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# What to do with all those embryos

By **EVE GLICKSMAN**

**T**est-tube babies, surrogate mothers and now embryos in deep freeze. Being fruitful and multiplying was never this complicated. To some, we've become a society obsessed with baby-making and devil-may-care the consequences.

Consider that U.S. infertility clinics now house upward of 16,000 frozen embryos waiting to be thawed and transferred to a welcoming uterus. In just five years, some of the parents of these embryos will be divorced, dead or medically unable to carry a child. Others will go the route of adoption, become pregnant through other means or simply have a change of heart. Indeed, the celebrated 1989 embryo custody case of Junior and Mary Sue Davis may seem trifling in years to come when stacked against the fates of thousands of "orphan embryos" cuddled up in liquid nitrogen tanks around the world.

What to do with scores of abandoned embryos collecting frost come a latter-day big chill? Toss some out if they're the "wrong sex" or the parents decide that two kids are enough? Use the fertilized eggs for experimentation if no one claims them after five years? Donate leftovers to another couple against the parents' wishes to destroy them? Or perhaps sell them to infertile couples through the classifieds and make a profit for your trouble? This, when we're still scrapping over when life begins in the womb, let alone in a petri dish.

With virtually all U.S. in vitro fertilization (IVF) clinics now using cryopreservation (embryo freezing), these scenarios are not far-fetched, nor are the more profound implications they raise regarding reproductive rights. During 1989, 23,468 embryos were frozen at American clinics and 172 U.S. babies were born as a result of embryo transfers — just five years after the first such birth in Australia. Doctors estimate there were double that number in 1990.

Medically, there is no doubt about the value of freezing. Fifteen percent of infertile couples undergo IVF, and the ability to save unimplanted embryos indefinitely can double their chances of having a baby without additional surgery for egg retrieval. It's cheaper by the dozen, too. Saving and implanting frozen embryos averages \$1,000, while repeating a complete IVF procedure costs about \$7,000.

Many prickly questions remain, however, about the legal status of these four- to eight-celled beings sometimes referred to as pre-embryos. Anti-abortionists celebrated the unprecedented Davis custody case as a legal endorsement of their views regarding when life begins. Siding with the mother's desire to bring her embryos to term, Tennessee circuit judge Dale Young decreed that the state had a duty to act in the embryos' best interests — which in his mind meant awarding the mother custody despite her husband's objections to becoming a parent and the couple's pending divorce.

"The Davis decision has ominous implications," reflects Lori Andrews, a reproductive rights lawyer with the American Bar Foundation in Chicago and author of *Between Strangers and Brave New Babies*. Specifically, Andrews fears the emergence of embryo protection laws that will "fly in the face of reproductive freedoms."

Recent technology offering a clearer-than-ever view of the fetus may be partly responsible for the swell of protective sentiments toward embryos. But, says Andrews, this is not compelling enough to infringe on someone's right to avoid procreation. And what about the psychosocial burden of unwanted parenthood faced by Junior Davis? Others have proposed that the mother's jurisdiction should be greater only when embryos are in the womb.

Scientists worry, too, that a verdict conferring rights to embryos is a setback for research. In that 40 percent of frozen embryos don't survive the thaw, cryopreservation could be viewed legally as a procedure that threatens life. Such embryos-are-people-too thinking could ultimately make physicians reluctant to treat pregnant women lest a drug they prescribe inadvertently harm their embryos. Or could a clinic with a malfunctioning nitrogen tank be implicated in embryo deaths?

With one out of six couples today suffering infertility, there's the embryo marketplace to consider, too. No one's yet attempted to hawk their frozen genetic wares, but doctors suggest that it's only a matter of time before couples try to sell their spares. Sperm is a commercial commodity, and to date, only Florida and Louisiana have statutes banning sales of IVF embryos. Other suggested restrictions include a ceiling on the number of embryos couples may freeze and a push for research money to assist scientists in attempts to freeze unfertilized eggs.

To be sure, other countries are far ahead of the United States in IVF management. In 1982, a parliamentary committee in Victoria, Australia, created IVF clinic guidelines recommending such things as embryo donor registries (to prevent unwitting marriages between genetic siblings) and a five-year limit on review on the time embryos can be stored. Laws also require that clinics provide prenatal adoption programs to find parents for embryo orphans.

But instead of distracting ourselves with these complex policy questions, we should be examining and preventing the causes of infertility — from unnecessary surgery to harmful reproductive devices — maintains Nadine Taub, a law professor and director of the Women's Rights Litigation Clinic at Rutgers University in Newark. Even poor day-care and maternity-leave options may unintentionally force working women to postpone pregnancies until after 35 when infertility rates increase, she pointed out.

In addition, all the hoopla about high-tech baby-making reinforces society's stigmatizing message that raising one's own genetic children is a crucial experience, asserts Taub. Other voices of conscience question how we can endure grueling, expensive IVF procedures when there are so many unadoptable babies around and people who cannot afford basic health care.

Nonetheless, cryopreservation continues to ride the ever-rising tide of what is medically possible. Whether what is possible is also desirable is a long way from being determined.

*Eve Glicksman is a free-lance writer based in Philadelphia.*

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