

# Specialized practices in embryo-related reproductive governance in Argentina

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## Abstract

This study addresses professional practical decisions on the use of assisted reproduction technology in Argentina. It recognizes the participation of non-medical agents in reproductive governance, involving the cessation of cryopreservation. The methodology employs sociolinguistic discourse analysis, in-depth interviews, and qualitative documentary and oral data analysis. Following Monica Casper, embryos are situated at the frontiers between human and non-human hence the controversy in their regulation. The results show the importance of concrete practices in decision-making and their influence on the construction of meanings. The study is focused on the practices of these actors in ART clinics in Cordoba and on cryopreservation-related controversies.

**Keywords:** Embryonic structures. Reproductive health. Family. Reproductive rights.

## Resumo

### Práticas especializadas em governança reprodutiva do embrião na Argentina

Este trabalho analisa as decisões práticas dos profissionais quanto ao uso das tecnologias de reprodução humana assistida na Argentina. Reconhece a participação de agentes não médicos na governança reprodutiva, em torno da cessação da criopreservação. A metodologia inclui análise sociolinguística do discurso, entrevistas em profundidade e análise qualitativa de dados documentais e orais. Seguindo Monica Casper, os embriões se situam nas fronteiras entre categorias humanas e não humanas, o que gera controvérsias em sua regulamentação. Os resultados destacam a importância das práticas concretas na tomada de decisões e sua influência na construção de significados. A pesquisa se concentra nas práticas desses atores nas clínicas de TRHA em Córdoba e nas controvérsias em relação à criopreservação.

**Palavras-chave:** Estruturas embrionárias. Saúde reprodutiva. Família. Direitos sexuais e reprodutivos.

## Resumen

### Prácticas expertas en la gobernabilidad reproductiva del embrión en Argentina

Este trabajo analiza las decisiones prácticas de los profesionales en torno al uso de las tecnologías de reproducción humana asistida en Argentina. Reconoce la participación de agentes no médicos en la gobernabilidad reproductiva, en torno al cese de criopreservación. La metodología incluye análisis sociolinguístico del discurso, entrevistas en profundidad y análisis cualitativo de datos documentales y orales. Siguiendo a Monica Casper, los embriones se ubican en los márgenes entre categorías humanas y no humanas, lo cual genera controversias en su regulación. Los resultados subrayan la importancia de las prácticas concretas en la toma de decisiones y su influencia en la construcción de sentidos. La investigación se enfoca en las prácticas de estos actores en las clínicas de TRHA en Córdoba y las controversias sobre la criopreservación.

**Palabras clave:** Estructuras embrionarias. Salud reproductiva. Familia. Derechos sexuales y reproductivos.

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The advance of reproductive medicine has posed significant challenges to human embryo-related reproductive governance<sup>1</sup>. Therefore, it has been the subject of controversies that have been addressed in different countries under the logic of specialists, that is, by engaging fields, in addition to medicine, that have specialized in the subject through law, anthropology, medical sociology<sup>1-5</sup>, feminism and gender studies<sup>6-10</sup>.

As noted by Lynn Morgan<sup>11</sup>, the rise of embryology involved a set of embryo classification and measurement operations that had, among other consequences, the erasure of the social relations in which they were produced<sup>12,13</sup>. Specifically, a cryopreserved embryo is a blastocyst, that is, a five-day-old embryo that has not been implanted and that, without technological or vital support, has no chance of developing. Thus, although social and cultural perspectives have also been fundamental to understanding the status of embryos in terms of social constructions, the symbolism of embryos as independent entities continues to operate very powerfully when building a regulation.

In Argentina, assisted reproduction technology (ART) regulation was introduced after thirty years of practices and regulations that were specific to the biomedical field. An important milestone was the sanction of Law 26,862<sup>14</sup>, on Medically Assisted Reproduction, in 2013, together with its regulation 956/2013<sup>15</sup> and the reform of the Civil and Commercial Code, in 2015<sup>16</sup>. The new legal context democratized access to ART and recognized this source of filial bond based on procreational will, that is, no longer based on a biologicistic notion of kinship, but on the consented decision to be a mother or father by ART techniques<sup>16</sup>.

These advances are distant from the hegemonic position of the biomedical paradigm, since access to treatments has come to be defined as a sexual and reproductive right, which expands access beyond the diagnosis of infertility and the association only with heterosexual reproduction. In addition, the recent legalization of abortion in 2020 is seen as a possible advance for the rights of ART users<sup>17</sup>.

However, despite significant political advances, at least two aspects of ART still lack regulation.

One of these aspects is gestational surrogacy, which is not prohibited, but is not regulated by health policies; and the other aspect is related to the treatment of embryos *in vitro*. On the latter issue, there is a pending special law that is complementary to the last reform of the Civil Code and Law 26,862<sup>14</sup>. This law would give rise to a pending policy in Argentina; however, its regulation in the current context faces a controversial scenario for changes in sexual policies.

One of the last public debates on the regulation of *in vitro* embryos occurred in early 2023 as a consequence of a couple's demand to obtain the cessation of cryopreservation, which reached the Supreme Court of Justice of Argentina (CSJ). In view of this situation, the CSJ announced the convening of a public hearing to define the situation of the cryopreserved embryos<sup>18</sup>. This public hearing, which did not happen, was interpreted by some sectors that defend sexual and reproductive rights as a counteroffensive to the legalization of abortion in 2020. In short, it was indicated a disguised means of *raising issues with remnants of an already resolved discussion on the legal status of an embryo and, underlying this, on when life begins*<sup>18</sup>.

The issue of the moral and legal status of human embryos, or the issue of the beginning of life, is one of the main aspects that arise in the public discussion on ART. In Argentina, the discussion has a history of controversies related to changes in the sexual policy<sup>19,20</sup>. In Argentina's *reprognational* history<sup>21-23</sup>, the dispute over the social interpretations of the human embryo is not minor, but has had legal effects on sexual and reproductive rights, as can be observed in the debates on the legalization of abortion.

From the perspective of religions, the expansion of sexual and reproductive rights processes cannot be dissociated from the historical tension between politics and religion in Argentina<sup>24</sup>. This tension may be rooted in a Catholic colonial heritage that, far from disappearing with secularizing processes, persists in multiple political, organizational, political and normative dimensions in processes of transformation and tension<sup>25</sup>. However, the neoconservative context that opposes sexual

and reproductive rights does not fully explain the role of religion in Argentina. Accordingly, I revisit José Morán Faundes and Angélica Peñas Defago, who delve into this idea:

*The prefix neo- emphasizes that, despite these continuities with the past, the conservative reaction to the politicization of sexuality, especially from the late twentieth century onward, acquired new political and strategic textures that renew the traditional components of the conservative field*<sup>26</sup>.

The dispute over the regulation of *in vitro* embryos is not exclusive to Argentina, since it has also not been easy to resolve in pioneering countries, where legislation gaps persist in some cases. In England, a controversy arose over the so-called “abandoned embryos,” when a 1991 regulation established embryo cryopreservation for a maximum period of five years. After this period, clinics only managed to contact half of the owners, which led to a social and legal conflict<sup>27</sup>. Other countries, such as Germany<sup>28</sup>, established legislation for total protection of embryos, but this regulation has not remained free of controversy, since over the years it has been debated how to enable the various scientific innovations under a model of exceptions to the rule<sup>29</sup>.

That is why other countries have made pragmatic decisions. The establishment of legal limits for conservation has proven a useful mechanism to solve the problem, which enables solving the “involuntary abandonment” when the owners do not want to or cannot decide on the cryopreserved embryos. A similar process occurs in Argentina. We find users who discard them “involuntarily”<sup>27</sup> or, when they decide to do so, they may encounter obstacles in the clinics and may need to resort to Justice to interrupt their cryopreservation or to decide to donate them.

As for the definition of the beginning of life and of the person, this is an issue subject to moral and religious conceptions, being difficult to reach normative consensus on it. The International Court of Justice (ICJ), in its decision on *Artavia Murillo vs. Costa Rica* proposed a pluralistic

stance in the face of this situation. This decision established a fundamental basis for understanding how to adopt a stance in relation to ART in Latin America, being understood as an existing practice that values people’s reproductive and family projects. Thus, the right to personal integrity, personal freedom, and private and family life were important arguments for the ICJ.

Moreover, this decision was fundamental not only to identify the idea of conception as implantation and not as fecundation, but also to propose an ontological model for embryo status based on gradualism. Thus, the proposal is that the right to life should be protected incrementally, according to gestational development. According to Bladilo and collaborators, the decision supports ART techniques based on a “plural” stance, which seeks a secular argument and recognizes that there are different views on human life. This is intended to avoid *the imposition of a specific type of beliefs on others who do not share them*<sup>30</sup>, as determined by the *International Convention on Human Rights* and which is recovered by the authors. The position marked by this decision is a relevant argument in a region where the secular nature of sexual and reproductive policies is continually questioned.

Argentina’s current regulations are, in general, in line with these arguments. This is the case of the Law on Voluntary Interruption of Pregnancy (IVG), which proposes a gradual approach based on embryonic development and, in this sense, provides a complementary legal ontology for the treatment of embryos. However, while debates are focused on embryo status, this is not the only aspect at stake. Some ART-related aspects could be regulated with a special law that addresses the concerns of users and clinics, which are addressed by other means.

In addition, a possible regulation would not only guarantee users their rights against various arbitrary practices of clinics, but would also position them differently in the face of these practices. As noted by Ariza<sup>31</sup>, although informed consent for ART is a very important instrument in practice for the construction of ethical frameworks, users often have difficulty in fully understanding their implications, without

anticipating the related legal, ethical, social and economic consequences.

The economic aspect is not minor for these actors, since it is a costly preservation method, covered by social security, prepaid health insurance plans, or users themselves. At the same time, there is the rise of a consequence related to the commodification of ART use by clinics. That is, if users cannot decide on the future of the embryos, they end up creating a situation of financial dependence with the clinic; which, if they cannot afford to maintain the embryos cryopreserved, creates debt.

However, that is not the only obstacle. As discussed in previous studies, making decisions about embryos without normative guidelines is difficult<sup>32,33</sup>. In this sense, the existence of regulation, such as the law on access to ART and the reform of the Civil Code, provides users with autonomy over their reproductive plans. That is especially important given the situations that arise in some clinics that decide to judicialize issues not regulated by the special law, which hinders people's access to reproductive rights<sup>18,34</sup>.

With regard to the treatment of embryos, Regulatory Decree 956/2013<sup>15</sup> of Law 26,862<sup>14</sup> allows gamete and embryo donations, while establishing criteria. The ordinance determines that they must come from gamete or embryo banks duly registered with the Ministry of Health, specifically in the Federal Registry of Health Care Establishments (REFES) of the Directorate of Health Regulation and Quality in Health Care Services. It also proposes the necessary identification of the center of origin and the consents of donors, and establishes the non-profit and non-commercial character. However, there is a need for a law that addresses this donation in depth and considers other ethical, social, psychological and legal aspects involved in a practice that can give rise to other kinship relationships.

In addition, donation for research is an option offered in practice; however, as in the case of cessation of cryopreservation, it remains with no regulation by a specific public policy. It should be noted that these practices are not prohibited

in Argentina, and in several clinics they are performed routinely.

According to Boltansky<sup>35</sup>, and as I have indicated in other studies<sup>33,36</sup>, the parenthood plan is central to understanding the situation of users. For some users, the *ethics of life*<sup>13</sup> gives centrality to their postures and gives the embryo the status of person, which is usually associated with religious beliefs. For other users, the so-called *ethics of kinship*<sup>13</sup> comes into play. According to Elizabeth Roberts<sup>13</sup>, and to what was noted by a recent study conducted in Argentina<sup>36</sup>, this means, for example, that embryo donation is not always a possible answer. That is, donating the embryo to another parenthood project is not an option for those who understand that there is a family associated with that embryo, even if it is not considered a person. This is reflected, for example, when users are aware that ART techniques produce more embryos than expected for implantation, and they do not expect to have as many children as available embryos; however, they value them.

Regarding the cessation of cryopreservation, the Argentinean Society of Reproductive Medicine (SAMER) estimates that there are more than 91,000 cryopreserved embryos in different centers in Argentina, and that half of them are not for reproductive purposes<sup>34</sup>. Beyond the advances in reproductive rights and several bills submitted to regulate the treatment of embryos produced by assisted fertilization, this situation remains unresolved through legislation, which means that when a clinic adopts a conservative stance in relation to these regulations, or when they fear to carry out the disposal due to the possible legal consequences, they must resort to judicial proceedings. Some studies also indicate that this situation can psychologically affect ART users<sup>37-39</sup>. Their experiences demonstrated how their adopted religious framework and moral autonomy<sup>40</sup> support complex and unusual decisions during treatments<sup>32,33,41</sup>.

In addition to the legal and economic aspects, we cannot ignore the fact that users also build bonds with these embryos<sup>33</sup> and express this value in what Mariana Viera Cherro<sup>42</sup> calls the *supervaluable fetus*. The construction of the

parenthood plan and the related clinical process are part of the need to preserve the embryo *in vitro*. This fetus, says the author, is considered valuable by medicine because it was difficult to obtain, as its value is manifested in subsequent treatment, which justifies scheduled cesarean sections as an option that minimizes risks<sup>42</sup>. This idea of fetus value appears in user accounts about the importance of cryopreservation<sup>37</sup> and requires greater reproductive work from users in the management of their reproduction<sup>43</sup>.

However, when ART users want to decide the future of embryos without reproductive purpose, we are faced with a conflict. This complex legal framework involves clinics, with their regulations and protocols, and the judiciary branch, with its technical and professional teams. Some mentioned actors interpret this situation as a gray context, in which certain practices, such as embryo disposal or embryo research, are not allowed, but are also not prohibited by law. In this sense, they refer to this legal void as a limit that precludes the advance of certain practices if there is no specific legal regulation<sup>17,44</sup>. Other positions indicate that this practice is not prohibited and that, in general, it is carried out routinely in some clinics based on their interpretation of the regulatory system in force, in line with the IVE law<sup>18</sup>, as mentioned above.

The way this situation has been resolved so far in Argentina is not homogeneous; on the contrary, it depends on the political, religious and social context of each region, which leads clinics and judicial operators to make different decisions. In Buenos Aires, some clinics offer embryo donation for reproductive purposes, donation for science or disposal with informed consent. However, this is not the case in all clinics. For example, in the city of La Plata (in the province of Buenos Aires), there are two cases in which the provincial court favored the cessation of cryopreservation. However, in the province of Mendoza, the decision of the Court was contrary to the petition.

The province of Córdoba is a particular case of neoconservative activism on sexual and reproductive rights. In previous studies<sup>45</sup>, I analyzed the lawsuit of a neoconservative organization

against fertility clinics in Córdoba and against the government of the province of Córdoba for the so-called abandoned embryos, which refer to the frozen embryos in the province. At that time, they argued that there are no parents responsible for the embryos and that the embryos, called children, were abandoned by their families and the State<sup>45</sup>.

Although the court decision was not favorable to the pro-life organization, after this process some clinics now refuse to allow the disposal of embryos without the permission of the Court. Although the court decision was not favorable, it served as a disciplinary measure for clinics, users and the provincial government, rather than serving as a measure to protect the embryos.

Consequently, the lack of a specific law regulating the non-reproductive future of the embryo continues to have economic, ethical, social and legal effects and obstacles to people's autonomy in their reproductive decisions. That is what users experience when faced with various dilemmas and obstacles when deciding on their parenthood plans or on their end<sup>36</sup>. Similarly, in previous studies, I observed that the perspectives of people using *in vitro* embryos undergo modifications throughout the reproductive process, and the changes in the parenthood project<sup>33</sup> make complex the decision about the future of the embryos.

Addressing these concerns involves different disciplines that intervene in ART judicial and clinical institutions, such as the practice of lawyers, psychologists and social workers<sup>39</sup>. However, the resolution of these controversies does not always respond to a clear and prior position on the embryo *in vitro*. According to Monica Casper<sup>5</sup>, constructions on embryos and fetuses are promulgated through professional practices. This means that this construction, in biomedical practices, is neither homogeneous nor responds to a single ontology of the embryo.

In dialog with the author's work, in the following pages of this work I analyze not only the arguments around the use of ART, but also the practical decisions, following Bourdieu's idea of practical meaning, which professionals adopt to face these situations.



In this sense, this work does not seek to define from the beginning the human/non-human status of embryos, but, as Mónica Casper points out in her work, the point is escaping this binarism and observing between the margins and the intermediate spaces<sup>5</sup>, thus, challenging this conceptual dualism.

In addition, I understand that reproductive governance in Argentina also involves non-medical agents, such as psychologists, lawyers, social workers and administrators. Therefore, I propose to understand conflict resolution through the practices of these work teams. Thus, the focus will also be on the work of non-medical actors who follow the decision-making process in ART clinics in the province of Córdoba. That is, I emphasize concrete practical decisions and not so much what they say, because I understand that, in doing so, meanings are also built. To this end, on this occasion, I will present the path that led me to study the possibilities of ceasing cryopreservation in the province of Córdoba.

In this sense, I understand that those people who inform and follow decision-making on the future of embryos also build practices around them, amid a context of legal uncertainty. Analyzing these views on *in vitro* embryos provides valuable input to improve the planning of health and sexuality policies, thus enabling the construction of a more comprehensive ART policy in Argentina.

## Method

The study is based on a sociolinguistic discourse analysis<sup>46</sup> through the examination of documentary and oral sources, for which I apply a qualitative methodological project and an interpretative paradigm<sup>47</sup>. In addition, five in-depth interviews were conducted with clinic professionals and judicial actors. I collected, from these sources, arguments, practical decisions and strategies to meet the needs left by the legal vacuum in the current Argentinean legislation as the main dimensions of analysis. The data were analyzed and coded qualitatively. In addition, these sources were complemented with public and journalistic documents, and public statements from professionals.

The research has the ethical endorsement of Resolution 8/2023<sup>48</sup> of the Committee for Ethics in Social and Human Sciences of the National University of Córdoba, and the data of respondents and institutions were protected.

## Building practices on embryos *in vitro*

Although the perspectives on the beginning and end of life establish non-negotiable *a priori* positions, these constructions of meaning are not formed in isolation nor are they, ultimately, so static. There is a network of professionals working in the biomedical field, specialists in the areas of reproduction and family, which combine aspects of the parenthood project, the possibilities of clinics, professional autonomy and the emotional implications involved in these decisions.

Human embryos in the context of ART have a shared value, even when regulations differ within the same province. If we observe the situation in the province of Córdoba, in two clinics specialized in ART, the decision on cryopreserved embryos is guided differently and has different effects in practice. Although they are not representative of all clinics, we will use these cases to exemplify this path. Both clinics are focused on cellular reproductive decisions, such as egg donation, which implies dealing with genetic mourning, or cases of gestational surrogacy, necessary to obtain judicial authorization.

A first instrument that enables building meanings about the embryo is the user informed consent—as indicated by the Civil and Commercial Code in article 560<sup>15</sup>—which must be renewed every time gametes or embryos are used. This document is fundamental to determine procreational will, while also being used for decision on embryo cryopreservation<sup>15</sup>, an aspect stipulated by reproductive medicine associations. After the cryopreservation period, clinics contact ART users to learn about their decision as to the future of the embryo and the continuity of its financial coverage.

At this time, users have the informed consent they signed at the time of starting the treatment. Although the signature confirms one's will,

it implies revisiting a decision made some time ago. As the interviewed professionals point out, when signing the consent, the users' objective is focused on the family project and, in this sense, cryopreservation is not easily incorporated, a phrase that indicates that *"Then they become confused, worried, with doubts about what is appropriate"* (11). Laura Wang, a psychologist and psychoanalyst specializing in reproductive medicine, also notes the importance of understanding informed consents as a central instance in the cryopreservation process based on subjectivity. *It is important to note that people who sign often change their decisions after several years in medical treatments and, of course, they are unaware of how this will affect them in the future, when they sign these documents*<sup>49</sup>.

This is understandable in the context of a treatment that involves an articulation of life decisions, treatments, access to them and their coverage, and where user concerns do not involve cryopreservation, but rather the parenthood plan. Similarly, the difficulties in dealing with this decision also have consequences for clinics, as they cannot make a decision without the updated signature of the users. Therefore, when a couple conflict arises, either due to a separation or the death of one of the embryo owners, a difficult problem arises.

In one of the clinics mentioned, when the cryopreservation period stipulated in the consent ends and the coverage expires, they contact the users. Initially, these consultations were carried out by the embryology department to offer the use of embryos for reproduction, donation or to cease their cryopreservation through informed consent. Subsequently, this practice was monitored by a psychology professional. Currently, the administrative team calls users to remind them of the commitment and, if any problems arise, they offer psychological care to monitor decision-making.

In the second clinic, it is the administrative team that communicates with users for decisions on embryos. In this sense, they often face the lack of response to their phone calls. One of the people in charge interprets that *"This lack of response also means that they do not want to know anything*

*about it anymore"* (12). They also note that this situation is due to multiple reasons related to people's life changes, associated with separations, interruption in treatment or pregnancy without medical assistance.

In the case of the second clinic, in communication with users, fewer options are offered, namely: continuing with cryopreservation, using the embryos for reproductive purposes, donating them to another couple or donating them for scientific research. In this clinic, the cessation of cryopreservation is only an option in case of judicialization; however, the possibility of donation for research is, in practice, offered as an alternative to disposal without lawsuit. This is related to a context where embryo regulation is a controversial issue, and where clinics fear legal consequences. As indicated by the study with health care professionals, Lima and Martínez note that the legislative loophole causes uncertainty and underscore the need for *specific regulations that can order the future of embryos and the need to include all options—cryopreservation, donation, cessation, and disposal—at the time of signing the informed consent form at the beginning of reproductive treatments*<sup>50</sup>.

According to the professionals, the perspectives of clinics are often not aligned with a pro-life position; rather, it is usually this legal aspect that affects the institution. Sometimes, this situation is even financially deleterious when there is no response from users, and clinics cannot decide on embryos.

In this context, the alternative of donating for research appears as an option. We could hypothesize that this alternative enables clinics to negotiate a solution for ART users without judicial authorization, but it still does not meet the real demands of users.

The other alternative—donating to someone else or to another parenthood plan—does not fully resolve this situation. As demonstrated by a recent study conducted previously<sup>36</sup>, embryo donation is not always a possible alternative for the end of a parenthood plan, as it mobilizes very different meanings about kinship in life stories. This was also what a psychology professional mentioned about the impact of donation in consultations.

She points out that “*there is a rejection of the circulation of embryos as donations,*” but that the perspectives are diverse and that “*sometimes they are conceived in the discourse of people as children*” (I2), but other times they are not.

Another influential aspect is that the routinization of the practice has been changing the mode of communication in the institution. Previously a model in which embryologists were responsible for communications, it has become an administrative process. However, the inclusion of psychology professionals to mediate conflict-generating situations is also interesting.

Occasionally, the psychology team offers care through referrals from physicians when they are faced with situations of user distress during medical consultations. The therapists designate the space as a follow-up resource linked to desire, not as a mandatory protocol, which is offered throughout the treatment process. However, decisions regarding cryopreserved embryos are not always followed by the psychological clinic; in many cases, users make their decisions autonomously.

When there is this demand, the professional is faced with a situation marked by the uniqueness of a transforming parenthood plan, as I will detail below. If the professional intervenes in this advisory on the embryo-related situation, their mediation will address the multiple situations related to the users' familial and individual life changes. Therefore, these are relevant changes in the parenthood plan that reflect a dynamic context: there may occur divorce, the formation of new couples, or the death of one of those involved in the family plan. Sometimes, people want a new pregnancy, but that exposes them to health risks and interferes with their ability to care for their children and family. All these situations imply conflicting decisions between users, sometimes assisted by clinics.

The interpretation of the place of the embryo in this familial and individual map is a central aspect in clinical practices. Identifying the transformation of meanings related to the embryo in the parenthood plan becomes a relevant aspect that provides insights into how professionals build, in therapeutic spaces,

new meanings about reproduction and family with ART users in a context of challenging decisions.

All these practices that allow decisions to be made and registered, such as signing consent, calling and reviewing consent, are permeated by the temporal dimension, in which cryopreservation is an element at stake in the modification of temporal meanings of reproduction and family. One of the interviewed psychologists reported this situation, referring to the fact that these are decisions from another moment in people's biographies, which is why many users have difficulty deciding amid this complex reproductive timeline. In this sense, it is noted that cryopreservation technologies have been interpreted as a pause in time. However, it is a more complex process and builds new scenarios.

Cryopreservation practices intertwine past, present and future in an unpredictable manner. Until now, freezing biological material equaled stopping time. While this image may seem simple, *cryopreservation has much more diverse, ambiguous, and complex temporal effects. The effects of cryopreservation are not limited to stopping time: they create futures, reorder presents, and continue to cling to pasts that still influence life*<sup>51</sup>.

The periods before, during and after cryopreservation generate rearrangements and resignifications throughout people's lives that can be addressed through professional listening<sup>52</sup>.

However, this resolution path does not always lead to the biomedical field. When this situation cannot be resolved within the range of options offered by each clinic, Justice is a new actor involved. An example of that occurred in the province of Córdoba in 2020. After having a child through ART and going through a separation, a couple decided to request the cessation of cryopreservation. Faced with this decision, the clinic offered them the possibility of donating the embryos for research or another parenthood plan, resorting to the “legal loophole” on *in vitro* embryos in Argentina. However, this option was not an acceptable alternative, so they decided to resolve this situation in court.



Although, according to the law, procreational will may cease prior to implantation, as indicated by article 561 of the Civil and Commercial Code<sup>15</sup>, the users' non-reproductive choice is the point that remains controversial. It should also be noted that this case occurred during the COVID-19 pandemic and during the debate on the legalization of abortion, when political, moral and religious positions on the unborn were critical in the country.

Thus, the possible decisions the clinic offered for the future of the embryos were informed by a boiling social and political context, in which the law did not support the cessation of cryopreservation. On the other hand, the alternative offered by the clinic—of donating the embryo for research—reflects the construction of an embryo ontology based on the possibilities offered by the biomedical practice itself. Somehow, this possibility offered by the clinic is inconsistent with an *ethics of life*<sup>13</sup>, because, if we considered that it is a person, the donation to science would be inadmissible.

Faced with this case, the couple of users filed an appeal for support. Raising the issue about the moral status of the *in vitro* embryo proved an impasse in a context where abortion was not yet legal. In any case, we know that there are multiple positions on the embryo ontology, which leads the debate on the moral status of the embryo to deviate from the aspect of the situation of families who experience these situations. For this same reason, the focus shifted to the end of the parenthood plan, which was central to the arguments presented in favor of cessation. Finally, in this case, the decision was favorable to cessation.

The arguments presented in the decision were framed in the right to autonomy in family formation and in the demands for reproductive justice. In this specific case, the jurisprudence resulting from the judgment on *Artavia Murillo vs. Costa Rica* served as a reference, since in it conception is understood as implantation and not as fecundation. Thus, the decision dismantles the *life ethics* framework by showing that the law regulates the treatment of embryos by ART. The fact that, after performing the ART

techniques, cryopreservation is a permitted and routine practice in biomedical practice does not shift the focus from the embryo status, but directs it to the practice itself and its consequences.

Cryopreservation itself as a practice becomes another central argument for the resolution of the decision in question. In this sense, the decision proposes an interpretation of the regulations in force that provides a practical ethics as to the treatment of embryos by stating that a person cannot be frozen. Therefore, if the current law allows the cryopreservation of embryos and not of people, then we are dealing with an entity that requires differentiated treatment<sup>50</sup>. In addition, the decision recognizes the importance of respecting the couple's autonomy in the family construction project, and this is where autonomy is situated.

This case allowed a decision in favor of the cessation of cryopreservation, which in practice is a very simple action. Although media discourses refer to the "destruction" of embryos, in reality, the cessation of cryopreservation occurs through a very simple act: the minimal tube containing the embryonic cells is removed from the cryopreservation site in nitrogen tanks (at  $-196^{\circ}\text{C}$ ). The cessation is also recorded materially. In this specific case, the clinic established a social and legal procedure that required the presence of a notary public. This act illustrates, in some way, the need to record the trajectory of the embryo in this technological and legal context.

## Final considerations

Just as the existence of regulations allowed the primacy of socio-affective factors through the notion of procreational will and recognized the existence of other family configurations, it also found some limitations in a context where the sexual policy is a source of controversy.

The difficulty in naming and regulating the embryo in legal aspects also translates into the lack of concepts that are accessible to professionals and users. In this complex context, professional standards and practices are building an interpretive path.

According to Boltansky<sup>35</sup>, science provides differential categories for naming the embryo, and this allows for its differentiated treatment. However, when debates are focused on a moral ontology of the embryo that ignores existing contexts and practices, this has adverse effects on the users' reproductive autonomy. This translates, in the emotional aspect, into guilt and conflict, as well as greater reproductive work.

Similarly, when there is no consensus, decisions are conditioned by the political, religious and social context of each region, leading clinics and judicial operators to make decisions that are sometimes contradictory in different places in the country.

A means to deal with these controversies has been through existing regulations, derived from national or international jurisprudence, such as human rights treaties. However, the practices themselves are also recovered by these normative systems. The fact that informed consent can be revoked even before implantation shows a specific meaning and certain graduality in the treatment

of the embryo *in vitro*, which prior to ART was a non-existent debate.

In the case analyzed, the construction of the end of the embryo ritualizes a situation by performing an act that requires witnesses and specialized professionals who can interpret this act of thawing, give it meaning and publicly record its trajectory. The end of cryopreservation can be understood as the end of a relationship between clinics, users and embryos, associated by a technological context that involves science and specialists.

Finally, the symbolisms, analogies and beliefs about the embryo are powerful tools in the practices of these specialists, as illustrated by the question in the abovementioned decision: "Can a person be frozen?" This question leads us to ask ourselves about the meanings and frontiers of the human/-non-human, as argued by Monica Casper<sup>5</sup>. These meanings are revealed in a procedural and relational manner, and the transformations of the users' parenthood plan are revealed as central when rethinking the meanings about reproduction and family.

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