

Uterus Transplants in Mexico: Legal Ambiguity and the Case for Reform

Keywords

Fertility treatment; infertility; Mexico; transplantation; uterus; uterus transplants

Abstract

A law amendment to Mexico's General Health Law that would allow live uterus donation from pre-menopausal women was recently proposed. This amendment, if passed, would be the first ever piece of legislation to explicitly address uterus donation at any level of government. Two objections have been raised to the amendment, by the authorities in charge of organ transplantation. In this paper I critically examine one of the objections. The objection maintains that there is no need to reform the General Health Law, because its correct interpretation entails that live uterus donation from pre-menopausal women is already permitted. In this paper I show that the objection fails, and that uterus donation from pre-menopausal women is currently forbidden. My approach is threefold. First, I show that the objector's interpretation of the relevant article of the General Health Law commits them to some unpalatable implications. Second, I refer to interpretative criteria set out by Mexico's Supreme Court of Justice to show that the objector's interpretation is flawed. Finally, I show, using an ordinary language approach, that the objector's interpretation is flawed, because it renders the law inoperable. I conclude that a legislative amendment is justified, in order to ensure legal clarity and ethical consistency in uterine transplantation practices.

Introduction

In recent years there has been an increased interest in uterus transplants in Mexico. This can be seen in the number of medical teams that have applied to obtain the relevant permissions to carry out this procedure¹; the bioethical and medicolegal discussions on the topic²; and the policy changes that have been proposed at the federal level to regulate it.³ A uterus transplant is, in short, a procedure where a woman who does not have a functioning uterus receives one from a live or a cadaveric donor.⁴ Some women without a functioning uterus are interested in this procedure

¹ Three medical teams have applied to Mexico's National Transplant Centre for authorization to carry out uterus transplants.

² Elisa Constanza Calleja-Sordo and María de Jesús Medina-Arellano, 'Uterus Transplant: Bioethical and Biolegal Issues from Mexico' [2024] *Cambridge Quarterly of Healthcare Ethics* 1; César Palacios-González and Héctor A Mendoza Cárdenas, 'Uterus Transplants and Mexico's Rule of Law' (2024) 11 *Journal of Law and the Biosciences* Isae027.

³ Emmanuel Reyes Carmona and Favio Castellanos Polanco, 'QUE REFORMA Y ADICIONA EL ARTÍCULO 333 DE LA LEY GENERAL DE SALUD, SUSCRITA POR LOS DIPUTADOS EMMANUEL REYES CARMONA Y FAVIO CASTELLANOS POLANCO, DEL GRUPO PARLAMENTARIO DE MORENA' (2023) XXVI, 7 *Gaceta Parlamentaria*, 33.

⁴ For a discussion on the ethics of donor type see: Laura O'Donovan, Nicola Jane Williams and Stephen Wilkinson, 'Ethical and Policy Issues Raised by Uterus Transplants' (2019) 131 *British medical bulletin* 19; Bethany Bruno and Kavita Shah Arora, 'Ethical Implications of Donor Type for Uterus Transplantation: Why We Should Remain Wary of Using Living Donors' (2020) 93 *The Yale Journal of Biology and Medicine* 587; Bethany

because it would allow them to get pregnant and deliver, via C-section, a baby.⁵⁻⁶ For a comprehensive review of the science behind uterus transplants see: Brännström et al., Veroux et al., and Pereira et al.⁷ And for an overview of the international regulatory landscape see the volume edited by Hammond-Browning and Williams, although it does not cover Mexico.⁸

On Tuesday 26th September 2023 the Parliamentary Gazette⁹ published a proposed law amendment to Mexico's General Health Law (i.e. the federal legislation that regulates health provision in Mexico) in relation to uterus transplants.¹⁰ The then president of the Health Commission of the Chamber of Deputies was the one who put the amendment forward, following on the steps of the academic work of Palacios-González and Mendoza Cárdenas.¹¹ The amendment, if passed into legislation, would allow live uterus donation from both pre-menopausal and post-menopausal women. This amendment is of particular importance, since it is the first ever proposed piece of legislation on the matter. Uterus transplants are currently regulated, at the federal level, via a law that was first drawn in 1984.¹² The section on transplants was last

Bruno and Kavita Shah Arora, 'Uterus Transplantation: The Ethics of Using Deceased versus Living Donors' (2018) 18 *The American Journal of Bioethics* 6; Michael Olausson and others, 'Ethics of Uterus Transplantation with Live Donors' (2014) 102 *Fertility and Sterility* 40.

⁵ For a discussion on the value of pregnancy see: Tina Rulli, 'Preferring a Genetically-Related Child' (2016) 13 *Journal of Moral Philosophy* 669; Byron J Stoyles, 'The Value of Pregnancy and the Meaning of Pregnancy Loss.' (2015) 46 *Journal of Social Philosophy*.

⁶ For a feminist critique of organ transplantation see: Wendy Rogers, 'Gender Inequities in Organ Donation and Transplantation: A Feminist Bioethics Analysis' in Wendy Rogers and others (eds), *The Routledge Handbook of Feminist Bioethics* (Taylor & Francis 2023); Ann Mongoven, 'Sharing Our Body and Blood: Organ Donation and Feminist Critiques of Sacrifice' (2003) 28 *The Journal of medicine and philosophy* 89.

⁷ Massimiliano Veroux and others, 'Living-Donor Uterus Transplantation: A Clinical Review' (2024) 13 *Journal of Clinical Medicine* 775; Mats Brännström and others, 'Reproductive, Obstetric, and Long-Term Health Outcome after Uterus Transplantation: Results of the First Clinical Trial' (2022) 118 *Fertility and Sterility* 576; Mats Brännström and others, 'Uterus Transplantation: From Research, through Human Trials and into the Future' [2023] *Human Reproduction Update* dmad012; Mats Brännström, Michael A Belfort and Jean Marc Ayoubi, 'Uterus Transplantation Worldwide: Clinical Activities and Outcomes' (2021) 26 *Current opinion in organ transplantation* 616; Ana Pereira and others, 'Uterine Transplantation: Advances, Challenges, and Future Perspectives' (2025) 13 *Diseases* 152; Mats Brännström and others, 'Maternal and Perinatal Outcomes of Live Births after Uterus Transplantation: A Systematic Review' (2025) 104 *Acta obstetrica et gynecologica Scandinavica* 559.

⁸ Natasha Hammond-Browning and Nicola J Williams, 'Introduction to International Legal and Ethical Perspectives on Uterus Transplantation', *International Legal and Ethical Perspectives on Uterus Transplantation* (Edward Elgar Publishing 2024).

⁹ The Parliamentary Gazette is the official internal communication medium of the federal Chamber of Deputies. It publishes, among other things, the law proposals and amendments that federal Deputies put forward.

¹⁰ Reyes Carmona and Castellanos Polanco (n 3).

¹¹ Palacios-González and Mendoza Cárdenas (n 2).

¹² de la Madrid Hurtado Miguel, 'Ley General de Salud' [1984] *Diario Oficial de la Federación* <https://www.dof.gob.mx/nota_to_imagen_fs.php?codnota=4652777&fecha=07/02/1984&cod_diario=200301> accessed 15 September 2025.

modified in 2000.¹³ Neither the General Health Law nor the Regulations of the General Health Law on Transplants mention uterus transplants.¹⁴

An interesting development on this matter is that the Department of Legal Affairs of Mexico's National Transplant Centre (CENATRA) has come out against the proposed amendment.¹⁵ The opinion of the National Transplant Centre is important since it has the following remit: "The National Transplant Centre is responsible for promoting and coordinating the processes from donation to transplantation of organs, tissues, and cells (...)"¹⁶ The Subdirector of Norms and Legal Affairs, the highest ranking official of such department, has put forward two objections to the law amendment. The objections target, simultaneously, the amendment and the arguments put forward by Palacios-González and Mendoza Cárdenas.

The first objection is that the General Health Law's aim is to regulate the country's health provision at the level of generality, and thus specific transplant instances do not belong there. The second objection is that the proposed amendment to Article 333, which establishes the conditions for organ donation between live individuals, is unnecessary. It is so given that the current text of the General Health Law already allows both pre-menopausal and post-menopausal live uterine donation.

In this paper I am going to focus on the second objection and explain why it fails. I will do so via three different arguments. The first argument shows that adopting the objector's position leads to unpalatable consequences. This argument is the weakest one, since it depends on what some might consider to be 'far-fetched' scenarios. The second argument relies on an isolated thesis from Mexico's Supreme Court to show that the objector's interpretation of Article 333 is found wanting. The third, and strongest argument, employs an ordinary language approach to show that the objector is mistaken in their reading of Article 333. These three arguments demonstrate, independently of each other, that the best interpretation of Article 333 of the General Health Law *does not* allow live uterine donation from pre-menopausal women, *pace* the Subdirector of Norms and Legal Affairs.

In this paper I am not going to examine the first objection in detail. I am not going to do so for two reasons. First, developing that argument would require much more space than the available here. Second, and more importantly, the matter of the nature and scope of General Laws is a legal theory issue one, that does not fit thematically with the medical law matter at hand. Nevertheless, here is what I consider to be a

¹³ Ernesto Ponce de León, 'Decreto Por El Que Se Reforma La Ley General de Salud' [2000] *Diario Oficial de la Federación* <https://www.dof.gob.mx/nota_detalle.php?codigo=2055314&fecha=26/05/2000#gsc.tab=0> accessed 15 September 2025.

¹⁴ Cámara de Diputados del H. Congreso de la Unión, Reglamento de la Ley General de Salud en Materia de Trasplantes 2014; Cámara de Diputados del H. Congreso de la Unión, Ley General de Salud 1984.

¹⁵ CENATRA's technical advice on: Emmanuel Reyes Carmona and Favio Castellanos Polanco, 'QUE REFORMA Y ADICIONA EL ARTÍCULO 333 DE LA LEY GENERAL DE SALUD, SUSCRITA POR LOS DIPUTADOS EMMANUEL REYES CARMONA Y FAVIO CASTELLANOS POLANCO, DEL GRUPO PARLAMENTARIO DE MORENA' (2023) XXVI, 7 *Gaceta Parlamentaria*, 33

¹⁶ CENATRA, '¿Qué Hacemos?' (4 April 2022) <<https://www.gob.mx/cenatra/que-hacemos>> accessed 16 April 2025.

good reason for why such an interpretation of the General Health Law is mistaken. The General Health Law is full of examples where an article addresses a specific issue and then lists and engages with particular instances that pertain to the matter at hand. In other words, historically legislators have gone beyond the level of generality when regulating health provision via the General Health Law. For example, Article 273 states that for the General Health Law cleaning products are “substances aimed at washing or cleaning objects, surfaces or locales ...” and the proceeds to list many of them.¹⁷ The same happens with the article that addresses psychotropic substances (Article 245), the one on the advertising of alcoholic substances (Article 308), the chapter on noncommunicable diseases (Chapter III), the one on the National Cancer Registry (Chapter III bis), and a very long etc. In sum, particular instances, or cases, are not always relegated to secondary pieces of legislation, regulations, or norms. I accept that some people might not be convinced by this argument. In any case, this paper moves the debate forward by showing, *in detail*, that the second objection fails.¹⁸

Before moving to the next section, I want to draw attention to the following. In recent work Palacios-González and Mendoza Cárdenas have argued that under Mexican legislation Mexican women have a right to uterus transplants.¹⁹ This right, they maintain, stems from two constitutional rights: the right to health protection and the right to form a family. In this paper I accept their position, and thus I will not elaborate on whether there is a right to uterine transplantation according to Mexican legislation.²⁰

Uterus Live Donation and the General Health Law

According to Palacios-González and Mendoza Cárdenas, Article 333 of the General Health Law allows for the live donation of uteri from post-menopausal women, but forbids the live donation of uteri from pre-menopausal women. This is so, according to them, because Section II of Article 333 establishes that the donor’s body “must be able” to compensate the functions of the removed organ.²¹

Article 333.- To carry out transplants between live individuals, the following requirements must be met with respect to the donor:

I. (...)

¹⁷ Cámara de Diputados del H. Congreso de la Unión Ley General de Salud (n 14).

¹⁸ I would like to thank one of the anonymous reviewers for pressing me on this point.

¹⁹ Palacios-González and Mendoza Cárdenas (n 2).

²⁰ For a wider discussion on reproductive justice in Mexico see: Carolina Aguilar Ramos, ‘Acceso a La Justicia Con Perspectiva de Género En México: Casos Relevantes’ (2025) 3 Revista Digital de Derecho y Debates 7; Selene Roldán Ruiz, ‘Apuntes Hacia La Justicia Reproductiva En El Estado de México/The Materialization of Systemic Gender Violence Manifested in the Lack of Guarantee Of the Reproductive Rights of Women and Other People with the Capacity to Gestate in the State of Mexico’ [2023] Revista Filosofía en la Red 62; María de Jesús Medina Arellano and others, *Justicia Sexual y Reproductiva: Diálogos Plurales Desde El Feminismo* (UNAM, Instituto de Investigaciones Jurídicas 2024).

²¹ Palacios-González and Mendoza Cárdenas (n 2) 6.

- II. Donate an organ or part of it that, when removed, its function can be compensated by the donor's body in an adequate and sufficiently safe way; (...).²²

In the case of post-menopausal women there is no function to be compensated by the body, and thus live donation is permissible. However, in the case of a pre-menopausal woman the functions of her uterus cannot be compensated by her body if the organ is removed. There is no second uterus where an embryo can implant, for example.

After examining the implications of this article, Palacios-González and Mendoza Cárdenas present what they consider to be a good reason for Article 333 to be amended, so to allow pre-menopausal live uterus donation. This is that the rationale for allowing live organ donation established in Article 330 of the General Health Law is also met in the case of uterine live donation from pre-menopausal women.²³

Article 330.- Organ, tissue and cell transplants in living human beings may be carried out when the results of the research carried out for this purpose have been satisfactory, they represent an acceptable risk to the health and life of the donor and the recipient, and provided that there are therapeutic justifications. [...]²⁴

Let us elaborate on this. I can say, following the conclusions of recent review articles and reports on the matter, that the *overall* results of live uterine transplant research have been satisfactory, and that the procedure carries an acceptable risk to the health and life of the live donor and the recipient.²⁵⁻²⁶ This can be observed in terms of graft survival, live births post uterus donation, and post-surgical recovery both for live donors and recipients.²⁷ After reviewing the data of all 59 live uterus donations that had been carried out up to 2023, Veroux et al. concluded that:

²² Cámara de Diputados del H. Congreso de la Unión Ley General de Salud (n 14). "Artículo 333.- Para realizar trasplantes entre vivos, deberán cumplirse los siguientes requisitos respecto del donante:

I. (...)

II. Donar un órgano o parte de él que al ser extraído su función pueda ser compensada por el organismo del donante de forma adecuada y suficientemente segura;"

²³ Palacios-González and Mendoza Cárdenas (n 2) 7.

²⁴ Cámara de Diputados del H. Congreso de la Unión Ley General de Salud (n 14). "Artículo 330.- Los trasplantes de órganos, tejidos y células en seres humanos vivos podrán llevarse a cabo cuando hayan sido satisfactorios los resultados de las investigaciones realizadas al efecto, representen un riesgo aceptable para la salud y la vida del donante y del receptor, y siempre que existan justificantes de orden terapéutico."

²⁵ Brännström and others, 'Uterus Transplantation: From Research, through Human Trials and into the Future' (n 7); Veroux and others (n 7); Brännström and others, 'Maternal and Perinatal Outcomes of Live Births after Uterus Transplantation: A Systematic Review' (n 7); Liza Johannesson and others, 'The First 5 Years of Uterus Transplant in the US: A Report from the United States Uterus Transplant Consortium' (2022) 157 JAMA surgery 790.

²⁶ I thank one of the anonymous reviewers for highlighting the need to expand this section.

²⁷ Veroux et al., for example, report that among the 59 reported live uterus donations the overall surgical success rate is 71.4%, and there have been 29 live reported births. Veroux and others (n 7). And Pereira et al. maintain that "Despite these differences, uterus transplantation success and graft failure rates are not far from those observed in liver transplantation if we compare the same time intervals, considering the beginning of research on this type of technique." Pereira and others (n 7).

Thanks to a fully translational approach, including animal studies and clinical trials, UTx is now an effective treatment for women with UFI [uterine factor infertility]. Living-donor UTx could be now considered an emerging surgical procedure, since it offers the extraordinary possibility to give women the opportunity to have a pregnancy.²⁸

And similarly, Johannesson et al. conclude:

This comprehensive report of outcomes following uterus transplant in the US demonstrates that uterus transplant is safe for mother and child; success is reproducible and not limited to single centers; success is achieved with both DDs [deceased donors] and LDs [live donors]; and success rate is comparable with the most effective infertility treatments.²⁹

Given that my main aim is to discuss uterus donation from pre-menopausal women, let me expand on the findings for this specific cohort in terms of risks to their health and life. With respect to mortality, we know that there has not been a single death among all uterus donors, which includes pre-menopausal women. This, of course, does not mean that there are no risks to life, since any surgery carries some risk to life.³⁰ However, what we can conclude from this is that donor screening, the expertise of the medical team, and the maturity of hysterectomy surgical techniques have contributed to making uterus donation a relatively safe intervention in terms of perioperative mortality. Let us now turn to health risks.

The review articles that have been published on uterus transplant to this date only differentiate between deceased donors and live donors. This means that they do not present a breakdown of the specific risks to the health of pre-menopausal or post-menopausal donors. When presented jointly we know that the most common complications are: “urinary tract complications, infection, bleeding, thrombosis, and hematoma, bowel injuries, urinary tract infections, and iliac vessels and ureter injury, with more than 1 in 10 LDs [live donors] requiring a surgical intervention following uterine donation due to postoperative complications”.³¹ However, Veroux et al. maintain that “most of these complications have been prevented with improved skill and expertise in living-donor hysterectomy and with the introduction of mini-invasive techniques, such as robotic hysterectomy”.³² This is not surprising given how new the intervention is.

If we accept that these surgical complications are the way health risks manifest in uterus transplants, then we can conclude that such health risks are acceptable when compared with the risks that we accept in other established surgical practices.³³ For

²⁸ Veroux and others (n 7) 11.

²⁹ Johannesson and others (n 25) 796.

³⁰ Leandro Gobbo Braz and others, ‘Mortality in Anesthesia: A Systematic Review’ (2009) 64 Clinics 999.

³¹ Veroux and others (n 7).

³² *ibid.*

³³ It is important to note that here I am referring to the existence of such risks, and not the likelihood of their occurrence.

example, the systemic complications of liposuction can include “pulmonary embolism (PE), fat embolism, sepsis, necrotizing fasciitis, and perforation of intra-abdominal organs”³⁴; and those of live kidney donation include gastrointestinal, bleeding, respiratory, surgical/anaesthesia-related injuries, and other complications.³⁵

It is true that the number of uterine transplants that have been carried out to date is very small, and that when the number increases other risks might be revealed. However, data from the Swedish trial is encouraging, in that they conclude that “Collectively, the 4-year follow-up [of live donors] clearly shows no major negative effects on health secondary to uterus donation although donor psychological well-being may decrease if her donation does not lead to live birth.”³⁶

Finally, a particular risk to the health of pre-menopausal women that the literature does mention is that “If the living donor hysterectomy is performed in a premenopausal age, there is an increased risk of early menopause due to the injury to the ovarian blood flow and excision of the ovaries, which could lead in turn to long-term health risk because of the sudden cessation of ovarian-derived estradiol, which will increase the long-term risk for cardiovascular disease.”³⁷ This risk can be mitigated, as before, by improving the skills and expertise involved in such surgical techniques.³⁸ Overall, and in agreement with Palacios-González and Mendoza Cárdenas, I can reasonably conclude that the rationale of Article 330 is met when considering live uterus donation from pre-menopausal women.

Now, in referring back to the contents of Article 330 what Palacios-González and Mendoza Cárdenas are effectively doing is adopting the beneficence and non-maleficence points of such article, as reasons for amending Article 333. The non-maleficence part stems from the fact that current research on uterine transplants has shown that the level of risk to the health and life of both live donors (pre and post menopausal) and recipients is acceptable. Research on uterine transplants has shown that the donated organ can survive in the recipient’s body, a pregnancy can be achieved, and the pregnancy can be carried to term. And the complications for the donor and recipient are tolerable. The beneficence part stems from the fact that the organ recipient benefits from receiving the organ, in that her infertility is partially

³⁴ Lauren Valentine and others, ‘Liposuction Complications in the Outpatient Setting: A National Analysis of 246,119 Cases in Accredited Ambulatory Surgery Facilities’ (Oxford University Press US 2024).

³⁵ Krista L Lentine and others, ‘Perioperative Complications after Living Kidney Donation: A National Study’ (2016) 16 *American journal of transplantation* 1848.

³⁶ Brännström and others, ‘Uterus Transplantation: From Research, through Human Trials and into the Future’ (n 7) 534.

³⁷ Veroux and others (n 7) 2.

³⁸ In my review of the scientific literature on the topic I could only find two cases, of both pre-menopausal and post-menopausal, where an oophorectomy had taken place. In the one reported by Testa et al. there is no indication that the oophorectomy took place because of surgical complications. The second case was a unilateral oophorectomy one, which took place in order to harvest one utero-ovarian vein. G Testa and others, ‘Living Donor Uterus Transplantation: A Single Center’s Observations and Lessons Learned from Early Setbacks to Technical Success’ (2017) 17 *American Journal of Transplantation* 2901. Brännström, Belfort and Ayoubi (n 7).

resolved. We say partially because women who receive a uterus still need to undergo IVF.³⁹

The amendment that Palacios-González and Mendoza Cárdenas propose is the following:

Article 333.- (...)

II. Donate an organ or part of it that, when removed, its function can be compensated by the donor's body in an adequate and sufficiently safe way; *with the exception of the uterus. Women can donate their uteri when they have decided in an informed and free manner that they have fulfilled their childbearing goals; (...)*⁴⁰

Their suggestion is very close to what was published in the Parliamentary Gazette.

Article 333.- (...)

II. Donate an organ or part of it that, when removed, its function can be compensated by the donor's body in an adequate and sufficiently safe way; *with the exception of the uterus, which may be donated when the donor determines this freely, consciously, and with the informed determination of her will. The donated uterus may be removed from the recipient once the aim of the transplant has been fulfilled, with the formation of a family, or when the recipient determines it in a free, conscious and informed way.*⁴¹

For Palacios-González and Mendoza Cárdenas there are no good legal, medical, or ethical reason for *not allowing* the live donation of uteri from pre-menopausal woman who have consented in an informed way. At this point someone might ask: what reasons do we have no to limit ourselves to cadaveric and live post-menopausal uterine donation? A first reason is that by including pre-menopausal women we expand the donor pool. Brännström et al. maintain that "A major limitation for translation of UTx into clinical practice concerns donor availability".⁴² Second, intrafamilial live donation is associated with better histocompatibility and a reduction in the risk of acute rejection, and possible intrafamilial live donors might be pre-menopausal.⁴³ Third, it is possible, however specific research needs to be carried out in this regard, that there might be better results both surgically and for the pregnancy

³⁹ Palacios-González and Mendoza Cárdenas (n 2).

⁴⁰ *ibid* 7.

⁴¹ Reyes Carmona and Castellanos Polanco (n 3). "II. Donar un órgano o parte de él que al ser extraído su función pueda ser compensada por el organismo del donante de forma adecuada y suficientemente segura, con la excepción del útero, el cual podrá ser donado cuando la donante lo determine de manera libre, consciente e informada su voluntad de hacerlo. El útero donado, podrá ser extirpado a la donataria una vez que se haya satisfecho el objeto del trasplante, con la conformación de una familia o cuando ella lo determine de manera libre, consciente e informada."

⁴² Brännström and others, 'Uterus Transplantation: From Research, through Human Trials and into the Future' (n 7) 539.

⁴³ Veroux and others (n 7) 2 and 8.

when using a uterus that comes from a pre-menopausal woman. This is due to a better vasculature and the younger age of the organ.⁴⁴⁻⁴⁵

Objection: What Does ‘Can’ Mean?

Let me now present the second objection that was raised by the Subdirector of Norms and Legal Affairs of Mexico’s National Transplant Centre (CENATRA), henceforth the objector. The objector maintains that even when Palacios-González and Mendoza Cárdenas’ justification for amending Article 333 seems reasonable, and which is adopted by the proposed law amendment, there is no need to revise this article since it already allows pre-menopausal uteri live donation. In other words, Palacios-González and Mendoza Cárdenas are mistaken in that Article 333 forbids pre-menopausal women from live uterus donation. They are so because Article 333 employs the phrase “can be compensated” (*pueda ser compensada* in Spanish) and not “must/should be compensated” (*deba ser compensada* in Spanish). The mistake that Palacios-González and Mendoza Cárdenas are committing is that they are interpreting Article 333 section II as if it established a requirement in regards to the body of the organ donor, whereas in fact the verb that Article 333 uses is “can”. Differently put, if Article 333 said that the body of the donor *must be able* to compensate for the functions of the donated organ, then it would indeed follow that pre-menopausal women are barred from live uterus donation. But this is not the case.

The objector concludes that since section II of Article 333 uses the verb “can”, then this entails that pre-menopausal women are allowed to take part in live uterus donation. This is so, again, because the law does not establish that the bodies of such women should work in certain biological ways after a live organ donation. It is important to highlight that the objector does not tell us how we should understand the phrase “its function can be compensated”. The objector is only arguing that Article 333 does not impose a requirement on the body of the donor, and from there they conclude that pre-menopausal live uterine donation is allowed by the General Health Law. I now move to the first argument against this objection.

Response 1: A Bullet too Tough to Bite

⁴⁴ *ibid* 7. “Uterus living donors are usually in postmenopausal age, and several studies have demonstrated that, after menopause, the size of the uterus decreases, and atherosclerosis might progress, thus reducing the uterine vasculature and increasing the risk of poor graft reperfusion and thrombosis.”

⁴⁵ On this matter Brännström et al. maintain: “Additionally, it should be noted that women with uterine grafts are often slightly older at first childbirth compared to the general population and that some UTx women carry uteri of peri- or post-menopausal age, raising concerns about the influence of maternal age-associated higher risks of preterm labor (PTL), gestational diabetes, preeclampsia (PE), and adverse fetal outcomes such as fetal growth restriction.” Brännström and others, ‘Maternal and Perinatal Outcomes of Live Births after Uterus Transplantation: A Systematic Review’ (n 7) 560.

The first reason why the objection fails is that it leaves us with an interpretation of Article 333 that has unpalatable implications. For example, someone might decide that they want to donate both of his kidneys while alive, similar to the US case of David Patterson. In 1996 Patterson donated one of his kidneys to his daughter, who suffered from End-Stage Renal Disease, but unfortunately the transplant failed. After the first transplant failed Patterson offered to donate his second kidney.⁴⁶ Patterson's request was denied. If our objector were to be faced with a similar case to that of Patterson then they would have to accept that Article 333 does not require that the body of the individual, who is thinking about donating both kidneys, should be able to compensate for the function of such organs. And thus, they would have to accept that Article 333 would not forbid a double kidney donation. They would also have to accept that live heart donation is not forbidden by Article 333. This is, obviously, a very unpalatable consequence.

The objector has two options. They could accept that it is absurd to accept such an interpretation, and thus that they were mistaken in that this article does not establish a specific requirement from the donor's body. Which in turn would not allow premenopausal live uterine donation. Alternatively, the objector could bite the bullet. Our objector could accept that this is what follows from a strict interpretation of Article 333. However, they would add that Article 330, in fact, does not allow such type of donations, and thus that there is no need to amend Article 333.

Article 330 does not allow these types of donations (i.e. those where the donor would for certain die due to the donation, or their life span would be greatly reduced), because it maintains that live organ donations can be carried out when "they represent an acceptable risk to the health and life of the donor and the recipient"⁴⁷. In the two previous cases there is not an acceptable level of risk to the life and health of the donor. A live donation that is due to kill the donor is too risky, for example.⁴⁸ Let us accept that Article 330 would forbid live double kidney donation and live heart donation.⁴⁹

In conclusion, either the objector accepts that their interpretation of Article 333 leads to unpalatable consequences and thus they reject it. Which in turn commits them to

⁴⁶ Phillippa Bailey and Richard Huxtable, 'When Opportunity Knocks Twice: Dual Living Kidney Donation, Autonomy and the Public Interest' (2016) 30 *Bioethics* 119.

⁴⁷ Cámara de Diputados del H. Congreso de la Unión Ley General de Salud (n 14).

⁴⁸ Risk is not defined in the General Health Law. However, a useful definition is presented in the Regulations of the General Health Law on Health Research: "Art 17. It is understood as risk in research the probability that a research subject suffers some harm as an immediate or delayed consequence of the study. (...)". If we remove the research element, we could define risk as: the probability that a patient suffers some harm as an immediate or delayed consequence of the intervention. Cámara de Diputados del H. Congreso de la Unión, Reglamento de la Ley General de Salud en Materia de Investigación para la Salud 1987.

⁴⁹ One of things that we are doing in accepting such possible rejoinder is not paying attention to the fact that Article 330 also employs the verb 'can': "Los trasplantes de órganos, tejidos y células en seres humanos vivos podrán llevarse a cabo [...]". "Organ, tissue and cell transplants in living human beings can be carried out [...]."

accept that uterus transplants from pre-menopausal women are not allowed under the General Health Law. Or, they accept the unpalatable consequences while affirming that they are blocked by Article 330. A problem with the latter position is that it creates tension between these two articles, since that they are cutting in opposite directions. The tension could be easily resolved, and the General Health Law would become more harmonious, if we accept an interpretation of the law that makes both articles (330 and 333) cohere in regards to patient safety. I grant that this first argument depends on cases that might be considered far-fetched, and thus that it is relatively weak. Let me now move on to a stronger one.

Response 2: “Can” Means “Must/Should”

A second reason why the objection fails is that by focusing on what the law does not say (i.e. “must”) it misses the variety of meanings that “can” has within the Mexican legal context. And these meanings, in turn, shape the possible interpretations of Section II of Article 333.

The argument, in short, is that “can” in Article 333 has the meaning of “must”. Therefore, section II of Article 333 is to be read as follows: “Donate an organ or part of it that, when removed, its function *must* (*should - is require to*) be compensated by the donor’s body in an adequate and sufficiently safe way”. This is the way in which Palacios-González and Mendoza Cárdenas interpret it.”⁵⁰

Here, of course, someone might argue that I am adopting a Humpty Dumpty strategy. In *Through the Looking-Glass, and What Alice Found There*, Alice and Humpty Dumpty are arguing about the meaning of ‘glory’, when Humpty Dumpty asserts: “‘When I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’”⁵¹ Let me assure the reader that I am not adopting such strategy, in the sense that now I have arbitrarily decided that in the Mexican legal context “can” means “must”, and “must” means “must”.

The reason why I maintain that “can” is to be understood as “must” in this context is because of a *thesis* of Mexico’s Supreme Court. Before I present the *thesis*, it is important to highlight what a *thesis* is in Mexico’s judicial system: “(...) the written expression, in abstract form, of a legal criterion established in the resolution of a specific case. Consequently, a thesis is not an extract, a synthesis, or a summary of the ruling.”⁵² It is also important to bear in mind that what I am going to present next is

⁵⁰ Palacios-González and Mendoza Cárdenas (n 2) 6.

⁵¹ Lewis Carroll, *Through the Looking-Glass: And What Alice Saw There* (Digital Scanning Inc 2007) 73.

⁵² Suprema Corte de la Justicia de la Nación, ‘ACUERDO NÚMERO 5/2003 DEL TRIBUNAL PLENO DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, DE VEINTICINCO DE MARZO DE DOS MIL TRES, RELATIVO A LAS REGLAS PARA LA ELABORACIÓN, ENVÍO Y PUBLICACIÓN DE LAS TESIS QUE EMITEN LOS ÓRGANOS DEL PODER JUDICIAL DE LA FEDERACIÓN, Y PARA LA VERIFICACIÓN DE LA EXISTENCIA Y APLICABILIDAD DE LA JURISPRUDENCIA EMITIDA POR LA SUPREMA CORTE.’ (2003) XVII *Semanario Judicial de la Federación y su Gaceta*. 1785. “La tesis es la expresión por escrito, en forma abstracta, de un criterio jurídico establecido al resolver un caso concreto. En consecuencia, la tesis no es un extracto, una síntesis o un resumen de la resolución.”

an *isolated thesis*. This type of *theses* are non-mandatory interpretative criteria, their role is to orientate the way in which judges work.

In 1997 the Supreme Court wrote the following *thesis*:

In the legislative sphere, the verb “can” does not necessarily mean discretion, but is sometimes used in the sense of “obligation”, since in such a case it is understood as a duty. However, the meaning in which the legislator uses the verb “can” is not always clear, so to discover the true intention of the creator of the law, the philosophical principles of law and legal hermeneutics advise that it is necessary to harmonize or reconcile all articles related to the issue that we are trying to solve, especially in those cases where the verb, by itself, is not decisive for reaching the conclusion that the normative provision in which it is inserted grants a potestative or discretionary power to the administrative authority.⁵³

I contend that it is reasonable to accept that the legislator is using the verb “can” in the sense of “must” in Article 333. This is, in the sense that something is required from the donor’s body. A reason that supports my interpretation is the following. The intention of Title Fourteen of the General Health Law, which regulates organ donation, is to protect the health of donors and recipients. Understanding “can” as “must” harmonises the contents of Article 300 and Article 333 in this regard. Under this interpretation both articles are better placed in furthering the goal of protecting the health of the live organ donor. Article 330 establishes the general terms in which live organ donation can occur, this is when there is an “acceptable risk to the health and life of the donor”, and Article 333 further qualifies the requirements that a live donor must meet.

If we interpret “can” as “must”, in Article 333, then this greatly reduces the probability of a live organ donation illy affecting the health of the donor, which is in line with Article 330. For example, it straightforwardly blocks the possibility of live heart donation, live double kidney donation, and similar donations.⁵⁴ However, this interpretation entails that live uterine donation from pre-menopausal women *is not* allowed by the General Health Law. It is not allowed given that the functions of such organ cannot be compensated by the donor’s body.

⁵³ Suprema Corte de la Justicia de la Nación, ‘PODER. EL USO DE ESTE VERBO EN LAS DISPOSICIONES LEGALES, NO NECESARIAMENTE IMPLICA UNA FACULTAD DISCRECIONAL.’ (1997) VI *Semanario Judicial de la Federación y su Gaceta*. 217. “En el ámbito legislativo el verbo “poder” no necesariamente tiene el significado de discrecionalidad, sino que en ocasiones se utiliza en el sentido de “obligatoriedad”, pues en tal hipótesis se entiende como un deber. Sin embargo, no siempre es claro el sentido en el que el legislador utiliza el verbo “poder”, por lo que para descubrir la verdadera intención del creador de la ley, los principios filosóficos de derecho y de la hermenéutica jurídica aconsejan que es necesario armonizar o concordar todos los artículos relativos a la cuestión que se trate de resolver, máxime en aquellos casos en que el verbo, por sí solo, no es determinante para llegar a la conclusión de que la disposición normativa en que se halla inserto, otorga una facultad potestativa o discrecional a la autoridad administrativa.”

⁵⁴ It is my opinion that these two articles (330 and 333) need to be amended, so to improve their clarity and avoid redundancies.

Finally, even when the previous argument lends support to Palacios-González and Mendoza Cárdenas' interpretation, there is a more parsimonious argument that I can put forward, for showing that the objector fails. The argument is more parsimonious in that it only depends on the different meanings that "can" has in ordinary language, and it does not depend on applying a thesis of the Supreme Court.

Response 3: The Different Senses of "Can"

The third reason why the objection fails is that an ordinary language interpretation of "can" shows that live uterine donation from pre-menopausal women is not allowed by the General Health Law. This argument delivers the same result as the previous one, but without having to rely in the objector accepting that the legislators were intentionally using "can" in the sense of "must" in Section II of Article 333. The reader might have noticed that a feature of the two preceding arguments is that I have not put forward a hypothesis of how the objector is understanding the concept "can". Here now I turn to such question: what does "can" mean in Section II of Article 333?

There are at least three meanings of "can" both in English and Spanish. "Can" might be understood as: i) possibility (e.g. it can rain), ii) to have a capacity (e.g. I can jump), or iii) be allowed to (i.e. I can go out). Once we have these three meanings in mind, let us redraw Section II of Article 333 according to each one.

"Can" as "possibility":

Donate an organ or part of it that, when removed, the donor's body has the possibility of compensating for its function in an adequate and sufficiently safe way.

"Can" as "have the capacity":

Donate an organ or part of it that, when removed, the donor's body has the capacity for its function to be compensated in an adequate and sufficiently safe way; (...).

"Can" as "be allowed to":

Donate an organ or part of it that, when removed, the donor's body is allowed to compensate its function in an adequate and sufficiently safe way; (...).

Let us examine these meanings in reverse order. The third meaning, "can" as "be allowed to", is a nonstarter for understanding what Section II of Article 333 is trying to establish. Asserting that the body is "allowed to compensate" can mean that the body has the permission to act in a certain way. The obvious problem here is that it is nonsensical to grant permission to the body for doing something that it will naturally do. Analogously, it would be nonsensical to have a law that allows plants to carry out photosynthesis.

Alternatively, "allowed to compensate" might be understood as that no third party can interfere with the donor's body, so to prevent it from responding in a particular way. For example, doctors would not be allowed to give the live donor drugs that would negatively affect the way in which their body can compensate the functions of

the donated organ. However, there are two good reasons to rule out this meaning of “can”. First, Article 1. Bis. and Article 2. of the General Health Law already protect the health of patients against interventions that could harm them.

Article 1. Bis.- Health is understood as a state of complete physical, mental and social well-being, and not just the absence of affections or diseases.

Article 2.- The right to health protection has the following purposes:

- I. The physical and mental well-being of the person, to contribute to the full exercise of their capacities;
- II. The prolongation and improvement of the quality of human life; (...) ⁵⁵

In order to avoid this redundancy, we should reject this interpretation (i.e. understanding “can” as “be allowed to”) of Section II of Article 333. This first reason is not decisive, since redundancies in the law are sometime intentionally introduced so to overlap rights protections. The more important reason, however, is that such interpretation of “can” does not fit thematically with the aims of Article 333. Article 333 is about the requirements that the live donor needs to meet for the donation to go forward. And “being allowed to X” shifts the focus away from the live donor, and places it in another individual, a healthcare provider.

Now, if we understand “can” as to “have the capacity” then pre-menopausal women are not allowed to take part in live uterus donation. Because post-live-donation their bodies do not have the physical capacity, at all, to compensate for what this organ does. I contend that this meaning of “can” is most probably the one that the legislators had in mind when they wrote Section II of Article 333. I consider this to be the case since this is the most natural reading of such article, in as much as this is how we talk about the body in the legal and medical context when referring to phenomena that is amenable to being scientifically evaluated. For example, consider how the following two phrases are functionally equivalent.

- i. After a clean fracture your body can repair your bone.
- ii. After a clean fracture your body has the capacity to repair your bone

A further reason to favour this interpretation is that it does not create a tension between article 330 and 333. In the sense that both articles are now aligned in furthering the aim of Title Fourteen of the General Health Law, which is to protect the health of the donor and recipient. A final reason in support of this interpretation can be elucidated if we accept that legislators are rational agents, who had put forward a coherent piece of legislation when they modified the law in 2000. It would have been incoherent for them to keep Article 330, a version of which was already present in the 1984 version of the law, and add Article 333 if they did not consider that these articles were *not* in tension with each other.⁵⁶ And for them no to be in tension with each other “can” in Article 333 is to be understood as to “have the capacity”.

⁵⁵ Cámara de Diputados del H. Congreso de la Unión Ley General de Salud (n 14).

⁵⁶ Miguel (n 12) Art. 321.

Finally, when examining “can” as “possibility” the first thing that we need to note is that there are at least two senses of possibility: “physical possibility” and ‘logical possibility’.⁵⁷ If we were to adopt “possibility”, in the sense of “physical possibility”, then we would have to redraw section II in the following way.

Donate an organ or part of it that, when removed, the donor’s body has the physical possibility of compensating for its function in an adequate and sufficiently safe way; (...).

Here, something being physically possible means that the laws of nature would allow it to happen.⁵⁸ In this sense, ‘an apple tree can grow from an apple seed’ is the same as ‘it is physically possible for an apple tree to grow from an apple seed’. Post-live-donation the physical possibility does not exist for the body of a pre-menopausal woman to compensate for the functions of the donated uterus. In other words, it is physically impossible for her body to compensate the functions of her uterus: menstruation, embryo implantation, gestation, and labour. A first thing that justifies this interpretation, just as in “can” as “physical possibility”, is that it gives us a natural reading of such article. Consider, again, these two phrases:

- i. After a clean fracture your body can repair your bone.
- ii. After a clean fracture it is physical possible for your body to repair your bone.

And further to this, all of the reasons presented in favour of interpreting “can” as “have the capacity” also apply here. Let me further emphasises that in the legal and medical context we talk about the body in regards of its physical possibilities.

In addition to “physical possibility”, possibility might also be understood as “logical possibility”. “Logical possibility” is possibility in the broadest sense. For something to be logically *impossible* it needs to be the case that it is inconceivable. For example, a two horned unicorn, or a married bachelor. Whatever is a contradiction in terms is logically impossible. Let us redraw section II in terms of “logical possibility”:

Donate an organ or part of it that, when removed, the donor’s body has the logical possibility of compensating for its function in an adequate and sufficiently safe way.

If we were to accept “can” as “logical possibility” then we have to conclude that pre-menopausal live uterus donation *is* legally allowed. It is so because it is “logically possible” that a second uterus might grow after the donation, for example. Nevertheless, we should reject understanding “can” as “logical possibility” because it commits us to accept live double kidney donation and live heart donation. It does so since it is logically possible that the extracted organs could instantaneously

⁵⁷ For a good introduction to this topic see: Edward Covey, ‘Physical Possibility and Potentiality in Ethics’ (1991) 28 American Philosophical Quarterly 237.

⁵⁸ *ibid.*

regenerate. The main problem with understanding “can” as “logical possibility” is that medical law and practice do not appeal to this sense of possibility when establishing the ways in which patients are to be treated. This sense of possibility is so broad that in real life adopting it for guiding our medical decisions would be detrimental for patient’s health, and would overburden the health system. An example of the former is double kidney donation, an example of the latter is when the state is mandated to carry actions that “can” benefit the populations’ health. It is difficult to even convince all the interventions that are logically possible here. And finally, it is rather improbable that lawmakers had in mind this meaning of “can” when drafting the legislation. The reason for this is that this way of characterising and employing “can” fits better with a metaphysics seminar than a legislative assembly.

In this section I have shown that we can rely on an ordinary language understanding of “can” to elucidate whether uterine donation from pre-menopausal women is allowed under the General Health Law. There are three possible meanings of “can”: “be allowed to”, “have the capacity, and “possibility” (either logical or physical). I have provided reasons why “can” is not to be understood as “logical possibility” and “be allowed to”. And I have argued that the most natural reading of “can” is either as “physical possibility” or as to “have the capacity”. There is a threefold justification for the former. First, such meanings track our common use of “can” when referring to the human body in medical and legal contexts. Second, they fit harmoniously with the overall intention of Article 333. And third, these meanings align better with there being rational legislators who want a coherent piece of legislation.

Conclusion

The objector has two possible strategies to try to show that pre-menopausal uterus donation is allowed by Section II of Article 333, and thus that a law amendment is unnecessary. The first one is to reject that Section II is establishing a requirement on the body of the donor. The problem with this line of thought is that we would have to accept some unpalatable consequences. The second possible strategy is to maintain that “can” needs to be understood in terms of “logical possibility” or “be allowed”. The problem with the latter interpretation is that it does not fit thematically with the aim of Article 333. The problem with the former is that in medical practice and the law we are interested in outcomes that are actionable, and the realm of ‘logical possibility’ does not allow for this, since it is too broad.

On the other hand. Mexico’s Supreme Court has a *thesis* maintaining that under certain circumstances “can” is to be understood as “must”, and Section II of Article 333 appears to meet them. If we read Section II as establishing a requirement then this better harmonises all articles related to live organ donation. And it does so in that this set of articles would better protect the health and life of both organ donors and recipients. This argument is convincing, and lends support to Palacios-González and Mendoza Cárdenas’s position that pre-menopausal uterus donation is not currently allowed.

Nevertheless, we do not need to rely on this isolated thesis. We do not need to do so because “can” in the sense of “have the capacity” or “physical possibility” provides

us with the best version of the article. It does so in terms of harmonisation with previous articles, furthering the aim of Title Fourteen, and accepting that legislators are rational agents who want coherent legislation. And additionally, this interpretation of Section II of Article 333 (i.e., can as “have the capacity” or “physical possibility”) blocks the extreme donation cases that I have discussed. However, from these interpretations we also need to conclude that pre-menopausal uterus donation is not allowed under the General Health Law. It is not so because the bodies of pre-menopausal women cannot compensate the functions of such organ in an adequate and sufficient way. Even more so, their bodies cannot compensate the functions at all.

Let me close this paper by stating that the reason why I do not adjudicate between the three best interpretations of “can” (i.e., “must”, “physical possibility”, and “have the capacity”) is because any of them shows that pre-menopausal uterus donation is not legally allowed. And, Article 333 needs to be reformed for pre-menopausal live uterus donation to be allowed, as Palacios-González and Mendoza Cárdenas have already argued.

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