

Frozen embryo disputes reveal legal discrepancies related to unwanted fatherhood

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Why are frozen embryos and developing embryos within existing pregnancies treated differently under the law? How do the rights of men and women differ regarding parenthood in these two circumstances? In a new paper, published in the *Indiana Law Journal*, a Penn State professor explores these inconsistencies and recommends policy changes that may help courts settle disputes related to these topics.

Dara Purvis, associate dean for research and partnerships and professor of law, provides two real-life examples to help illustrate the points in her paper.

In the first example, a woman is diagnosed with cancer and told that the treatment would make her infertile. She and her boyfriend begin the process of in vitro fertilization (IVF) so that after her cancer treatment, the woman may have a chance to become a genetic mother. The couple subsequently separates, and the man successfully argues in court that the woman should not be allowed to use the [frozen embryos](#), thereby blocking her access to her last opportunity to be a genetic parent.

In another example, a woman in her mid-thirties has sexual intercourse with a fifteen-year-old boy, and the encounter leads to pregnancy. Despite constituting statutory rape, the woman's request for the father to pay child support upon the birth of the child is granted by the court.

Why did the courts treat these two instances of unwanted fatherhood differently, and what do their decisions suggest about broader societal issues in family law and reproductive health?

A self-described feminist legal scholar, Purvis, in her paper, examines these questions through a masculinities theories lens, which involves looking at stereotypes of men's behavior—for example, that men are simply breadwinners who give their children financial but not [emotional support](#) and are themselves not emotional beings—and asking what harm such stereotypes cause to men.

Purvis also explores the inconsistencies in how courts define 'personhood'—when an embryo or fetus is considered a moral person with legal rights. She noted that personhood has arisen as an important theme in the abortion debate, and how the term comes to be officially defined will have an impact not only on abortion cases, but assisted

reproduction cases as well.

"The idea of personhood is playing a central role in the case from Mississippi that is currently before the Supreme Court [Dobbs v. Jackson Women's Health Organization], which will determine whether bans on abortion before fetal viability are constitutional," said Purvis. "If [embryos](#) are granted personhood status, then the Supreme Court may rule that an abortion ban is constitutional."

The Supreme Court's ruling, she added, may also impact decision making related to frozen embryo disputes. What's interesting, she said, is that in cases of frozen embryo disputes, the courts have so far rejected the concept of fetal personhood. This is demonstrated in the example of the court's ruling in favor of the man who did not wish to allow his former partner to use the frozen embryos he helped to create.

"Not only will this precedent be relevant if states are considering passing abortion statutes, but it also shows that the implications of fetal personhood reach into areas that people may not have considered, namely assisted reproductive technologies [technologies used to treat infertility]," said Purvis.

She noted that although frozen embryo disputes are uncommon, the outcomes of these disputes influence how family law differentially views legal parentage for women versus men.

"Explanations of why men's consent is irrelevant for purposes of child support, such as in the context of statutory rape, generally focus on the child's needs," Purvis explained. "The logic is whatever the circumstances of conception may be, the child requires support. Embryo disputes, however, do not always follow this logic. When it comes to frozen embryos, a man's feelings of unwanted fatherhood may prevail over a woman's desire to be a mother. By contrast, when it comes to a

pregnant person's control of their own body, embryo disputes tend to conclude that no matter the circumstances of conception, a man does not have the right to interfere."

Ultimately, Purvis said, these examples illustrate how differently courts treat statements about the emotions of men and women, and why the inconsistent recognition of men's consent to become fathers demonstrates that courts have rejected personhood. Purvis explained that courts tend to use a variety of approaches to settle such disputes. For example, a 'balancing approach' weighs the interests of the litigants against each other.

"A [court](#) that credits a woman's emotional appeal that conforms to gendered stereotypes about [women](#)'s desires to be mothers, yet dismisses a man's emotional appeal, turns the balancing approach from an assessment of interests into a tool reinforcing sexist prejudice," she said.

To remove gender-based inconsistencies with regard to parenthood in frozen embryo disputes, Purvis suggests that a 'contractual approach' is the "least worst" option. A contractual approach would enable each partner to weigh their own preferences and emotions around parenthood and memorialize their plans in the agreement.

"A contractual approach to embryo disposition agreements can help by building in more time for couples to reflect upon their decision and ensuring they receive clear explanations of what choices they are to be presented with," said Purvis. "Legislatures could require a certain period of time in between executing the agreement and undergoing IVF treatment and could also require independent legal counsel or psychological counseling for both potential parents."

More information: Paper: [www.repository.law.indiana.edu ...
le=11446&context=ilj](http://www.repository.law.indiana.edu/handle/11446/context=ilj)

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