence, legally it would be easy to introduce same-sex marriage, but the
30 Estonian Propatria and Res Publica Union Party (IRL) announced in 2016 that they plan
31 'to propose a constitutional amendment to define marriage as a union only between men
32 and women'. However, no further action has been taken to date (ILGA-Europe, 2017, p.
33 87). In April 2018, the Supreme Court clarified that the RPA was valid and the Court
34 saw no need to review the law because of possible gaps in its implementation. The lack
35 of political will to adapt the legislation to implement the RPA better is useful for foreign
36 same-sex married couples and problematic for local couples as there is a lack of clarity
37 regarding the formal establishment of their partnership status (Vaigé, 2018).
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49 Until 2016, the Family Law Act allowed adoption only for married couples and
50 single people above 25 years of age. Co-parental recognition was not possible for same-
51 sex couples according to the Family Law Act, 2009, §148: 150 (Riigi Teataja, 2009;
52 Rainbow Europe, 2017a). Since 2016, intra-family adoption for cohabiting couples has
53 become possible, and in March 2016 the first official queer adoption took place: a cis
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lesbian couple mutually adopted their children, conceived with anonymous donors (ERR, 2016).

In Estonia three different laws regulate LGBTQI and ART issues: the Penal Code (PL) from 1994, amended in 2007, which prohibits surrogacy; the Patents Act (CA) from 1994, amended in 2004; and finally the Assisted Fertilization and Protection of Embryo Act 1997 (AFPEA), amended 2003. The latter allows the use of donor-eggs, -sperm and -embryos, only if pregnancy is impossible in another manner, and without commercial intermediaries (§23-24). Medically assisted insemination is legal solely for queer singles. According to the AFPEA, ARTs are accessible to all adult women up to 50 years of age (§4(2)). The law does not explicitly exclude queer women, but there is a distinction between married and unmarried women. Unmarried women have access to artificial insemination with anonymous donor sperm or with sperm from a known person (§21-22; Uibo, 2016: 2).

Queer people's reported experience of access to ARTs in Estonia varies. Strömpl *et al.* (2008) found that exclusion from ART was the norm because queer people did not feel included in the heteronormative administrative forms and attitudes of the medical staff. Legally the birth mother is the only registered mother (Uibo, 2016: 2). However, a more recent study reported that artificial insemination 'is unrestricted for lesbian couples and . . . widely used as a means to complement the family' (Meiorg and Grossthal, 2012: 23). The different findings in these two studies might be due to a) one being published four years later, but b) also a function of their cohorts: Strömpl *et al.* interviewed 30 Estonian LGBTQI-people, while Meiorg and Grossthal relied solely on two telephone interviews, one with an Estonian ILGA-Europe member and the other with a public Estonian trans woman who got political asylum in Belgium in 2000.

Most queer people do not have access to state-financed ART and have to pay privately. Since 2008 pro-natalist Estonia has paid for unlimited IVF attempts and embryo transfers (Tonsiver *et al.*, 2013: 7) for cis women up to age 40 with valid health insurance and medical indications. But without medical indications, queer women have to pay privately for ART.

Gestational surrogacy is criminalized in the Penal Code (§132). However, in October 2015 the Social Affairs Committee of the Parliament decided that surrogacy should be

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2 allowed for non-commercial use under certain medical conditions (Sotsiaalkomisjon,
3 2015; Uibo, 2016: 4).

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6 Trans people may marry a person of the other gender. But during the political
7 struggle around the RPA 2014 (ILGA-Europe, 2017: 85), public opinion regarding
8 LGBTQI rights also became less accepting. According to a survey by the market
9 research company Turu-Uuringute AS (2016), the opposition to LGBTQI people has
10 increased. 60% of the participants, compared to 54% in 2015, were opposed to
11 registered partnerships for same-sex couples. In the new study 77% were also opposed
12 to adoption by same-sex couples (ILGA-Europe, 2017: 88).

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15 In Estonia the ontological surgery regarding ART-assisted parenthood for queer and
16 trans people is effected through partnership regulations and their impact on potential
17 parenthood. This means that LGBTQI people have to navigate a grey zone where the
18 requirement for singledom to access ART contradicts the possibility of same-sex
19 registered partnerships. However, LGBTQI acceptance by the general population has
20 recently declined, possibly indicating rising conservatism. The situation in Austria is
21 more progressive, and LGBTQI acceptance by the population is slightly better.

22 23 24 **Austria's ontological surgery: Between restrictivity and progressiveness**

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27 In Austria same-sex marriage became possible in 2019. Registered partnerships with
28 similar rights to marriage had existed since 2010. Joint adoption (legal since 2015) and
29 second-parent adoption (2013) are possible, and so is automatic co-parent recognition
30 (ILGA-Europe, 2016). The forced divorce of trans people was stopped in 2006 as was
31 sterilization in 2009 (TransX, n.d.).

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34 Since 2015 lesbian couples have been allowed to use medically assisted
35 insemination with semen from a third person, but not single cis women, because
36 medically assisted reproduction (MAR) is solely allowed in marriage, in a registered
37 partnership or in co-habitation (Fortpflanzungsmedizinrechts-Änderungsgesetz, 2015,
38 §2(1), 2(2)3., and §3(2)). Financial Aid (70% of costs) for IVF is possible under certain
39 conditions (age limits for both partners, both must have health insurance in Austria, be
40 Austrian, or EU citizens or have a valid permit of residence, and must have one of three
41 different medical infertility reasons). Surrogacy continues to be banned and the child
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2 belongs to the birth mother ('madre cierta est'). Thus, the child of a foreign mother does
3 not automatically acquire Austrian citizenship, for example; instead, the intended
4 mother has to be Austrian, or the child has to have an Austrian father, or there must be
5 the danger that the child will be stateless without Austrian citizenship. This means that
6 in the case of surrogacy undertaken abroad, the birthmother and, if existing, her partner,
7 have to sign a contract giving up their parental rights (Palmer, 2013). As adoption for
8 same-sex couples has been allowed since 2016, gay male couples can make use of
9 surrogacy abroad and the non-biological father can legalise his parent status in Austria
10 through adoption (Tempfer, 2017).

11
12 A clause in the new reproductive medicine law, relevant for trans people, is the
13 entitlement to store semen, egg cells and testicular or ovarian tissue for future MAR, if a
14 given medical treatment poses a serious threat to pregnancy through sexual intercourse
15 (Fortpflanzungsmedizinrechts-Änderungsgesetz, 2015: §2b (1)). The question remains
16 if hormonal treatment and/or surgery which threaten their fertility count as medical
17 treatment, since gender dysphoria is no longer considered a mental disorder.

18
19 Austria, under pressure from the European Court of Human Rights, has slightly
20 liberalized its legal regulation of ART use, and is in that sense a little more open to
21 certain LGBTQI-rights than Estonia. In Austria the Catholic Church and the restrictive
22 conservative party (ÖVP) blocked the liberalisation of reproductive laws for decades
23 (Griessler and Hager, 2016: 68). Most notably in the 20 years between the first ART
24 law and its amendment, public attitudes towards LGBTQI, family and ART had shifted
25 (Seidl, 2013). A change in political culture also meant that citizens could express their
26 discontent through appeals to the Austrian Supreme Court, the Constitutional Court and
27 the European Court for Human Rights (ECHR) (Griessler, 2012: 53; Griessler and
28 Hager, 2016: 72). LGBTQI rights tend to be implemented through appealing to national
29 and international courts, as happened with the recognition of same-sex unions (Knill *et*
30 *al.*, 2014: 285 ff). The ECHR also pressured the Austrian government to review the
31 ART law, and after a lesbian couple appealed to the national court in 2012, the
32 Constitutional Court repealed several clauses as unconstitutional
33 (Verfassungsgerichtshof, 2013; Griessler and Hager, 2016: 72).

34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 **The UK: The ontological surgery of relative permissiveness** 57 58 59 60

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LGBTQI family structures in the UK are enabled through marriage equality in England, Wales (since 2013) and Scotland (since 2014) and registered partnerships since 2004, as well as the possibility of joint adoption, allowed since 2005 in the Adoption and Children Act, Sect. 50 (Government UK, 2002), in Northern Ireland only since 2013 after a court ruling. Second-parent adoption was also allowed in the Human Fertilisation and Embryology Act (HFEA) 2008, Sect. 54, in Northern Ireland from 2013. Automatic co-parent recognition is possible according to HFEA 2008, Sect. 42 (Government UK, 2008).

HFEA (2008) allows medically assisted insemination for couples and singles. For same-sex female couples three conditions apply: first, they must be married or in a civil partnership before conception; second, the donation has to be done by artificial insemination; third, the non-birth parent has to consent to the insemination if both lesbian parents are to be registered on the birth documents without adoption or the use of a clinic (HFEA 2008, Sect. 42, 45). Donor anonymity was abolished in 2005 and donor information should be available to the offspring (Richards, 2014, pp. 36–38). ART is allowed for same-sex partners and single people.

The extension of legal parenthood to a second female from the moment of birth is a benefit of the HFEA 2008, since having to adopt a child as a same-sex couple is considered second-best to ‘real’ parenthood. To become the legal parents after a surrogacy process, a parental order is necessary, ‘a type of fast-track adoption’. The 2008 Act also allows same-sex couples with a partial genetic link to the child and ‘in an enduring family relationship’ to apply for a parental order (HFEA 2008, Sect. 54(2)(c); McCandless, 2013: 143).

However, the overall effect of these measures is still a legal assimilation of female couples’ position to straight couples. Only one mother and a father or female parent count as parents on the birth certificate. There are no formal options for two mothers or two female parents. These options and terminology would make the two parents more equal than having one partner as ‘female parent’, whilst the other is the ‘mother’. Two fathers are also not possible, as a male same-sex couple can only apply for a parental order following surrogacy (McCandless, 2013: 147). Commercial surrogacy is not legal (Government UK, 1985). However, a relationship based on surrogacy is recognized

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2 under Section 30, HFEA 2008. Nonetheless, the surrogate mother remains the legal
3 mother of the child without a parental order or adoption.
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6 McCandless highlights four ways in which parents of the same gender have different
7 legal roles, e.g. 'mother' (= birth mother) and 'female parent' because of the 2008 Act:

8
9 first, by reserving legal motherhood as a status exclusive to the birth mother,
10 whether or not she is the genetic mother...; second, by insisting that the second
11 female parent is a 'parent' rather than a 'mother'; third, by attributing female
12 parenthood on grounds which closely parallel those by which men achieve
13 fatherhood...; and fourth, by explicitly prohibiting the attribution of motherhood
14 and female parenthood on the basis of the genetic link..., rendering the gestational
15 connection as holding significance per se, rather than as a marker of the mother's
16 genetic link (McCandless, 2013: 148).
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23 Here ontological surgery occurs through assimilation to the straight (two of different
24 sexes), gender-binary parental model through the refusal to view motherhood as also
25 grounded in genetic connection. Motherhood is constructed 'as a nurturing rather than
26 also a generative activity' (Ibid.). Furthermore, section 47 prohibits female parenthood
27 on the basis of the genetic link, which is thus not equal to fatherhood, as the latter can
28 be attributed through a genetic link (Ibid: 139). This is in contrast to the situation where
29 a partner in a female same-sex couple gives her egg to the other partner who becomes
30 the (gestating) and birth mother. Here the child is genetically linked to the first, egg-
31 donating woman. However, legally the egg-donor has only the status of a female parent
32 and explicitly does not obtain parenthood status through the genetic link. She can only
33 achieve legal parenthood status through being the civil or married partner of the birth
34 mother, or through procedures that are similar for non-genetic fathers (McCandless,
35 2013: 148 f). McCandless therefore warns that the silencing of the female genetic
36 contribution signals a more precarious position for genetic mothers (compared to
37 fathers) and privileges genetic fatherhood in family law (Collier and Sheldon, 2008;
38 McCandless and Sheldon, 2014: 69).
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51 A different challenge exists for trans people who since 2004 have been able to
52 change their name in legal documents without sex reassignment surgery, and to marry a
53 person of the other gender according to the Gender Recognition Act, Sect. 11, Schedule
54 4 (Government UK, 2004; Rainbow Europe, 2017b). Their problem is that solely the
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birth mother has the status of the legal mother, and both a transman giving birth and his partner must adopt their own child. This is due to the HFEA's heteronormative parenthood definitions. McCandless (2012b) therefore argues for a gender-neutral status regarding legal parenthood. This would also be helpful for non-binary trans people (White, 2018: 4)

The ontological surgery effected by the HFEA shows that queer and trans wishes for reproduction are recognised, but LGBTIQ reproductive possibilities, and legal queer and trans parenthood are not fully achievable because underlying HFEA's regulations are heteronormative assumptions of reproduction and parenthood.

The problematics of ontological surgeries in 3 EU-states: a comparison

ART and parenthood status regulations produce problems for queer and trans people both transnationally, and within one state. This is most evident in the contradictions between laws regulating partnership and parenthood status relative to laws regulating access to ART. Both the more permissive and the restrictive dimensions of family policies and ART laws even within individual countries are associated with the imbrication of such policies in the broader national political cultures. Thus the dominance of the Catholic Church in Austria, for example, compared to the relative secularity of the UK means that questions of formal partnership recognition have been dealt with more liberally in the UK than in Austria. This, however, does not automatically imply restrictivity or permissiveness on all fronts within the same country. The most restrictive of the three countries in this study, Estonia, still allows certain forms of surrogacy whilst Austria does not.

Given these complexities we suggest that Isabell Engeli's and Christine Rothmayr Allison's comparison of different ART policies (2017) and their analytical dimensions do not adequately capture the reproductive opportunities and challenges queer and trans people face. In our comparison, we looked at the regulations for queer and trans ART-based reproduction in Austria, Estonia and the UK. Based on this we modified Engeli and Rothmayr Allison's model to consider 1) the laws concerning queer and transgender kinship (e.g. legal registration of parents and children); 2) LGBTIQI access to ART; and 3) the funding possibilities for ART treatment. Table 2 below summarizes our findings. It shows, differently from Engeli's and Rothmayr Allison's results, that Austria has

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3 become more permissive due to its recent, more progressive legislation regarding queer
4 and trans people. It also points to an important issue we wish to highlight: the
5 regulations we are concerned with change over time. This means that Engeli and
6 Rothmayr Allison's model has valence only at a specific point in time; political shifts
7 can mean shifts in the permissiveness or restrictivity of a given legislation. Second, the
8 same specificity applies to the regulations regarding ART access and parenthood status.
9 Thus the permissiveness of one regulation may be cancelled out by the restrictivity of
10 another, and, to paraphrase Jasanoff (2011: 77), it is when queer and trans people's
11 desire for parenthood surfaces that the "'joints" of biotechnologically manipulated
12 nature stand publicly revealed.' Hence the ontological surgery done to legislate ART
13 and parenthood becomes exposed when we look at queer and trans access to
14 reproductive technologies and parenthood.
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Conclusions

In this article we have argued that ontological surgery of queer and trans reproduction with ART is effected both through ART access regulation and through the regulation of partnership and parenthood status. Thus, in more restrictive countries such as Estonia, vague laws concerning LGBTQI people's access to ART and un-implemented partnership and kinship regulations make legal discrimination not obviously visible in the laws themselves. This can leave queer and transgender people in limbo as they seek to legalise their family structures in official documents. This challenge exists in restrictive countries, and in intermediate countries such as Austria where same-sex marriage became only legal in 2019.

More permissive countries such as the UK may use heteronormative family structures as the basis for enabling different forms of legal kinship. This creates its own difficulties, as it does not necessarily reflect the reproductive realities of queer and transgender people. It also promotes differences between being 'mother' and being 'parent', which produce differences in status between these entities. It is clearly necessary to rethink gender, sexuality and kinship (e.g. the importance of genetic links) and utilize more up-to-date definitions of gender, sexuality and kinship as the basis for legal ART and parental regulations.

Here we want to suggest that while some European state legislations have become increasingly progressive regarding formal partnership recognition, this is not the case for formal parenthood recognition. This is partly because this scenario involves legal adults *and* a child or children, legal minors. Further, there is a basic question which also divides diverse members of the LGBTQI community regarding how different participants in the procreation process (donors, surrogates, birth mothers, social parents) should be recognized, indeed *if* they should be recognized. Discussions around these issues often centre on the various parents' interests (see Griffin, 2017), potentially erasing the resultant child's perspective. As Crawshaw et al. (2017: 1) have argued: 'Current birth registration systems fail to serve adequately the interests of those born as a result of gamete and embryo donation and surrogacy. In the UK, changes to the birth registration system have been piecemeal, reactive and situation-specific and no information is recorded about gamete donors. Birth registration has thereby become a statement of legal parentage and citizenship only, without debate as to whether it should serve any wider functions. This sits uneasily with the increasingly accepted human right to know one's genetic and gestational as well as legal parents, and the duty of the State to facilitate that right.' And, beyond

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3 this, the prospective parents'/donors'/surrogate's desire for involvement with the child may not
4 only be at variance from the desires of the child but also from those of the other co-procreators.
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6 And, even more complexly, these desires may change over time, both for the co-procreators and
7
8 for the child.
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10 One solution regarding this dilemma might be to make the procreative process transparent and
11 accountable by registering every co-procreator on the birth certificate which might then list the
12 sperm donor, the egg donor, the surrogate, the social parent/s. The child might also be entitled to
13 information (more or less extensive) about these co-procreators on maturity, for example. To
14 safeguard privacy, this might take the form of two different documents: a birth certificate that
15 simply attests to that fact, its place and date, and the name of the born person, and a second
16 certificate containing the co-procreators' details. Crawshaw et al. argue, not dissimilarly, for a
17 document indicating legal parentage, and another recording genetic and gestational parentage.
18 Such dual documentation is necessary given that surrogacy, egg and sperm donation remain
19 taboo in some countries even as they practise commercial ART support in extensive ways.
20 Nonetheless, inclusive ART legislation and regulation requires that a formula is found that
21 addresses all ART users in like fashion.
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34 **References**

35
36 Bundeskanzleramt Österreich (2015) VwGH Ro 2015/01/0011 - Erkenntnis (Volltext): RDB
37 Rechtsdatenbank https://rdb.manz.at/document/ris.vwght.JWT_2015010011_20151215J00
38 (accessed 27/2/2018).
39

40 Collier, R. and Sheldon, S. (2008) *Fragmenting Fatherhood*. Oxford: Hart Publishing.

41
42 Crawshaw, M., Blyth, E. D., and Feast, J. (2017) Can the UK's birth registration system better
43 serve the interests of those born following collaborative assisted reproduction?, *Reproductive*
44 *Biomedicine and Society Online* 4, pp. 1-4.
45

46
47 Edwards, J. (2014) Undoing kinship, in: T. Freeman, S. Graham *et al.* (Eds) *Relatedness in*
48 *Assisted Reproduction*. Cambridge: Cambridge UP. 44-60.
49

50 Engeli, I. and Rothmayr Allison, C. (2017) Governing new reproductive technologies across
51 western Europe, in: M. Lie, and N. Lykke (Eds) *Assisted Reproduction Across Borders*. New
52 York: Routledge. 87-99.
53
54
55
56
57
58
59
60

- 1
2
3 Enke, A.F. (2012) The education of little cis: cisgender and the discipline of opposing genders.
4 In A. Enke, ed. *Transfeminist Perspectives in and beyond Transgender and Gender Studies*.
5 Philadelphia: Temple UP. 60-77.
6
- 7 *ERR* (2016) Eestis Lapsendas Esimene Samasooline Paar Kaks Last, March 29. At
8 <https://www.err.ee/557008/eestis-lapsendas-esimene-samasooline-paar-kaks-last> (accessed
9 14/11/2017).
10
11
- 12 Franklin, S. (1997) *Embodied Progress: A Cultural Account of Assisted Conception*. New York:
13 Routledge.
14
- 15 Government UK (1985) *Surrogacy Arrangements Act*. At
16 <http://www.legislation.gov.uk/ukpga/1985/49> (accessed 18/1/2018).
17
- 18 Government UK (2002) *Adoption and Children Act*. At
19 <https://www.legislation.gov.uk/ukpga/2002/38/contents> (accessed 17/1/2018).
20
- 21 Government UK (2004) *Gender Recognition Act*. At
22 <https://www.legislation.gov.uk/ukpga/2004/7/contents> (accessed 22/1/2018).
23
- 24 Government UK (2008) *Human Fertilisation and Embryology Act*. At
25 <https://www.legislation.gov.uk/ukpga/2008/22/contents> (accessed 17/1/2018).
26
- 27 Griessler, E. (2012) ‘Selbstbestimmung’ versus ‘Kind als Schaden’ und ‘Familie’, *Reihe*
28 *Soziologie* 98 (Vienna: Institute for Advanced Studies). At
29 <https://www.ihs.ac.at/publications/soc/rs98.pdf> (accessed 2/1/2018).
30
31
- 32 Griessler, E. and Hager, M. (2016) Changing direction: The struggle of regulating assisted
33 reproductive technology in Austria, *Reproductive Biomedicine & Society Online* 3: 68–76.
34
- 35 Griffin, G. (2017) Erasing mother, seeking father: biotechnological interventions, anxieties over
36 motherhood and donor offspring’s narratives of self, in: G. Rye et al. (Eds) *Motherhood in*
37 *Literature and Culture*. London: Routledge. 85-95.
38
- 39 Griffiths, S. (2017) Both parents’ name on child passports, *The Sunday Times*, October 15. At
40 <http://newspaperspdf.com/country/the-sunday-times-uk-15-october-2017/> (accessed 4/11/2017).
41
42
- 43 ILGA-Europe (2016) *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual,*
44 *Trans and Intersex People in Europe 2016*. At [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf)
45 [europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf) (accessed
46 20/11/2017).
47
- 48 ILGA-Europe (2017) *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual,*
49 *Trans and Intersex People in Europe 2017*. At [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf)
50 [europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf) (accessed 3/1/2018).
51
52
- 53 Jasanoff, S. (2005a) *Designs on Nature: Science and Democracy in Europe and the United*
54 *States*. Princeton: Princeton UP.
55
56
57
58
59
60

1
2
3 Jasanoff, S. (2005b) In the democracies of DNA: Ontological uncertainty and political order in
4 three states, *New Genetics and Society*, 24(2): 139–156.

5
6 Jasanoff, S. (Ed) (2011) *Reframing Rights: Bioconstitutionalism in the Genetic Age*. Cambridge,
7 MA: MIT Press.

8
9 Jasanoff, S. and Metzler, I. (2018) Borderlands of life: IVF embryos and the law in the United
10 States, United Kingdom, and Germany, *Science, Technology, & Human Value*, published online
11 January 29, 1-37.

12
13 Knill, C., Preidl, C., *et al.* (2014) Die katholische Kirche und Moralpolitik in Österreich:
14 Reformdynamiken in der Regulierung von Schwangerschaftsabbrüchen und der Anerkennung
15 gleichgeschlechtlicher Partnerschaften, *Österreichische Zeitschrift für Politikwissenschaft*, 43(3):
16 275–292.

17
18
19 McCandless, J. (2012a) Transgender parenting and the law, *British Politics and Policy at LSE*.
20 At <http://blogs.lse.ac.uk/politicsandpolicy/parenthood-laws-family/> (accessed 1/11/2017).

21
22 McCandless, J. (2012b) Who's the daddy? At
23 <http://www.lse.ac.uk/researchAndExpertise/researchHighlights/Law/HFEA.aspx> (accessed
24 22/1/2018).

25
26
27 McCandless, J. (2013) Cinderella and her cruel sisters: parenthood, welfare and gender in the
28 Human Fertilisation and Embryology Act 2008, *New Genetics and Society*, 32(2): 135–153.

29
30 McCandless, J. and Sheldon, S. (2010) The Human Fertilisation and Embryology Act (2008) and
31 the tenacity of the sexual family form, *Modern Law Review*, 73(2): 175–207.

32
33 McCandless, J. and Sheldon, S. (2014) Genetically challenged: The determination of legal
34 parenthood in assisted reproduction, in: T. Freeman, S. Graham, F. Ebtehaj and M. Richards
35 (Eds) *Relatedness in Assisted Reproduction*. Cambridge: Cambridge UP. 61-78.

36
37 Meiorig, M. and Grossthal, K. (2012) *Monitoring Implementation of The Council of Europe*
38 *Recommendation to Member States on Measures to Combat Discrimination on Grounds of*
39 *Sexual Orientation or Gender Identity*, Estonia Compliance Documentation Report. At
40 [https://www.ilga-](https://www.ilga-europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_recommendation_-_compliance_documentation_report_-_5_12.pdf)
41 [europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_reco](https://www.ilga-europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_recommendation_-_compliance_documentation_report_-_5_12.pdf)
42 [mmendation_-_compliance_documentation_report_-_5_12.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/estonia_monitoring_implementation_of_the_coe_recommendation_-_compliance_documentation_report_-_5_12.pdf) (accessed 14/11/2017).

43
44
45 Melhuus, M. (2009) Conflicting notions of continuity and belonging: assisted reproduction, law,
46 and practices in Norway, *Social Analysis: The International Journal of Social and Cultural*
47 *Practice*, 53(3): 148–162.

48
49
50 Palmer, E. (2013) *Austria: Reform of Citizenship Law*. At [http://www.loc.gov/law/foreign-](http://www.loc.gov/law/foreign-news/article/austria-reform-of-citizenship-law/)
51 [news/article/austria-reform-of-citizenship-law/](http://www.loc.gov/law/foreign-news/article/austria-reform-of-citizenship-law/) (accessed 2/11/2017).

52
53
54
55
56
57
58
59
60
Parlament (2015) *445 d.B. (XXV. GP) - Fortpflanzungsmedizinrechts-Änderungsgesetz – FmedRÄG*. At https://www.parlament.gv.at/PAKT/VHG/XXV/II/II_00445/index.shtml (accessed 22/2/2018).

- 1
2
3 Parliament (2007) House of Lords Debates, Vol. 696, col 672-3, 19 November. At
4 <https://publications.parliament.uk/pa/ld200708/ldhansrd/index/071119.html> (accessed
5 11/3/2018).
6
7 Rainbow Europe (2017a) Rainbow Europe Map: Estonia. At [https://rainbow-](https://rainbow-europe.org/#8631/0/0)
8 [europe.org/#8631/0/0](https://rainbow-europe.org/#8631/0/0) (accessed 2/1/2018).
9
10 Rainbow Europe (2017b) Rainbow Europe Map: UK. At <https://rainbow-europe.org/#8666/0/0>
11 (accessed 22/1/2018).
12
13 Riigi Teataja (2009) *Family Law Act*. At
14 <https://www.riigiteataja.ee/en/eli/506062016002/consolide> (accessed 14/11/2017).
15
16 Seidl, C. (2013) Umfrage: Mehrheit will Ehe und Adoptionsrecht für Homosexuelle, *Der*
17 *Standard*, November 3. At [https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-](https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-Adoption-fuer-Homosexuelle)
18 [Adoption-fuer-Homosexuelle](https://derstandard.at/1381370702708/Mehrheit-will-Ehe-und-Adoption-fuer-Homosexuelle) (accessed 1/2/2018).
19
20 Shamas, J. (2015) Transgender man pregnant by his female transgender partner as couple
21 admit ‘the process to get here was complex’, *The Mirror*, 21 Dec. At
22 [https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-](https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-7050883)
23 [7050883](https://www.mirror.co.uk/news/world-news/transgender-man-pregnant-female-transgender-7050883) (accessed 25/3/2018).
24
25 Siddique, H. (2017) UK lobbies for trans rights in UN treaty but allows term ‘pregnant women’,
26 *The Guardian*, October 23. At [http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-](http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term)
27 [trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term](http://www.theguardian.com/world/2017/oct/23/uk-lobbies-for-trans-rights-in-un-treaty-but-allows-contentious-pregnant-women-term) (accessed 26/10/2017).
28
29 Solinger, R. (2013) *Reproductive Politics: What Everyone Needs to Know*. Oxford: Oxford UP.
30
31 Sotsiaalkomisjon (2015). *Sotsiaalkomisjon Kaalus Ekspertidega Asendusemaduse Seadustamist*
32 (Press Release, October 15). At [http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-](http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist)
33 [et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist](http://www.riigikogu.ee/pressiteated/sotsiaalkomisjon-et-et/sotsiaalkomisjon-kaalus-ekspertidega-asendusemaduse-seadustamist) (accessed 11 November
34 2018).
35
36 Stonewall (2015) *Surrogacy*. At [http://www.stonewall.org.uk/help-advice/parenting-](http://www.stonewall.org.uk/help-advice/parenting-rights/surrogacy-1)
37 [rights/surrogacy-1](http://www.stonewall.org.uk/help-advice/parenting-rights/surrogacy-1) (accessed 24 January 2018).
38
39 Strathern, M. (1992) *Reproducing the Future*. Manchester: Manchester UP.
40
41 Strathern, M. (2004) *Partial Connections*. Series Nr. 3. Walnut Creek: AltaMira Press.
42
43 Strömpl, J., Alvela, A. et al. (2008) *GLBT-Inimeste Ebavõrdne Kohtlemine Eestis*. At
44 <http://www.digar.ee/arhiiv/nlib-digar:18716> (accessed 3/11/2018).
45
46 Tálos, E. and Kittel, B. (2001) *Gesetzgebung in Österreich*. Vienna: WUV-Universitätsverlag.
47
48 Tempfer, P. (2017) Mutterleib auf Miete, *Wiener Zeitung*, January 14. At
49 http://www.wienerzeitung.at/nachrichten/oesterreich/politik/867598_Mutterleib-auf-Miete.html
50 (accessed 31/1/2018).
51
52
53
54
55
56
57
58
59
60

1
2
3 Tonsiver, T., Ehrenberg, A., *et al.* (2013) *Kehavälise Viljastamise Efektiivsus ja Kulud Eestis*,
4 Tervisetehnoloogia Hindamise Raport TTH04 (Tartu Ülikool, Tervishoiu Instituut). At
5 <http://www.etag.ee/wp-content/uploads/2015/12/TTH-keskus-raport-4.pdf> (accessed
6 11/11/2017).

7
8
9 TransX, n.d. Rechtsgrundlagen. At <http://transx.at/Pub/Rechtsentwicklung.php> (accessed
10 20/11/2017).

11
12 Uibo, R. (2016) *Where Do Babies (of Queer Parents) Come From?* Unpubl. PhD, *LGBTQ*
13 *People in Estonia Doing Close Relationships*, Södertörn University.

14
15 Vaigé, L. (2018) *Cross Border Recognition of Formalized Same-Sex Union*, PhD in progress,
16 Uppsala University.

17
18 Verfassungsgerichtshof (2013). *G16/2013 ua.* At
19 [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_1](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_13G00016_00)
20 [3G00016_00](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20131210_13G00016_00) (accessed 2/1/2018).

21
22
23 White, F.R. (2018) *Trans Pregnancy: An International Exploration of Transmasculine Practices*
24 *of Reproduction. Law and Policy Review United Kingdom.* University of Westminster. Available
25 at [https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-](https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-policy-review-UK.pdf)
26 [policy-review-UK.pdf](https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-policy-review-UK.pdf) (accessed 25 September 2018).

27
28 Whittle S. (2006) Foreword, in: S. Stryker and S. Whittle (Eds) *The Transgender Studies Reader*,
29 pp. xi-xvi (New York: Routledge).

30
31 Zegers-Hochschild, F., Adamson, G.D., *et al.* (2009) The International Committee for
32 Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organization
33 (WHO) Revised Glossary on ART Terminology, *Human Reproduction* 24(11): 2683–2687.

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37 ¹ We use queer here as an umbrella term for LGBTQI people and others such as intersex people
38 who self-define as queer, even as we acknowledge that not all lesbians and gays, for example,
39 identify as queer. Transgender or trans is someone ‘who does not feel comfortable in the gender
40 role they were attributed at birth, or who has a gender identity at odds with the labels “man” or
41 “woman” credited to them by formal authorities’ (Whittle, 2006: xi).

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44 ² Cis (or cisgendered) designates staying within the parameters for normative gendered
45 behaviour (Enke, 2012: 61), and functions as a binary opposition to a term such as trans (or
46 transgendered). In doing this, a cis person ostensibly stays in line instead of crossing the line, ‘as
47 though we agree upon what and where that line may be as well as on what constitutes male and
48 female’ (73).

Table 1. Regulations regarding queer and trans people's formal relationship registration in Estonia, Austria and the UK, 2018.

Country	Civil partnership	Same-sex marriage
Estonia	Yes, with limited rights, but not fully implemented yet.	No.
Austria	Yes, with similar rights to marriage.	Yes, from 2019.
UK	Yes, in England, Wales, Scotland and Northern Ireland.	Yes, in England, Wales, Scotland.

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Table 2. Comparison of the Relative Restrictiveness of Regulations Concerning Queer and Trans People in Austria, Estonia and the UK, 2018.

Regulations:	Estonia	Austria	UK
Legal registration of parents.	No automatic co-parent recognition. Intra-family adoption for cohabitating couples possible.	Yes, automatic co-parent recognition. Joint and second-parent adoption.	Yes, automatic co-parent recognition. Joint and second-parent adoption.
Birth certificate terminology for parents.	Mother Father	Mother/Parent (or literal translation of German 'Elternteil' = Parental Unit) Father/Parent (Parental Unit), (Bundeskanzleramt Österreich, 2015).	Mother (= birth mother) Father/Parent
ART: allowed for queer people?	Only for queer singles.	Yes, for lesbian couples.	Yes, for lesbian couples and singles.
ART: surrogacy	Gestational surrogacy allowed since 2015 for non-commercial use for medical reasons.	No. Surrogacy is banned, but a child born abroad can acquire Austrian citizenship, if the intended mother is Austrian, or it has an Austrian father and if the child would otherwise be stateless (Palmer, 2013).	Yes, if not commercial/brokered. The surrogate mother is legal mother. If she is married/in a civil partnership, her partner is the legal father. The intended parents have to apply for parental orders (Stonewall, 2015).
ART: State funded/reimbursed?	No, only for medical indication. But unlimited number of IVF attempts paid through social security.	No. IVF with donor semen reimbursed at 70% (excl. costs of donor semen), only for medical indication.	In principle yes, but 'postcode lottery' as dependent on local Clinical Commissioning Group. 1-3 IVF cycles may be paid for by National Health Service (NHS), sometimes only under certain conditions (not having any children, healthy weight, non-smoker, under 35), sometimes not funded at all (NHS, 2015).

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