

Frozen products? Embryo freezing, IVF and ‘harm reduction’

Dr Helen Watt, Anscombe Bioethics Centre, Oxford h.watt@bioethics.org.uk

Most of us have heard of the existence of cryonics: the strange practice of freezing adult corpses in the hope that the doctors of the future will be able to bring them back to life and cure their conditions. Some customers opt to have just their heads frozen; others opt for the full-body treatment which, unsurprisingly, costs more. While those frozen are supposedly corpses, some have suggested this be done to *living* people with currently life-threatening conditions who would otherwise be doomed to die.

Would any of us here be prepared to be frozen as adults while we were still alive? Most of us, would, I think, be highly reluctant - though some of us might be prepared to contemplate it as a last resort to save our lives. I suggest that we would not, however, consider being frozen if we were in good health at the time, but our families wanted us frozen for reasons of their own. We would be especially reluctant if the risks of freezing killing us were high (10, 30 or 50 per cent) and if the only motive for freezing were to save other people some problem which could be otherwise avoided. One would hope that our families would also be reluctant to put us through this hazardous, invasive procedure with no benefit to ourselves.

What if our families were to freeze us indefinitely, while they decided what to do with us? We would miss our children’s birthdays and everything that happened down the years while we waited unconscious in the freezer, in a kind of cryonic coma. Governments would change, family members would be born, get older and, in some cases, die. In the meantime, we would be left on ice, awaiting a decision on when and if our families would be ready to resume life in our company. Rescue from the freezer would seem increasingly unlikely the longer we were left frozen: perhaps our relatives would simply not contact those holding us in storage, unwilling either actively to discard us or to take responsibility – financial and emotional - for welcoming us back into the family.

Risks of freezing embryos

The Golden Rule of morality tells us that we should do unto others as we would want others to do to us. With that in mind, let us look at embryo freezing, the main topic of this talk. Freezing is, of course, carried out on healthy or (as they are rather brutally called) ‘high-quality’ embryos (those less healthy are sadly immediately subjected to destruction after quality control). The saved embryos and their ‘lower-quality’ siblings are produced in numbers greater than can be transferred immediately to the mother. Such mass-production is not for their own benefit – on the contrary, it reduces the survival rate of any embryo conceived - but is done to enhance the prospects of pregnancy while reducing financial and other burdens for the patient. Freezing is not only avoidable (it can normally be avoided even in the IVF context simply by not conceiving extra embryos) but is positively dangerous for the embryo frozen. While the risks of death to the embryo do vary depending on the clinic and the method of freezing, freezing is - as two IVF clinics frankly put it on their

websites - a 'harsh' and 'very traumatic' procedure for the embryo. Even leaving aside those embryos who are immediately discarded, or discarded later as surplus to requirements, the freeze-thaw process is itself dangerous for the embryo made to undergo it.

Status of the embryo

What is an embryo? An embryo is the first stage in the life-span of the human organism. It is a living whole - although a very young one - not a living part like a skin cell. We were all once embryos - beginning either at fertilization, when the male genetic material was first released into the interior of the ovum, or slightly later, for those of us who budded off as twins of preexisting embryos. We are bodily beings, and as such have rights and interests throughout our bodily lives, however much our bodies change and develop over time. Whatever our small size or strange appearance as embryos, we have objective interests and rights concerning what is good for human beings. It is in our interests to survive and develop, though we cannot, of course, *take* an interest in this happening, or in anything at all. Just as babies have objective interests, and rights to have those interests respected, the same is true of human embryos, in or outside the womb. As soon as a living human being exists, that human being has objective interests in everything that benefits a human being, whether now or in the longer-term.

Some will object that the high rate of natural embryo loss means either that the embryo is not a human being or that we are justified in taking major risks with his or her life. Such objections are, however, unconvincing: human infants in many countries today have sadly a very high rate of mortality, but are still human beings with human rights. While it may be permissible for couples to have babies in these countries hoping and praying that at least some will survive, this is very different from deliberately subjecting babies to dangerous, invasive and avoidable procedures for the benefit of others. A high risk of someone dying naturally does not make it permissible to cause *additional* serious risks to his or her life of a kind that can be readily avoided. Nor does it make it permissible to discard or destroy as surplus to requirements that endangered human being. We do not kill off cancer patients or subject them to lethal experiments, even if they are likely - or even certain - to die very soon.

IVF is, of course, geared very much towards increasing, not the survival rate of individual embryos, but the pregnancy rate of women hoping to get pregnant. Such is the pain and stress caused by infertility that many couples are prepared to accept the production of multiple embryos so as to improve their chances. This does not, however, mean that they are literally indifferent to the fate of their embryos; on the contrary, many IVF parents are deeply conflicted on the subject, particularly after some IVF siblings have already been born.

Attitudes of IVF parents

Many couples 'fall in love' when they first see their embryos at (say) the 8 cell stage, and long for them to be born as babies. Some see them as lives or (more confusedly) potential lives and/or as siblings for their born children; some see them (or try to see them) as mere human tissue. "Little lives, that's how I thought about them", said one IVF mother. "But

you have to switch gears and think, They're not lives, they're cells. They're science." Other IVF parents do not find it so easy to "switch gears" and think of their embryos as "science". One parent described a freezer full of embryos as like an orphanage; another said of her six embryos "They call to me. I hate to talk about it. But they call to me."

There are an estimated half a million frozen embryos in the USA alone. One study by Susan Klock and colleagues found that only about half the patients whose embryos had been stored for more than 3 years could still be traced. The rest were incommunicado. As the IVF doctor Mark Sauer describes it: "They would rather have you pull the trigger on the embryos. It's like, 'I don't want another baby, but I don't have it in me; I have too much guilt to tell you what to do, to have them discarded.'"

These are startling revelations from a doctor who presumably deals with the freezing and storage of embryos on a daily basis. When we remember the longing of these couples for a child and the difficulty of creating embryos for them, it is saddening and shocking that so many IVF parents, despite their guilt feelings, do not take their sense of responsibility further than they do.

But is not embryo adoption a solution to the problem, for couples who do not want another baby? At first sight, this may seem like the perfect solution; however, some would argue that parental (or maternal) duties in the special case of pregnancy simply cannot rightly be transferred. It is, the argument runs, morally wrong to become a biological mother of an embryo not one's own by purely technical means. Becoming a mother of one's own biological child is so important it should happen via the interpersonal act which truly reflects that importance - not a mechanical travesty of that interpersonal act. In any case, many IVF parents are unwilling in practice to see their children brought up by others, and will even choose to have them discarded rather than see this happen. And even if all genetic parents were willing to allow another woman to do what arguably the mother should be doing herself, this would not be enough to solve the problem of banked frozen embryos. The huge stockpile of embryos in the USA in particular could not be taken care of in this way, as there would simply not be enough couples wanting to 'adopt' the otherwise unwanted frozen embryos.

Among those parents who want their embryos thawed and not 'used' (in the revealing phrase of IVF practice) a minority want to say a prayer or to have some kind of ceremony, rather than simply have the embryos poured down the sink. Some couples want to have their embryos transferred to the mother at a time in the month when implantation is unlikely. This is a distasteful and rather dishonest solution, but one that bears witness to the couple's remaining - if insufficient - feelings of parental responsibility. Some parents disagree on the fate of their embryos, including parents who are now separated or divorced. Some parents die: one bereaved father in the UK was left with 6 embryos in the freezer and no idea what to do with them. Assuming that, as I would argue, it is unethical to use a surrogate mother or even to try to find a couple to adopt the embryos, they and their father are left in the horrible situation of there being no morally acceptable way to help them come to term. Whether they are kept frozen or unfrozen, they have no proper future in this world, if women

are not to be asked to do something that only the embryos' mother could morally have done. There is simply no way of righting the wrong that has been done to the embryos in producing them in vitro, freezing the 'spares', and keeping them in storage.

Many frozen embryos – even if their mother is alive to gestate them - will never be brought to term but are left in limbo or eventually discarded. This is an extraordinary, though all-too-familiar, situation and we need to ask why this is happening. Is there something about the IVF process itself which leads to so many parents – despite their own serious misgivings – treating their embryos more like objects they own than like children they should care for? I would say yes: the very process of IVF is so much like any other process of production that it is natural that parents come to think – at least to some extent - in terms of quality control and products surplus to requirements. This is not a good start to the parent-child relationship, which should be all about unconditional welcome - not production, selection, abandonment or even destruction of unwanted offspring.

Ethical IVF?

So what, you may ask, am I recommending – egg freezing instead of embryo freezing? We have heard of the advantages of egg freezing over embryo freezing in Dr Elena Porcu's interesting presentation. I should stress that freezing of eggs per se, leaving aside the context of IVF or ICSI, is not my main concern here. In a case of medical need – for example, after cancer treatment - ovarian tissue taken earlier could theoretically be retransplanted and conception could occur naturally. If the medical risks were sufficiently low, this particular use of freezing seems at least potentially morally acceptable. The objection to egg freezing is not to the freezing itself but to the context of IVF/ICSI for which freezing is, in practice, normally designed.

How about so called 'gentle' IVF using the woman's natural cycle? Again, this is very much better than standard IVF – better both for the woman's health and for the survival of the embryos conceived. However, I believe that it is still morally wrong, as the rights of children are not limited to their right not to be killed or physically endangered. It is not just the discarding and endangerment, but the mechanical production of children which demeans them, in a similar way to the exchange of money for a child. In both cases, the symbolism of unconditional, interpersonal acceptance, as in the best kind of sexual conception, is replaced by activity that has more to do with the world of objects than the world of human beings. Having a child is a momentous undertaking, and should be achieved in a way that reflects the child's dignity, to give both the child and the parent-child relationship the best possible start.

As any doctor or ethicist can testify, not all medical treatments are ethical; sometimes alternative treatments must be chosen or else treatment avoided entirely, if no morally acceptable treatment is on offer. In the case of IVF, alternatives do exist for many infertile couples, apart from letting nature take its course. Treatment approaches such as NaproTechnology can sometimes help even those for whom IVF has failed, as well as being very much cheaper and safer for the woman's health. It is not the fact that a technical procedure takes place in IVF which is morally objectionable, but rather, the fact that this

procedure is replacing something deeply important. The proper place of technology is in helping couples have their own children in a fully human way – and for many, if not for all, couples, there will be ways of helping them have children without going down the route of non-sexual manufacture. For those couples for whom this is sadly not the case, we should never forget that it is possible to have a good life without having children genetically one's own, as so many infertile couples can testify.

Legal responses

So much for a moral analysis of IVF and freezing – what about the law? Many things are unethical but – sometimes rightly, sometimes wrongly – are not against the law of the land. It may be inappropriate and/or politically impossible to ban all abuses, even those which involve a serious injustice. How can we best use the law to protect those at risk in the area of IVF?

Let us assume that banning IVF itself is not politically possible – whether or not it is desirable – and look at alternative approaches. Is it possible to prevent more embryos being created than will be immediately transferred to the mother – or ideally, to prevent more than one or two embryos being created at a time? If this is desirable in principle, does that mean IVF must or should be regulated in order to achieve this? Unregulated countries are sometimes called the 'Wild West' by those who point with justified repugnance to the human rights abuses they allow. If the Wild West is bad, as it certainly *is* bad, is not regulation the answer?

My own view is that a response to harmful social practices should be either a total or a partial ban, not the regulation of those harmful practices. After all, if pursuing a regulatory system involves us in choosing something wrong ourselves, even a balance of good over bad outcomes will not justify us in pursuing that option. Those who are absolutely opposed to IVF will not be consequentialists, who believe the end justifies the means, but moral absolutists who are or should be anxious to avoid complicity in what they believe are wrongful acts. Moral absolutists will be particularly concerned to avoid deliberate – so called 'formal' – cooperation in the wrongful choices of others. Any such cooperation will be wrong in itself, and not merely because of bad consequences it may have.

It may be helpful here to look at the example of prostitution. Imagine a country where prostitution is legal, and where it is politically impossible (let's say, due to financial interests) to ban prostitution altogether, though a ban on coercive prostitution is possible. Surely our aim should be to ban coercive prostitution by statute, without attempting to 'regulate' or direct a deeply immoral and exploitative activity. How can it be right to tell pimps how to run brothels, and women how to negotiate with pimps for better working conditions? We should ban coercive prostitution and investigate claims of coercion, rather than issue licences to brothels or consent-forms for the women they exploit.

It is important to remember that to *prepare* to do something morally wrong is itself morally wrong, and hence should not be deliberately assisted or encouraged by others. Thus if it is

wrong to do 'simple case' IVF where every embryo is transferred to the mother, it is wrong to *prepare* to do simple case IVF, or to help or invite others to so prepare. It is wrong not only to hand out permissions but to appoint and train staff to hand out permissions and help applicants apply. However well-motivated the drive for regulation, regulation will in practice involve the intentional recruitment of staff who will deliberately help people through the system, and staff who will give licenses to successful applicants. And even if, *per impossible*, those appointed to give licenses had no intention of giving them to anyone, it would still be wrong to invite applicants to embark on what one believes is a wrongful attempt – whatever the applicants' good faith or motivations - to obtain a licence to do wrong.

There is, of course, a huge amount more to say on these complicated but very important questions. However, I would argue that regulation (i.e. giving actual permissions or instructions for doing bad things) involves formal or deliberate cooperation in evil, so that we must choose other legislative means of making a bad situation better. These alternative means would include selective banning of some bad actions and the mandating of other actions which are good or potentially good in the context in which they are mandated. It is good to ban freezing and excess embryos being produced; bad to give licenses to IVF clinics and instruct them how to manufacture embryos. It is good to ban the use of donor ova; bad to tell clinics to freeze ova from the patient. In taming the 'Wild West', we should aim, not for supervised shootouts, licensed lynching or mandated maiming, but for the Sheriff breaking up the right fights, and knowing how to use the Town Jail.

IVF and harm reduction

If we really want to reduce the harm of IVF, we should consider, not merely the physical risks such as those posed by freezing of embryos, but the damage done to human dignity both by freezing and by the mechanical production that precedes it. Freezing continues the 'consumerist' symbolism of IVF: embryos are first manufactured like products and then kept in a state of suspended animation, awaiting others' convenience. While political necessities may dictate concentration on one, rather than another, form of harm involved in IVF (for example, excess production and selection, freezing, use of donor gametes), political responses should, I think, use the 'selective ban' approach, rather than that of issuing licences and/or instructions for essentially abusive procedures. In addition, State assistance for IVF can and should be withheld: the State has a legitimate interest in deliberately helping to achieve only those forms of conception which are respectful both of the life of the child and of his or her dignity. 'Producthood' is not a dignified state, and the direct production of children by doctors is not a private matter for parents to decide on but an appropriate concern of the State.

We should not be afraid to ask the hard questions concerning *why* IVF embryos, whose parents so much wanted to create them, are treated with so little respect for their lives and well-being. Is there some reason, apart from the opportunities that IVF offers, why so many lives are taken in the course of providing children for the infertile? At the risk of offending those who may be involved in IVF, perhaps entirely in good faith, I want to argue that this

kind of attitude to IVF embryos is closely linked to the IVF procedure *per se*. Children are not consumer goods, and should neither be mechanically produced nor bought and sold. Nor should they be left on ice for the convenience of others – the patients or ‘consumers’.

To return to freezing, there is no reason why a moral objection to IVF *per se* should stand in the way of a legal ban on particularly unethical practices such as the production and freezing of surplus embryos. Freezing an embryo and keeping it frozen, when it is possible to transfer it to the mother, is itself an injustice to the embryo which is well worth the attention of the law. The law is also a powerful educator: laws banning freezing may encourage parents of existing frozen embryos to take responsibility for them and give them a chance of going to term. As the singer Celine Dion has said of her own IVF offspring: “This frozen embryo that is in New York is my child waiting to be brought to life.” Or rather, we could say, waiting to get on with the life that was unjustly put on hold.