



ARTICLES

ON MORAL INCOHERENCE AND HIDDEN BATTLES: STEM CELL RESEARCH IN ARGENTINA

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ABSTRACT

In this article, the authors focus on Argentina's activity in the developing field of regenerative medicine, specifically stem cell research. They take as a starting point a recent article by Shawn Harmon (published in this journal) who argues that attempts to regulate the practice in Argentina are morally incoherent. The authors try to show first, that there is no such 'attempt to legislate' on stem cell research in Argentina and this is due to a number of reasons that they explain. Second, by examining the role played by different values, conflicting legal and moral views, and the influence of various actors, they attempt to show that the legislative silence regarding stem cell research may not necessarily be a manifestation of a legal/moral disconnection but rather a survival strategy for navigating the long and heated battle on the moral status of the embryo and the kind of treatment it deserves.

INTRODUCTION

In the last few decades of the twentieth century, Argentina's activity in the developing field of regenerative medicine has made it clear that some medical technologies, usually associated with the wealthiest countries, have crossed cultural borders. Such is the case with stem cell research, pursued by teams of experts in the country.

In Argentina, as in so many other countries in the world, the moral status of stem cell research is ambiguous. Some people see it as a moral aberration, others as benefit-increasing and society-enhancing. This kind of research is not legally regulated, and so far there is no official government position on its moral or legal permissibility.

Regarding the ethical and legal discussion, there are a variety of issues to deal with, ranging from the moral status of the human embryo (in the case of embryonic stem cell research) to the importance of the moral imperative to help others. Argentines share many of the ethical concerns that Americans and Europeans have regarding the origin of stem cells and its potential utility. However,

there are other issues raised by the technology more germane to developing countries such as Argentina.

In a recent article, Shawn Harmon has tried to contextualize the discussion by focusing on some of these specific issues. Harmon starts by pointing out that in Argentina not only is stem cell research (SCR) carried out, there is also the intention to continue building capacity in this area. He states, '... [Argentina] has already taken many positive steps to build its SCR capacity and is now advanced in its health research and SCR activities'.¹ He concentrates then on the apparent lack of correlation between the values supposedly held by the general population in Argentina and the lack of regulation of the practice. Harmon understands values as 'the deeply held and sometimes unarticulated ideals and principles which we as a society and as individuals hold, and which move societies/communities to respond, either positively or

¹ S.H.E. Harmon. Emerging Technologies and Developing Countries: Stem Cell Research Regulation and Argentina. *Dev World Bioeth* 2008; 2: 148.

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negatively, to possibilities.² He is particularly interested in examining how values translate into legal guidelines. In the case of Argentina, he notes that the 1997 Decree prohibiting reproductive cloning appears to presuppose the existence of a particular set of moral values shared by Argentines, and he correctly points out that what those values are remains unexplained in the document. Then, he concludes that considering the prohibitive character of this document, Argentina's ratification of the *American Convention on Human Rights*, and the 'constitutionally entrenched catholic dogma' in the country,³ one would expect stem cell research to be either prohibited or severely restricted.⁴ Thus, the fact that in practice this activity is not even regulated baffles Harmon, who then concludes that 'on balance, Argentina's attempt at regulation could be characterized as *morally incoherent, socially inadequate*, and in light of the importance of deliberative democracy noted above, democratically deficient.'⁵

Harmon is right in calling for regulatory clarity and flexibility regarding SCR in Argentina. However, we find part of his analysis incomplete, and this ultimately affects his conclusion. In this paper, we try to show first that there is no such 'attempt to legislate' on stem cell research in Argentina and this is due to a number of reasons that we explain. Second, we want to show that the legislative silence that worries Harmon may not necessarily be a manifestation of a legal/moral disconnection but rather a survival strategy for navigating the long and heated battle on the moral status of the embryo and the kind of treatment it deserves.

In order to do this, we confine our discussion to four issues. First, in his review of the debate over the moral status of the embryo, Harmon identifies four positions ranging from the conservative to the liberal. But for this overview to be more relevant to the Argentinian situation, it needs to include a fifth position, the more conservative one found in the official teachings of the Church, which cannot be reduced to any of the positions discussed by Harmon. Thus, in the first section of the paper, we concentrate on this missing view and explain how it is relevant to the Argentinian context. Second, we are not convinced that an analysis of Argentina's regulatory position on human cloning research can do the job without a focus on the legal status of human embryos in general in Argentina. Thus, we devote the second section to a discussion of the legal status of the embryo. Third, we focus on the idea that Argentinian values are conservative and shaped by Catholicism. We do not deny the cultural and political influence of the Catholic view on Argentinian institutions and public policy. Nor do we deny that within the public forum, this appears to be the prevailing view. However, we

argue that in order to understand the lack of legislation on stem cell research, it is necessary to take into account the plurality of values in the population and to acknowledge the voices of other social actors who think in another direction, express diverse opinions and question the conservative *status quo*. Finally, in the last section we speculate on two different interpretations of the legislative silence on embryonic stem cell research in Argentina. We hope that an examination of these 'missing links' will enhance understanding of the cultural and legal meanings of stem cell research in Argentina.

THE MISSING PERSPECTIVE: THE FIFTH VIEW

To set the stage for the legal/ethical discussion on embryonic stem cell research in Argentina, Harmon starts by reviewing four divergent ethical perspectives on the use of embryos and on our obligations to alleviate the suffering of others. They are the prohibitive, the restrictive, the permissive and the facilitative positions. As he describes them, the first two can be understood in terms of a framework that takes the value of the embryo to be equal to that of the born human being, its personhood assured by the fact that it was conceived by human beings. Harmon notes that in both cases the ethical discussion revolves around the idea of dignity, the respect that it is due and the sanctity of human life. As he sees it, the main difference between them is that the prohibitive variant 'prohibits procuring or using human embryonic stem cells (hESCs), or indeed conducting embryonic research, for any purpose other than assisting reproduction'⁶ whereas the restrictive position 'would allow research to continue on those cell lines already in existence, viewing the unethical damage to have already been done.'⁷

In contrast, Harmon notes that the permissive and the facilitative positions agree in that although deserving of some respect, the embryo is not a person. Therefore, they allow the use of embryos for research. The permissive view also relies on the notions of dignity and sanctity but understands them differently. Furthermore, it gives a role to the notion of autonomy that plays a crucial role in the facilitative position. The fact that embryos are used for noble ends and that their use would provide the opportunity to relieve the suffering of future patients, frames the debate in both these views. According to Harmon, a significant difference between them is that the facilitative position finds the creation of human embryos for research morally acceptable whereas the permissive position would draw the line at existing fertilized ova discarded by fertility clinics.

² Ibid: 139.

³ Ibid: 147.

⁴ Ibid: 145.

⁵ Ibid: 147 (emphasis added).

⁶ Ibid: 141.

⁷ Ibid: 141.

Harmon states that given Argentina's conservative legal and social history and its apparent commitment to Catholic values, only the first two positions could reasonably be reflected in Argentinian legislation on embryonic stem cell research. This means that embryo use should either be totally prohibited except to assist in reproduction or limited to existing cell lines. Since neither option has been officially adopted, Harmon concludes that the resulting situation appears to be at odds with Argentinian moral views about the embryo and the respect it is owed. Thus, his charge of 'moral incoherence.'

This conclusion, however, raises some questions. First, is the lack of legislation necessarily equivalent to adopting the facilitative position? We discuss this in the next section. Second, Harmon's conclusion appears to be based upon the idea that Argentines in general are strongly committed to conservative Catholic values. However, if this were actually the case, the prohibitive and the restrictive policy options that Harmon proposes would not be appropriate either for they would still be too permissive. To understand why, we need to examine the more conservative option found in the official teachings of the Church. This is what in this context we can call the 'fifth position.'

The Church's position on the status of the embryo was initially articulated in *Donum Vitae*.⁸ This document provided the moral foundation for what later became the official Roman Catholic position on embryonic stem cell research. According to this document, the human being created by God and made in His image and likeness can never be reduced to a group of cells. It states:

The fruit of human generation, from the first moment of its existence, that is to say, from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality.⁹

Any activity that leads to the manipulation, sacrifice or destruction of embryos is never licit:

No objective, even though noble in itself, such as foreseeable advantage to science, to other human beings or to society, can in any way justify experimentation on living human embryos or fetuses, whether viable or not, either outside or inside the mother's womb.¹⁰

This document rules out not only embryo research but assisted reproduction techniques insofar as they require the manipulation of embryos.

⁸ Congregation for the Doctrine of the Faith. 1987. *Donum Vitae*. Rome: The Vatican. Available at: http://www.vatican.va/roman_curial_congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html [Accessed 27 Jun 2009].

⁹ Ibid.

¹⁰ Ibid.

In 2008, the Vatican's Instruction *Dignitas Personae* reaffirmed *Donum Vitae*'s teachings, adding that the human embryo has from the beginning 'the dignity proper to the person' and that biomedical science owes 'unconditional respect' to 'every human being at every moment of his or her existence.'¹¹ These statements evidently demonstrate that any kind of embryo manipulation is morally impermissible.

This does not mean that there is homogeneity within the Catholic tradition. The theologian Margaret Farley notes that:

Some Catholics (whether moral theologians, church leaders or general members of the Catholic community) clearly disagree on, for example, particular issues of fetal and embryo research, assisted reproductive technologies and prospects for morally justifiable human stem cell research.¹²

She includes herself among the group of people who believe that there is a strong case for stem cell research. Thomas Shannon holds that 'because the early human embryo is not yet an individual and, *a fortiori*, not a person, it is not entitled to the same strong moral respect or protection accorded to persons'.¹³ It seems then that both Farley and Shannon would be willing to accept one of the positions that Harmon describes.¹⁴

However, in Argentina generally the *public* Catholic narrative on this issue follows the more conservative

¹¹ Congregation for the Doctrine of the Faith. 2008. *Dignitas Personae*. Rome: The Vatican Available at: http://www.vatican.va/roman_curial_congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html [Accessed 27 June 2009].

¹² M. Farley. 2001. Roman Catholic Views on Research Involving Human Embryonic Stem Cells. In *The Human Embryonic Stem Cell Debate*. S. Holland, K. Lebacqz & L. Zoloth, eds. Boston, MA: MIT Press: 114.

¹³ T. Shannon. The Moral Status of the Early Human Embryo: Is a Via Media Possible? *Am J Bioeth* 2005; 5: 6.

¹⁴ N. Rourke, in an e-mail to Arleen Salles dated June 21st, 2009, notes: 'Catholic understanding of magisterial infallibility is that the Magisterium's authority when speaking in its areas of competence is indisputable. In areas where the Magisterium is not understood to have professional competence (for example, biology, politics, military science, new technologies), Magisterial statements are given in order to serve as essential religious contributions to global discourse. The US Bishops' document 'The Challenge of Peace: God's Promise and Our Response' (USCCB, 5/3/1983) demonstrates this distinction. 'As Catholic bishops we write this letter as an exercise of our teaching ministry. The Catholic tradition on war and peace is a long and complex one . . . not all statements in this letter have the same moral authority. At times the pastoral letter makes specific applications, observations and recommendations which allow for diversity of opinion on the part of those who assess the factual data of situations differently.' There is much discussion among theologians and the hierarchy about the nature of this distinction. For example, J. Selling & J. Jans, eds. 1994. *The Splendor of Accuracy: An Examination of the Assertions Made by Veritatis Splendor*. Grand Rapids, MI: William B. Eerdmans Publishing Company; C.E. Curran & R.A. McCormick, eds. 1988. *Dissent in the Church: Readings in Moral Theology, No. 6*. New York, NY: Paulist

Vatican's teachings.¹⁵ And these teachings are at odds with Harmon's restrictive and prohibitive positions. First, as described by Harmon the restrictive position allows the use of existing cell lines. However, the Vatican's *Dignitas Personae* states that:

... the use of embryonic stem cells or differentiated cells derived from them – even when these are provided by other researchers through the destruction of embryos or when such cells are commercially available – presents serious problems from the standpoint of cooperation in evil and scandal.¹⁶

Second, Harmon's prohibitive position allows embryo use and experimentation for assisted reproductive technology (ART) whereas the Church specifically rejects it on the grounds that it involves, among other reasons, the 'utilitarian treatment of the embryo' considered simply as a mass of cells.

Of course, the preceding does not show that Harmon is mistaken regarding the apparent incoherence between values and existing legislation in Argentina. If anything, it could be said that it shows that the incoherence is even more severe. That is, it could be argued that even if Harmon misunderstands an important aspect of the Catholic narrative in Argentina he should still be given credit for seeing that there is a problematic incompatibility between allegedly fundamental Argentinian values and the law. But before reaching this conclusion we need to take on two issues: first, what is the legal situation in Argentina exactly? And second, is there a fundamental commitment to conservative Catholic values in Argentina, at odds with more liberal approaches to embryo research? We turn to these issues in the next two sections.

FILLING IN THE BLANKS: UNATTENDED LEGAL CONSEQUENCES

Harmon's analysis of the legal situation of stem cell research in Argentina takes as a starting point a 1997 Decree that prohibits human cloning.¹⁷ He states:

... indeed, the only statutory instrument potentially relevant to hESCR (human embryonic stem cell research) is the Prohibition on Human Cloning

Press; T.A. Salzman & M.G. Lawler. Theologians and the Magisterium: A Proposal for a Complementarity of Charisms through Dialogue. *Horizons* 2009; 36(1): 7–31.

¹⁵ For an alternative understanding of the Catholic tradition that has some voice in Argentina see Catholics for Choice (*Católicas por el derecho a decidir*), a group with a different view of what Catholicism means.

¹⁶ See also Pontifical Academy for Life. 2000. *The Declaration on the Production and the Scientific and Therapeutic use of Human Embryonic Stem Cells*. Rome: The Vatican. Available at: http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20000824_cellule-staminali_en.html [Accessed 23 May 2009].

¹⁷ Presidential Decree N° 200/1997. Art 1.

Research (1997 Decree), which, it must be conceded, is silent on matters relevant to SCR except insofar as cloning is closely associated with hESCR.¹⁸

That Harmon only focuses on a Decree that he acknowledges does not appear to be directly relevant to the issue of the moral or legal status of the embryo in Argentina is puzzling. But the fact is that although he recognizes its shortcomings and even states that it may be unfair to consider it a regulatory instrument,¹⁹ the examination of several recitals of this Decree allows Harmon to conclude that:

The practical consequences of this carving out of cloning for particular attention, combined with *silence* on other issues, would seem to be that both the *use of surplus IVF embryos and the gestation of embryos for obtaining hESCRs for research is permitted*. Similarly, given the *legislative silence* on the issue of international collaborations and the importation of SC (stem cell) lines, it would seem that both (1) *the importation and use of SC lines derived from surplus embryos, and* (2) *the importation and use of SC lines derived from therapeutic cloning, is also permitted*.²⁰

Later in his article, Harmon is more cautious regarding this and refers to an 'apparent permissiveness.' However, in general he seems to assume that embryo research is permitted in Argentina.²¹

No doubt that in a sense, Harmon is right: there is no specific prohibition 'in the books' on the matter of embryonic research and therefore, implicit permission can be inferred. His interpretation implies a sort of ideal or progressive view of the Argentine legal system. 'Law in the books' may imply, in fact, that embryonic research is allowed. However 'law in action,' that is, how the system effectively works in practice, is much more complex and uncertain regarding this issue. Underlying the legislative silence there is a legal situation that looks like a minefield: green on the surface but extremely dangerous to traverse. We believe that the 'silence' that worries Harmon may not be reflecting a 'moral/legal disconnection' but a hidden battle over what kind of legal protections the embryo is entitled to.

It is possible to identify two sides in this battle, two different interpretations of existing legislation. On one hand, there is a conservative interpretation of the law that reads existing legislation as attributing personhood to embryos, especially in the context of assisted reproductive technologies and reproductive health in general. The prevalence of this view is evident in the press. To illustrate, we can focus on a recent article discussing assisted

¹⁸ Harmon, *op. cit.* note 1, p. 144.

¹⁹ *Ibid*: 146.

²⁰ *Ibid*: 145 (emphasis added).

²¹ *Ibid*: 145.

reproduction in *La Nación*, one of the main Argentine newspapers.²² It was published a few days after Barack Obama lifted stem cell research restrictions in the United States thus renewing the discussion on the status of embryo experimentation in Argentina. The newspaper article discussed the psychological impact on couples who undergo fertility treatments of not using surplus embryos. However, and somewhat unnecessarily, a separate window in the same page was added to provide information on the legal status of the embryo in Argentina.²³ There, it was stated that the nation's Civil Court of Appeals and the Supreme Court of Justice determined that according to the *Civil Code*, 'life' starts at the moment of conception. Interestingly, the author of this shorter, supposedly descriptive article did not transcribe the full statement found in the *Code* which attributes personhood to those 'conceived in the mother's womb.'²⁴ Instead, he tried to buttress the point that the fetus is a person by referring to International Treatises on Human Rights (ratified by the Argentine Constitution in its 1994 reform) that claim that life must be protected from conception. Thus in the same page in which one article addresses the psychological impact of a practice, the reader finds a clear and categorical statement that cryopreserved embryos have the legal status of persons, are entitled to the same rights, and cannot be destroyed or used in scientific research.

An alternative, more liberal view interprets the *Civil Code* and the Human Rights Treatises ratified by the Constitution differently. Proponents of this view point out that contrary to what is claimed, Article 63 of the *Civil Code* applies only to those 'conceived in the mother's womb'²⁵ and, therefore, embryos in fertility clinics cannot be considered persons. This point is usually neglected in conservative interpretations of the law.²⁶

Proponents of the more liberal view point to the complexity of interpreting Human Rights Treatises ratified by the Constitution. For example, Argentina has ratified the *Convention on the Rights of the Child*, the *American Convention on Human Rights*, and the *Convention on the Elimination of All forms of Discrimination against Women*

(CEDAW). The *Convention of the Rights of the Child* does not mention embryos: the assumption is that the entitlements and freedoms enumerated in the document apply to children from birth to 18 years of age as defined in article 1.²⁷ Argentina entered a reservation on that article declaring that the term 'child' means every human being from the moment of conception. This reservation and its range of application are still being debated.²⁸ The *American Convention on Human Rights*, and in particular article 4 is usually used to lend support to the conservative view. Harmon specifically mentions it when discussing the prevalence of the conservative view in the nation.²⁹ According to article 4, 'Every person has the right to have his life respected. This right shall be protected by law and, *in general*, from the moment of conception. No one shall be arbitrarily deprived of his life.' (emphasis added). However, Harmon does not explain that the 'in general' clause has caused controversy, nor does he note that there is a standard interpretation of the clause that is open enough to allow for the possibility of abortion.³⁰ Moreover, relevant international tribunals in charge of the supervision of legal instruments and human rights experts consider that the silence in other documents regarding the right to life from the moment of conception indicates that this right is protected only after birth.³¹ This understanding is compatible with the 1994 Constitutional ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), an instrument that strongly supports reproductive rights.

The tension between the conservative and more liberal views on the legal status of the embryo and on the interpretation of the main international legal documents is not enough to explain the mine field that embryo research faces legally in Argentina. There are also other measures, such as 'judicial action-lobbies' systematically presented

²² S.A. Rios. 2009. Parejas con culpa: congelan embriones y después no los usan (Couples with guilt: freezing embryos and then not using them). *La Nación*, April 4: 1/16.

²³ H. Cappiello. 2009. Cuál es el status legal del embrión (What is the legal status of the embryo). *La Nación*, April 4: 16.

²⁴ 'Son personas por nacer las que no habiendo nacido están concebidas en el seno materno' (Persons to be born are those that not having been born are conceived in the mother's womb) (authors' translation) *Código Civil (República Argentina)* Article 63.

²⁵ *Civil Code*, *Ibid*.

²⁶ Some judges consider that this article of the *Civil Code* cannot be interpreted literally because when written there was no conception *ex utero*. See 'Jurisprudencia. Derecho a la salud' (CFed. Mar del Plata, 2008/12/29. NN; c. I.O.M.A.) in *La Ley*, March 13, 2009; LXXIII N° 51: 6–7.

²⁷ 'A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' *United Nations Convention on the Rights of the Child*, Art.1.

²⁸ International law interprets reservations in the more restricted way. Therefore, there would be a tendency to limit its scope. However, some conservative views choose a different, more encompassing interpretation and use it to try to forbid reproductive health laws and to reject even the provision of contraceptives.

²⁹ Harmon. *op. cit.* note 1, p. 147.

³⁰ In 1981 the *Interamerican Commission on Human Rights* was asked to determine whether such an article allowed the right of women to safe and legal abortions. This was established through the Baby Boy case. For details see F. Luna. 2008. *Reproducción asistida, género y derechos humanos en América Latina*. San Jose, Costa Rica: Instituto Interamericano de Derechos Humanos: 80. Jurisprudence established by this Commission is obligatory for Argentina.

³¹ A relevant case is *Paton v. United Kingdom* (1980). There, the European Court of Human Rights decided that regarding the concrete application of the right to life in the Convention, the term 'everyone,' (in French 'toute personne') does not cover the unborn. The Court ruled out the foetal right to sue the woman carrying the foetus. Luna. *ibid*: 80.

to stop any technical and scientific innovation that may be perceived as threatening the status of the embryo.³² They range from legal sentences, for example, one banning a gynaecological drug used for emergency abortions (also used for other gynaecological treatments, and because of this judicial interference, later forbidden), to the nomination of a '*tutor especial de embriones*' (an embryo legal guardian) for assisted reproduction clinics. This development was the result of a judicial presentation in 1993 by a lawyer contesting the existence of frozen embryos in fertility clinics not controlled by the *Ministerio de Menores* (Office of Minors) and judges.³³ In 2004, a Civil Court in the City of Buenos Aires designated the lawyer who filed the case as legal guardian of all cryopreserved embryos in that jurisdiction.³⁴ One of the guardian's tasks was to cense all embryos in fertility clinics. This was challenged by the clinics that argued that the privacy of their patients would be compromised. In the meantime the legal guardian resigned. Finally, in December 2006 some fertility clinics in Buenos Aires signed an agreement accepting a 'defence attorney for minors' to count and control the quantity of frozen embryos and see that they are not destroyed.

Argentina does not operate on a common law system, where leading cases establish mandatory precedent. We have a codified system (inherited from the French-Napoleonic Code). This means that the case previously described was just one approved by one of the Chambers in the local Court of Appeals. There might be others solved in different ways by different Chambers.³⁵ If this were the case, a Plenary Tribunal Sentence would have to unify and set one interpretation to be followed by all judges. This has not happened yet, therefore, the case mentioned, which calls for a defence attorney for minors, is now in place. This seems to imply that embryos in labs in the city of Buenos Aires cannot be destroyed or used for research. But since labs elsewhere are not covered by this legal requirement it would seem that embryos could be used elsewhere.

This kind of actions and interventions by judges have a great impact on the press and on public opinion and contribute to the overall confusion and general lack of clarity. The conservative interpretation is particularly powerful and receives the support of the media, the Catholic Church and many in the judicial branch.

Thus, discussing the legal situation of stem cell research in Argentina just by focusing on the Decree on reproductive cloning and talking about 'legislative silence' provides a misleading picture. It seems that to better understand this silence it is crucial to recognize the heated battle underlying it, a battle that reflects diverse viewpoints and values. Let us concentrate then on what these viewpoints are.

SOCIAL ACTORS AND THEIR VALUES

In a way, the belief that there is a conservative, predominantly Catholic morality in the country is understandable. Argentina is a Catholic country: more than 80% of Argentineans call themselves Catholic. Historically, the Church has tried to exert its influence on the nation and the lives of its citizens through its institutions and its presence in fields such as education and charity. Furthermore it has been able to impose its views on sexual rights and sexuality in general.³⁶ It has tenaciously opposed contraception and abortion in the region and has strongly influenced judicial and social institutions that regulate those practices. The growth of liberalism in the region during the twentieth century did not hinder the influence of Catholic groups nor did it alter their main goal: to promote Christian values as interpreted by the Church. Since public involvement in the discussion over controversial issues such as reproductive health in Argentina is infrequent, it has been easier for the Catholic message to gain prominence. In this it has also been helped by the main press.³⁷ As a consequence, most arguments in the public forum are often justified by theistic considerations or can be traced back to theistic ideas

³² These are specially focussed on preventing legal abortions (that is, those accepted in the *Penal Code*).

³³ CNCiv, Sala 1, diciembre 3-1999 'R., R D s/medidas precautorias' E.D.t. 185, p.407.B. It speaks of 'la falta de control del Ministerio de Menores y los jueces'.

³⁴ This was presented by the Juzgado en Primera Instancia en lo Civil N° 56' of the City of Buenos Aires.

³⁵ To illustrate, in another case regarding the right to health care and the provision of free assisted reproduction to a couple who wanted to select an embryo compatible with his sick brother, such possibility was granted by the Judge and later ratified by the Federal Chamber (*Cámara Federal*) of Mar del Plata. However, ruling against the decision of the Judge, the Chamber forbade the use of spare embryos for research. This case is in line with the previous one mentioned but it was dealt with in another Chamber in a different jurisdiction and for a specific situation. See 'Jurisprudencia. Derecho a la salud', *op. cit.* note 26.

³⁶ D. Barrancos. Problematic Modernity: Gender, Sexuality, and Reproduction in Twentieth-Century Argentina. *J Womens His* 2006; 18: 2. See also D. Barrancos. 2007. *Mujeres en la sociedad argentina: una historia de cinco siglos*, Sudamericana: Buenos Aires.

³⁷ See S. Chafer, S. Molina & A. Waigandt. El aborto en la prensa argentina. Monitoreo de 10 casos. Available at: www.artemisanoticias.com.ar/images/FotosNotas/informe%20monitoreo%20final6-08%5B1%5D.pdf [Accessed 27 Jun 2009]. This is a study that analyzed how the topic of abortion was covered by ten newspapers in Argentina during April, 2008. The authors conclude that the majority of newspapers had a restrictive position on abortion. This position was predominantly supported by religious arguments, but legal and philosophical considerations also played a role. According to this study, that the topic of abortion is discussed in articles that revolve around religious issues, where the Catholic Church is the main actor and an important source of information, shows a conservative bent.

about the value of human life and the importance of deferring to nature. Rarely are all the ethical positions given a fair consideration, nor are all the ethical issues involved analyzed rigorously.³⁸ This has had the effect of reinforcing the idea that Argentines are conservative. The situation, however, is more complicated.

Today the influence of the Church on the behaviour of individuals is not as easy to discern and it is difficult to determine how far it extends. This is shown by a number of things: for example, the widespread use of birth control methods, the popularity of assisted reproductive technologies among Argentinians and the fact that although legally restricted, experts estimate that a considerable number of women undergo abortions annually.³⁹ This suggests that while there are no doubts that Argentina has been heavily influenced by Church doctrine and organization, and that the Church has played and continues to play a significant role in shaping the value system of many Argentines, it is also true that the Church does not appear to necessarily determine their behaviour and value system. This is probably because for many Argentinians, Catholicism is more a part of their *cultural* tradition than a strong spiritual commitment. Thus even if they recognize Catholicism as part of their cultural heritage, and they are partial to some or even most Catholic principles, they are not necessarily committed to them and their behaviour does not always follow the teachings of the Church. This means that the fact that public discussion of the issues is shaped by Catholic argumentation should not mislead us into believing that such argumentation determines the values that Argentinians accept and follow in their behaviour.

In order to understand all the values at stake, we also need to take a look at the scientific community, the values that it is promoting, and how those values have contributed to Argentinians' self-understanding. Argentina has produced Nobel Prizes in science and medicine and, particularly in the last decade, has tried to promote scientific innovation and cooperation with international groups.⁴⁰ In 2007 the Department of Science, Technology and Productive Innovation was established, in an initiative intended to stimulate excellence in research and to promote science. After President Obama's 2009 decision to lift restrictions on stem cell research in the United States (US), the Science and Technology Commission of the Legislative Chamber (*Comisión de Ciencia y Tecnología de la Cámara de Diputados de la Nación*) issued a

press release calling attention to the potential benefits of using embryos that will be destroyed in fertility clinics, thus rejecting the conservative stance on this issue and advocating an autonomous scientific spirit. Another press release, by the Commission of Regenerative Medicine and Cellular Therapies from the Ministry of Science, Technology and Productive Innovation (*Comisión Asesora en Medicina Regenerativa y Terapias Celulares del Ministerio de Ciencia, Tecnología e Innovación Productiva*) similarly elaborated on some of the main issues and celebrated Obama's decision.⁴¹ The message that these Commissions are trying to send to society is that the production of scientific knowledge is valuable and possibly even crucial, and that the country must be an active player in the moral and scientific debate in order to succeed and be globally competitive.

A significant portion of the research in Argentina is conducted by scientists in public universities. They have access to different kinds of resources and are often seen as the repository of objective knowledge. They are valuable actors in the social setting; their role prominent, their voices heard when they seek to legitimize their research. This explains why their discourse on the importance of science and on the possibility of improving human health and well-being has swept up many Argentines. It also explains why many Argentines look at stem cell research as a promising new opportunity for the country to achieve international recognition and serve as a regional leader.⁴² And finally this shows the reason why many in Argentina would consider that a prohibitive policy regarding stem cell research would be devastating. The fact is that despite appearances, there is no single set of Catholic values in the country, nor is there only one view on the moral permissibility of practices such as stem cell research.

We have to point out, however, that both the scientific community and the system of institutionalized religion have a tendency to ignore the interests and concerns of another group of actors: women. As in other countries, in Argentina the most controversial issues regarding stem cell research revolve around the moral status of the embryo and the role that science ought to play. Few realize that even if we settle the issue of the moral permissibility of using embryos for research, the issue of how they are sourced is still open. This issue directly affects women, their bodies and their self-determination. And yet this is a consideration typically left out. Harmon's

³⁸ Ibid: 40.

³⁹ See M. Gogna, et al. Abortion in a Restrictive Legal Context: Obstetrician-Gynaecologists in Buenos Aires, Argentina. *Repro Health Matters* 2002; 10: 19.

⁴⁰ Argentina has signed an agreement on scientific and technological cooperation with the European Union; so far 300 projects have been approved. See N. Bar. 2009. El rating de la ciencia. *La Nación*, 13 May:11.

⁴¹ See the web page of the Ministry of Science, Technology and Productive Innovation. Available at: http://www.mincyt.gov.ar/index.php?contenido=comision_celulas_madre1 [Accessed 27 Jun 2009].

⁴² S.H.E. Harmon & G.T. Laurie. 2008. The Regulation of Human Tissue and Regenerative Medicine in Argentina: Making Experience Work. *Arts and Humanities Research Council, Policy Brief 4*. Buenos Aires: Ministry of Science, Technology and Productive Innovation.

article is no exception: he does not address how embryonic stem cell research could affect women in a society such as Argentina's.

Of course we are aware that this neglect is not unusual in international debates about embryonic stem cell research, as some feminist bioethicists point out.⁴³ We believe, however, that this topic is particularly relevant in our Latin American context where there is a particular idealized idea of women that in practice determines what their expected duties and their rights are. In countries like Argentina, women are men's formal equals, and yet, at an informal level often they still try to build their image on traditional representations of womanhood as devoted and nurturing wives and mothers. Female ideas of abnegation and self-sacrifice within the family are popular. Women have a tendency to renounce independent roles and accept their status as childbearers and home makers. So the possibility of embryonic stem cell research raises questions about the extent to which it could reinforce the idea that women have certain caring responsibilities that could, occasionally, only be met by donating ova or embryos. Could this kind of research increase the vulnerability of some women by promoting the idea that those undergoing infertility treatments should donate fresh embryos? Will society consider ova donation a woman's duty? In short, are those 'nurturing' traits culturally imposed on women more likely to be abused if stem cell research remains unregulated?

What is at stake here goes beyond the issue of how women are seen and what responsibilities they may be taken to have. It has to do with women's rights as well. The fact that in Argentina nobody is talking about women in the context of stem cell research is another manifestation of a general tendency to ignore the condition of women and to forget that women have a right to their own body and to their own reproductive choices. It also shows the weakness of the feminist movement in the country. Feminists have long recognized that social and political systems that exclude the interest of women from consideration are harmful, and have worked towards the recognition of the rights of women and the promotion of their well-being and their fair treatment. However, the women's movement has limited influence in Argentinian politics and culture, and feminism is systematically discredited in the media.

⁴³ C. McLeod & F. Baylis. Donating Fresh versus Frozen Embryos to Stem Cell Research: In Whose Interests. *Bioethics* 2007; 21: 9; D. Dickenson. Commodification of Human Tissue: Implications for Feminist and Development Ethics. *Dev World Bioeth* 2002; 1: 55–63; D. Dickenson. The Lady Vanishes: What's Missing from the Stem Cell Debate. *J Bioeth Inq* 2006; 3; D. Dickenson & I. Akkorta Idiákez. Ova Donation for Stem Cell Research: An International Perspective. *Int J Fem Appr Bioeth* 2008; 1: 2; A. Ballantyne & S. de Lacey. Wanted-Egg Donors for Research: A Research Ethics Approach to Donor Recruitment and Compensation. *Int J Fem Appr Bioeth* 2008; 1: 2.

In addition to their general lack of political clout, feminists in Argentina usually focus on issues such as the availability of legal abortions, many of which are routinely denied (for example, abortions due to rape or for health reasons), and the provision of emergency contraception in public hospitals. This leaves very little room for a discussion of practices such as stem cell research that may have a negative impact on women.⁴⁴ The few who do focus on this research often find themselves in a quandary. If they take an overly critical position and call for the legal prohibition of the practice for the sake of women, they risk internal disagreements and the possibility of defending the same position that conservatives defend (although for different reasons) and in the process depriving women of some choices that they are fighting for. Thus, the vulnerability of women in this context.

Of the different social actors that we identified, then, the Church and conservative groups play a significant role in the public forum. On the other hand, the strength of the scientific community, which advocates for the advancement of science and its benefits to the sick, is evidenced by the lack of regulation which leaves open the possibility of research that conservatives want forbidden. But both keep the interests of women in the background.

SILENCE REVISITED

The preceding examination of the diverse issues at stake in the discussion over stem cell research in Argentina suggests that the legislative silence does not necessarily reflect moral incoherence. In fact, we believe that this silence is a reflection of a different phenomenon. However, before explaining it, we are going to dismiss another, less generous interpretation of what the lack of legislation in Argentina means.

Some would argue that the legislative silence on stem cell research reflects moral laziness, or, even worse, it is a manifestation of what in Argentina we would call 'viveza criolla' (native cunning). This is an attitude of taking advantage of a confusing situation without having to engage with the complex moral issues, it usually leads to the promotion of one's interests without consideration for the collective well-being.

The legislative silence represents an easy way out where everybody pretends that nothing is really happening when in fact it is, and everybody assumes that the same old values are being accepted, when in fact they are not. The *status quo* remains seemingly unaltered and the powerful lobbies of society undisturbed.

⁴⁴ S. Ramos, et al. 2009. El acceso al aborto permitido por la ley: un tema pendiente en la política de derechos humanos en la Argentina. In *Derechos Humanos en Argentina, Informe 2009* (CELS), Buenos Aires: Siglo XXI Editores; P. Bergallo, M. Magnelli & A. Ramón Michel. Unfulfilled Promises: Access to Legal Abortions in Argentina. (Unpublished).

This kind of strategy is usually defended on the grounds that ultimately, the purpose is met: even if controversial, the activity in question (be it stem cell research or assisted reproduction) is still carried out. The problem with this attitude is that it promotes cynicism and hypocrisy: operating values are not addressed, nor is there deliberation on how the acceptance of those values can affect other public policies.

Although aware of the plausibility of this explanation, we believe that our analysis supports a different, more generous interpretation of the reigning legislative silence. Considering the diversity of moral positions, the heated legal battle on the embryo, and the influence of different social actors, we believe that the legislative silence on stem cell research in Argentina can be seen as a form of *resistance*, a way to act by omission in a context in which either a) it is very difficult to legislate or b) legislation is likely to be unfairly influenced by the views of those who have the stronger lobby and therefore more power.

Silence as resistance can be understood in one of two ways. First, as a way to resist the imposition of one set of values, thus respecting the plurality of views regarding the moral status of embryos and of stem cell research, and the autonomy to pursue this research. In his article, Harmon refers to this possible interpretation, but it is one that he rejects. He states that 'it is . . . stretching the inference to claim that inactivity can masquerade as respect for autonomy.'⁴⁵ We agree with him in that this is not the best way to express respect for value diversity, but unfortunately this is not unusual in our context.

Second, and more importantly, this silence can be seen as a long-term combat strategy with a goal: to make the research better known and possibly more acceptable to all. Instead of crossing the field now and exposing oneself to the dangers of this legal and moral war, the plan may be to 'wait and see' in order to resist and be stronger. Stem cell research is quite contentious locally and abroad. Legislative silence allows proponents of this research to buy time for further ethical and legal debate in the international scientific community, for more legal ammunition locally and for the general population to learn what stem cell research is, what its benefits and implications are, and what position to take regarding its moral status. This would be a strategy similar to the one used in the case of assisted reproductive technologies. Because attempts at legislation are difficult and there is

such a powerful lobby against them, proposed laws stay as mere proposals and they are never passed. Underlying this legal 'inactivity' is the fear of an absolute prohibition as is the case for Costa Rica and ART.⁴⁶ Meanwhile reproductive technologies are used.

We agree with Harmon that the uncertain legal situation of stem cell research in Argentina is morally dangerous. We also agree in that it does not promote the kind of open discussion so needed in democratic countries. However, rather than a moral disconnection or moral incoherence, we believe it is a reaction to an adverse situation that can be more accurately interpreted through the image of a hidden battle. In practice, it means the lack of a respectful policy on an activity that affects many people. And this lack masks not only the legal struggles regarding the status of the embryo and of scientific innovation facing countries like Argentina; it stills even more some voices within society.

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⁴⁵ Harmon, *op. cit.* note 1, p. 147.

⁴⁶ Costa Rica's Supreme Court forbids all in vitro fertilization and heterologous artificial insemination from being done in the country, against a Decree (N°24029-S) that regulated these practices since 1995. Because of this, a group of patients filed a case (Ana Victoria Sanchez Villalobos y otros contra Costa Rica (Petición 12.361)) against the country arguing that such rulings of the Supreme Court violated their human rights. The petition was accepted and is now at the Interamerican Commission on Human Rights. For details see F. Luna. *op. cit.* note 30: 59–61.