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The Governance of Reproductive Contingencies between Italy and Japan

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Abstract Gametes cryopreservation led to accumulation of abandoned reproductive cells. A regulatory forecast of possible survivorship has not accompanied such phenomenon and the current laws aren't capable of determining how the cells should be used in the event of a marriage crisis, death, or transition. In Italy, the law provides no solution, and regulations on assisted reproduction have not been updated in the past 20 years, while the Italian jurisprudence is set to be the one to solve the cases applying quite controversial and outdated rules. In Japan, also, the law does not consider contingencies to consent and cryopreservation of reproductive cells and the Japanese jurisprudence seeks solutions in the Japanese Civil Code. However, in both jurisdictions there is the problem of managing and using cryopreserved cells by applying laws referring to the heteronormative family, based on marriage, and a shared gene pool between children and parents.

Keywords Assisted reproductive technologies. Embryos. Post-mortem reproduction. Reproductive cells. Reproductive health. Reproductive rights.

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1 Introduction

Reproductive health has been a sensitive topic for decades worldwide. Despite a modern trend, which is attentive to the protection of rights to self-determination and health, also in reproductive treatments, several national legal systems still exhibit resistance. This resistance may be detected in strenuous opposition to the liberalization of the various medical techniques aimed at preserving fertility, especially for single women, as well as to the procedures that allow filiation through asexual artificial reproduction methods. Notably, both the Italian and Japanese legal systems fall into this trend.

Statistical data reveals that both Italy and Japan are experiencing a low birth rate coupled with an aging population. In fact, Italy and Japan both lead the rankings on population decline and ageing.[1] Surprisingly, despite the shared challenge, the national governments of these two countries do not use the liberalization of artificial reproduction techniques as a strategy to address declining birth rates.

No policy to support birth rates seems to have led to an increase in births on the international scene or to an effective response to the more than progressive aging of the population (Repo 2012, 199; Fukuda 2003a, 31; 2003b, 7; Rosina 2021, 5). Nevertheless, the inertia that has been recorded in these two systems does not result from the assessment of poor effectiveness of the policies (Vertommen, Pavone, Nahman 2022, 112). The inertia is not even a consequence of the indifference of the population towards the preservation of fertility and the protection of reproductive rights. For instance, despite officials' initial forecast that 300 women would sign up for the scheme, more than 7,000 women have signed up for a state-subsidized egg-freezing regional pilot project in Tokyo, Japan.[2] While in Italy, a recent study was conducted to understand people's views on fertility preservation and this study showed that most Italian women interviewed would like to receive more information about reproductive cell freezing and would like to be able to access this treatment without a partner and without a verified infertility condition (Tozzo et al. 2019, 12; Tozzo 2021, 4). So, the recalled inertia in the regulating fertility treatments and the management of reproductive contingencies stems from a political will to preserve a traditional, heteronormative and biparental model of family, often based on marriage.

Despite the two described similarities, rapidly aging societies and a political will to reinforce the traditional family, there is a difference

1 The statistics on the birth rate in Italy and Japan are available here: https://www.istat.it/it/files/2023/10/Report-natalita-26-ottobre-2023.pdf; https://www.ilsole24ore.com/art/giappone-calo-record-nascite-e-crisi-matrimoni-AFEaI9rC?refresh_ce=1

2 The project of the Tokyo Metropolitan Bureau of Social Bureau of Social Welfare on Subsidy for expenses related to egg freezing is available here: https://www.fukushi.metro.tokyo.lg.jp/kodomo/shussan/ranshitouketsu/touketsu/gaiyou.html.

that is identified in the way Medically Assisted Reproduction (MAP) is regulated in the two jurisdictions in comparison. While the Italian law[3] provides rules on informed consent, filiation by MAP, who can access the treatment, who can perform the procedures, which procedures are allowed and which are banned, the Act on Assisted Reproductive Technology Offering and the Special Provisions of the Civil Code Related to the Parent-Child Relationship of a Child Born As a Result of the Treatment (2020) (*Seishoku Iryō Minpō Tokureihō, Reiwa 2 nen hōritsu dai 76*, 生殖補助医療の提供等及びこれにより出生した子の親子関係に関する民法の特例に関する法律 令和二年十二月十一日法律第七十六号)[4] has a narrow object, since it only regulates filiation by consent to MAP. In the meanwhile, gametes cryopreservation led to accumulation of abandoned reproductive cells and no disciplines have been adopted to manage contingencies to cryopreservation in these two countries. However, since the Italian MAP law has a broader extent and the Japanese law has a narrower extent, an important consequence followed. some Italian courts have resolved some disputes related to the management of reproductive contingencies by only considering the rules provided for MAP and its functions; in contrast, some Japanese courts have resolved disputes on the management of reproductive contingencies by also considering the rules found outside the MAP law and, in particular, in the Japanese Civil Code.

For this reason, this paper will focus on the two different perspectives regarding artificial reproduction methods, particularly in the context of post-mortem procreation. In fact, among reproductive contingencies, that of post-mortem reproduction is the one that has received the most attention in Japanese and Italian courts. However, the reasoning conducted for resolving disputes over post-mortem procreation is also applicable to other reproductive contingencies.

This study adopts the following investigative plan. The first step identifies the various reproductive contingencies that may occur after informed consent is given to MAP. Particular attention is addressed to post-mortem procreation, by considering the general notion and its various facets and nuances. The article then traces a comparison of the regulatory scenario. This analysis helps to investigate how the two distinct legal systems, the Italian one and the Japanese one, regulate reproductive health and specifically post-mortem reproduction, identifying similarities and differences. Finally, a case law analysis explores how Italian and Japanese Superior and Territorial

3 Rules on Medically Assisted Reproduction, Law No. 40/2004 (*Norme in materia di Procreazione Medicalmente Assistita, Legge 19 febbraio 2004, n. 40*).

4 Act on Assisted Reproductive Technology Offering and the Special Provisions of the Civil Code Related to the Parent-Child Relationship of a Child Born As a Result of the Treatment (2020) Law No. 76/2020.

courts[5] consider the regulatory systems of each jurisdiction and how the relevant legal principles are enforced in reproductive health cases, especially when parenthood is based on consent and does not align with the traditional paradigm enforced by the Italian and the Japanese Civil Code.

2 Reproductive Contingencies

MAP encompasses different medical procedures to overcome infertility and sterility conditions (Jackson 2016, 3; Jackson 2008, 429; Jackson 2001, 10), which can be detected whenever spontaneous conception is impossible or highly unlikely, or when other pharmacological or surgical interventions appears to be inadequate. Patients access MAP with an informed, free and spontaneous consent, that authorizes the harvesting, fertilizing, and implanting of reproductive cells and embryos obtained artificially. However, after the consent, the patient or patients may decide to cryopreserve the relevant cells and the embryos, to postpone embryo transfer. And, specifically, during the cryo-storage phase, which can last days, weeks, months, years, and even decades, several contingencies could happen.

The most common contingency is the crisis of the patient couple who started MAP together (Orestano 2021, 2613; Brunetta D'Usseaux 2007, 1246; Ford 2008, 171): the married or non-married couple might abandon their shared life plan, including forming a family with children together. This could impact the medical procedure and the informed consent, since one patient may withdraw the consent and the other one may still want to enforce the effect of the consent to pursue the desire to have a family with the frozen cells and embryos.

Another kind of contingency can be traced when one patient transitions, with a change in their registered gender or a change in primary and secondary sexual characteristics (Vine 2022, 1). In this case the patients may have cryopreserved their cells prior to the transition and may have had valid access to the medical procedure, but during the procedure the patient couple becomes a same-sex couple. Therefore, the clinic where the cells and embryos are frozen could object to the continuation of the treatment or the release of the samples. Otherwise, two other issues could rise: after the birth of a child by MAP, civil registrars could object the acknowledgement of parenthood of the same-sex couple or could object the acknowledgement based on a consent given before the transition.

5 Italy and Japan, as a civil law jurisdiction, do not have doctrine of case law precedents: the judgments of superior courts are not a source of law, even if they are respected and followed by lower courts in similar cases.

Last but not least, one or both patients could die (D'Amico, Liberali 2023, 1358; Liberali 2023, 557; Angelini 2023, 4). As with the contingencies mentioned before, again the clinic could hinder the prosecution of the treatment or the use of the cells could be denied preventing surrogacy or the release of the samples or the registrar could prevent the recognition of the parentage of the preborn parent.

When one of these three phenomena occurs then it is necessary to identify the contingency and the rules to apply. Two scenarios configure at this point: the national law can regulate the phenomenon and then the lawyer or the judge can limit himself to correctly framing the contingency and its legal regime. According to the second scenario, the law may ignore the phenomenon, leaving it to the lawyer or to the judge to determine the solution to be applied according to the available legal norms. In this second event, there is a risk of applying rules on filiation and succession contained in the Civil Code or other national laws even if these rules were issued for different procreative techniques in a historical period during which the assisted procreation was not even known. This risk conceals others: the judges rule on a concrete case as well as the request of the party. Consequently, the courts may resort to existing rules in order to settle the case in favor of one or other patient, without providing any further interpretative and application coordinate for the consequences and distortions that may be created later by the application of rules that have been originally issued to deal with different cases in different historical periods.

It is precisely the conservative approach which characterizes Italy and Japan, the laconic discipline in the matter, the contingencies to consent in reproductive matters, as well as the manner in which the cases have been resolved by the courts, that has determined the need for a comparison between the two systems.

3 The Governance of Reproductive Contingencies

Reproductive legislation varies significantly across different countries, reflecting cultural, social, and ethical perspectives, especially considering how reproductive technologies have revolutionized tradition, family planning, and fertility treatments worldwide.

In the countries most advanced in the field,[6] such contingencies are regulated or certain procedures are banned at the onset of a contingency. When banned, patients cannot perform certain procedures and the scholar is not forced to identify a legal solution within

6 Brahams 1983, 883; Freeman 1986, 5; Grubb, Pearl 1986, 227; Krause 1985, 185; Parker 1987, 168; Balestra 2005, 84; Piciocchi 2008, 107.

an unaltered legislation which doesn't consider the contingency.[7] In other legal systems, reproductive contingencies are not always predicted because some lawmakers have not informed themselves regarding the implications of cryopreservation. This is precisely the case in Italy[8] and Japan,[9] where it is the bureaucracy and the judiciary that have to contend with such contingencies.

In the case of performing MAP during a relationship crisis, the problem of balancing opposite needs arises. On the one hand, there is the desire for filiation, and, on the other hand, there is the right to therapeutic self-determination to MAP, which is still a medical treatment. The second one might contrast and override the first one, since self-determination in treatments is a constitutional subjective right, while the desire for filiation is not in these legal systems.

In the case of transition of one of the two patients, traditional notions of parenthood are challenged: gestational capacity might be severed from the legal notion of motherhood, and the legal concept of fatherhood may become redundant.

In the case of death of one of the two patients, especially sensitive and complex issues arise considering the application of contract law, inheritance law and family law principles.

3.1 The Relevance of Consent in the Italian Law on MAP

Law No. 40 of February 19, 2004, provides rules for Medically Assisted Reproduction. This brief legislation outlines both objective and subjective requirements for the execution of medically assisted reproductive techniques. Additionally, it imposes several prohibitions related to procedures involving human embryos and reproductive cells.

The law establishes specific criteria for accessing assisted reproductive techniques that individuals residing within Italy must meet. Eligibility is limited to living, heterosexual couples who are married or cohabiting, who fall within potentially fertile age ranges. Crucially, these individuals must provide informed and voluntary consent to access the assisted reproductive procedure and become parents. Moreover, the informed consent to MAP has another function according to Art. 6 Law no. 40/2004: the patients consent to assuming a procreative and parental responsibility for any child born via MAP. So, informed consent to MAP has two different functions in

7 Rubio 2011, 147; Rodriguez-Patron 2011, 137; Alkorta 2021, 127; Perrino 2024c, 207.

8 Lenti 1993; Riva 2010, 39; 2012, 4; D'Amico, Liberali 2016, 20; d'Avack 2015; 2012.

9 Kinjō 2012, 24; Shimazu 1974, 8; Shirai 2010, 18; Brehm King, 189; Lie, Semba 2021, 191; Muraoka, Kakudo, Kazuto 2024, 165.

Italy: one is protecting self-determination in treatment and the other one is to exempt from the rules of filiation, traditionally based on a common gene pool, and base child status on the consent of patients. This different function is missing in any other informed consent to treatments, which usually have only the function of protecting the freedom in the patient's care.

Since there is this new function then the law provides additional rules to implement it, in Articles 8 and 9 of the Italian law on MAP. According to these rules, after the fertilization of reproductive cells and thus after the formation of a human embryo, patients can no longer withdraw their consent to treatment. The mother cannot give birth anonymously to abandon her child, and the father cannot disown the MAP-born child. In this way, informed consent deviates from other models of authorization for medical treatment not only in function but also in its structure: every consent is such precisely because it is revocable while in this case consent is irrevocable because it is placed to guard the family that will be formed if the MAP procedure is successful.

However, the two different functions conflict with each other, and this becomes apparent when considering cryopreservation and the phenomena supervening consent, in the face of which consent cannot be revoked.

3.2 The Relevance of Consent in the Japanese Law on Filiation by MAP

The first artificial insemination was performed in Japan in 1948, while the first IVF was successfully executed in 1983 (Shimazu 1974, 8). Even if a law reform commission deliberated on the matter in 2001, "no law incorporating the Committee's conclusions had been enacted at this time" (Lie, Semba 2021, 195). Instead, the Japanese Institution for Standardizing Assisted Reproductive Technology (JISART) was established in 2003, which regulates the best practices to achieve high standards in infertility management.

The only legislation that has been passed concerns the issue of filiation more than the range of medical procedures that are available. On 4 December 2020, the Japanese Diet approved *Seishoku Iryō Minpō Tokureihō, Reiwa 2 nen hōritsu dai 76 gō* (the Act on Assisted Reproductive Technology Offering and the Special Provisions of the Civil Code Related to the Parent-Child Relationship of a Child Born As a Result of the Treatment, Act No. 76 of December 11, 2020), which recognized the social legal parenthood of married couples who had children through third-party donated gametes (MAP) and artificial insemination (AI) (Kokado 2015, 211).

Currently, Japan has a permissive stance on reproductive rights for cis-heterosexual married couples who are Japanese citizens,

emphasizing individual autonomy. Assisted reproductive technologies, including in vitro fertilization and gamete donation, are widely accessible.

According to the Japanese law on filiation by MAP, a minor who is born through egg or sperm donation is legally the child of the birth mother and the mother's husband who agreed to the use of the donated cells. So, the mother is always the one who carries out the gestation even if the embryo is not produced with the use of her reproductive cells. Otherwise, the father is the one who has a conjugal relationship with the mother of the MAP birth and, in addition, has given his consent to the procedure, even if the embryo was produced with gametes from parties outside the couple.

Therefore, consent has a specific function for this medical procedure, since it is the legal basis for social parenthood to become legal parenthood, even if there isn't a common gene pool between the parents and the child. A child who was born through MAP and AI has the same rights as the minor who was born with sexual reproduction (Kokado 2015, 214). His rights are not identified by the Japanese law on filiation MAP but by the other rules in Japanese law for all children.

Given that the Japanese law on filiation from MAP serves to regulate the parent-child relationship, and given that it does not deal with the techniques but only with one of its consequences, i.e., filiation, then the law does not seem to identify the rules on consent, withdrawal of consent, and its deferred effects over time in the case of cryopreservation of cells.

4 The Italian Legal Approach to Post-Mortem Reproduction

The Italian law on MAP explicitly prohibits certain practices related to embryos: such as cloning, the creation of genetically identical copies of an organism; experimentation, conducting research or testing on embryos; creating hybrids and chimeras, which means combining genetic material from different species; surrogacy, allocating gestation to a surrogate mother. Notably absent from the list of prohibitions is the post-mortem fertilization ban which is quite common in the EU legal systems: the Italian law does not include a specific prohibition on post-mortem fertilization. However, a careful analysis of legislative intent reveals that only living individuals can access these assisted reproductive techniques, and violating the access requirements constitutes an offense under Article 12 of the Italian law on MAP, to be applied to the *équipe* of doctors who perform the procedure. According to this rule, any breach of these criteria is subject to legal sanctions and, since being alive is a prerequisite for access, post-mortem procreation is prohibited and punishable by Italian law.

The legal framework ensures that assisted reproductive techniques are available only to living individuals who meet specific criteria. While the law does not explicitly forbid post-mortem fertilization, its underlying principles effectively prohibit such practices.

According to the general principle, summarized in Art. 12 of Preleggi (the Italian law on interpretation), Italian legal norms that lack specificity must be interpreted in a manner consistent with the semantics of the law and the legislative intent (Iorio 2023, 9). Consequently, while the law does not explicitly address post-mortem procreation, its emphasis on consent and access while alive effectively restricts all forms of such practices. Rather than distinguishing between specific methodologies, the law appears to preclude all types of post-mortem procreation. However, Italian case law has in certain cases, allowed post-mortem procreation procedures, by treating the facts as falling outside the scope of the (indirect) legislative ban.

5 The Japanese Legal Approach to Post-Mortem Reproduction

The Japanese law on filiation by MAP does not allow single patients to access MAP, but it doesn't address other issues and phenomena, such as commercial use of gametes, surrogacy or post-mortem reproduction. In 2006 the Japanese Supreme Court refused to accept the birth registration of twins born through a surrogacy agreement in the US.[10] The Court reject the claim of the social intentional parents, who signed the registration application as "mother" and "father" that they were the legal parents of the children, according to Article 118 on the Validity of a Final and Binding Judgment Rendered by a Foreign Court of the Code of Civil Procedure, Act No. 109 of June 26, 1996 (第百十八条外国裁判所の確定判決は、次に掲げる要件のすべてを具備する場合に限り、その効力を有する, 民事訴訟法, 平成八年六月二十六日法律第百九号), since the decision is considered to be contrary to public policy in Japan (Ishii 2014, 188).[11]

The hardships and other contingencies mentioned above, such as gender transitioning and re-assignment or relationship breakdown, are also not covered by Japanese regulation.

10 Tokyo High Court, 29 September 2006, 民集 *Minshū* 61, 2.

11 According to Article 118 of the Code of Civil Procedure, Act No. 109 of June 26, 1996: "A final and binding judgment rendered by a foreign court is valid only if it meets all of the following requirements: (i) the jurisdiction of the foreign court is recognized pursuant to laws and regulations, conventions, or treaties; (ii) the defeated defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation, or has appeared without being so served; (iii) the content of the judgment and the litigation proceedings are not contrary to public policy in Japan; (iv) a guarantee of reciprocity is in place".

Nonetheless, in 1988 the Japan Society of Obstetrics and Gynecology banned posthumous reproduction with embryos and eggs. In a statement on the cryopreservation and transplantation of human embryos and eggs, the Association manifested an antagonistic approach to the procedure. The ban was renewed once again in 2007: in a statement on cryopreserved sperm, the Association also prohibited posthumous reproduction using any kind of cryopreserved reproductive cells, since there is no way for a doctor who performs IVF to verify the will or the agreement of deceased partner, even if he had given informed consent during his life. The Association considered that consent, once death has occurred, loses the characteristic of being current (Uedaa et al. 2008, 285).

6 The Case Law Approach of the Italian Legal Ban, Limiting Its Application

The Italian case law has adopted an interpretative approach that varies depending on the type of treatment.[12] In fact, post-mortem reproduction generally refers to the use of assisted reproductive techniques after an individual's death. Thanks to advancements in cryopreservation techniques, which play a pivotal role in enabling new reproductive options, this field has seen progressive growth. Within this phenomenon, post-mortem reproduction encompasses three distinct variations: post-mortem sperm retrieval, post-mortem fertilization, and post-mortem embryo implantation. Posthumous or perimortem cell retrieval is achieved by slowing the decay of tissues and cells, cell harvesting for assisted reproduction is made technically possible. This procedure is initiated on a subject after a permanent loss of consciousness or death, so that the other living patient can use the reproductive cells, fertilize them using MAP, obtain an embryo, and then implant it at a desired time to start a pregnancy. Instead, post-mortem fertilization is realized when the fertilization takes place at a time when one of the two patients has died and the other is still alive. While post-mortem embryo implantation is realized when reproductive cells have been taken from living subjects, fertilized to form an embryo, which is cryopreserved and used in an embryo transfer into the female partner after the death of their male partner.

12 In the Italian judicial system there are territorial courts of first instance (Tribunali), whose decisions can be appealed before the Courts of Appeal (Corti d'Appello); while, legitimacy issues can be asserted before the Supreme Court (Corte di Cassazione). Differently, the activity of reviewing the constitutional legitimacy of laws is among the duties of the Constitutional Court (Corte costituzionale), and this review can be urged by the Italian courts on an incidental basis.

According to the Italian case law, the indirect Italian prohibition on post-mortem fertilization does not apply to all the cases, but only to some of them. In particular, the prohibition of post-mortem fertilization applies only when the subject is already deceased at the time of the beginning of the procedure or when the embryo has not yet been produced as of the time of death (Perrino 2024b, 249). Instead, post-mortem embryo transfer, involving the uterine transfer of an embryo that was already produced before the death of one of the two parties, does not fall under the prohibition. Moreover, this case law has been implemented by the Ministry of Health with new guidelines for MAP experts and clinics. However, it is important to understand the reasons behind these three groups of decisions that may impact the solution of other controversies on contingencies.

On posthumous or perimortem sperm retrieval, only one case has been recorded. The Court of Vigevano[13] issued a ruling in 2009. A woman wanted to have a child through the use of reproductive cells removed from her husband while he was in a vegetative coma. Following the removal of the cells, the woman, acting as her husband's provisional guardian, filed an appeal to be authorized to give consent, in place of the man for IVF. The Court of Vigevano did not grant the petition, given the lack of free, informed, and aware consent of one of the patients and future parents (De Rosa 2022, 578), since he was unconscious but still alive.

In further cases, the Tribunal and the Court of Appeals of Bologna have ruled out the possibility of delivering the reproductive cells of a deceased partner to the surviving female patient, given that Italian law precludes post-mortem fertilization.[14] Similarly, the Court of Rome[15] has stated that biological specimens are not objects of right; they are not property and, therefore, no one can claim property over them. If so, reproductive cells cannot be transmitted through the rules of inheritance. And for these reasons, the surviving female patient cannot claim control of these cells because she does not and cannot own reproductive cells. Moreover, informed consent for MAP is pivotal, since it allows cryopreservation, the use of cells taken during the patient's lifetime, and it makes such treatments conditional on there being a reproductive purpose, according to the so-called principle of finality. The principle of finality is a general limit imposed to treatments that allow to process body parts, but it can also be found in the data protection regulation. The principle limits the use of cells to those purposes for which the person has been properly informed

13 Trib. Vigevano, 3 giugno 2009, in *Dir. fam. succ.*, 2009, 1847.

14 Trib. Bologna, 31 maggio 2012, n. 1522 in *Foro it.*, 2012, I, c. 3349, conf. da App. Bologna, 11 dicembre 2013, n. 2203.

15 Trib. Roma, sez. II, 28 giugno 2013, n. 14146, in *Nuovo dir. civ.*, 2016, 1, p. 139 ss.

and for which he or she has given his or her consent, provided that the destinations need to be compatible with the legal system. The principle is based on Art. 22 of the Oviedo Convention and art. 170-*bis*, § 3 of the Industrial Property Code (Dani 2024, 279). So, according to the consent finality, on a theoretical level the artificial insemination on these reproductive cells can be executed even after death if the reproductive purpose persists. However, the reproductive finality persists only during the patient's lifetime, while after death the permission to use body parts is lost along with the deceased person's ability to become a parent.

The Court of Modena in 2019 has also used the principle of finality, by stating that informed consent to MAP is functional to reproduction and, therefore, to achieve of filiation. This finality is binding, freezing cells would be useless, if not functionalized for future use in an artificial insemination cycle. Nonetheless, as the Roman court has already stated, the general provisions of succession do not apply, so the surviving patient cannot legitimately obtain the cryopreserved cells as a sole heir.

Yet, in 2019 the Court of Rome stated the exact opposite. The judge[16] considered that the will of the patient, who previously authorized the removal of the cells, can govern the same cells: among the atypical non-patrimonial testamentary dispositions, one can confirm and revoke consent to MAP, as long as there is no formation of the embryo and can even revoke one's consent to the cryopreservation contract. So, in contrast to precedent, the Court of Rome affirms that inheritance cannot be denied and the surviving patient inherits the control of the explanted cells.

Except for the last isolated pronouncement, Italian jurisprudence seems to agree in excluding inheritance rights over reproductive cells and thus post-mortem fertilization. This solution seems convincing because it also prevents discrimination against women who are not married to the deceased patient and cannot claim to be their heir. It also seems respectful of self-determination in care, including reproductive health, as well as people's power of control over their body parts. Self-determination should be manifested through the lawful means, namely informed consent. However, consent does not produce effect after death: for this reason, a will or a bio-will should be used to provide determination over the body parts usage after death. In fact, among the atypical non-property provisions of the will, the testator may, according to Italian law, provide for and dispose of control over his or her cells in the future. Otherwise, the rules on legal succession cannot be applied, because there would be a lack of provision applicable to this kind of 'goods' without any economic value.

16 Trib. Roma, 8 maggio 2019, in *Foro it.*, 2019, 1, c. 1952.

So, testamentary succession could be considered permissible but not succession governed by law, in the absence of a valid, complete, effective will over body parts.

Different considerations have been made by Italian jurisprudence for the embryo transfer of an embryo produced before the partner's death and implanted after the partner's death. According to the Italian case law this case is not covered by the prohibition, the practice is permitted, it complies with the subjective requirements for access to the law and the child born is the child of the predeceased patient. This approach is to be traced in a number of judgements issued by Courts of Bologna,[17] Lecce,[18] L'Aquila,[19] but also by the Italian Supreme Court (Corte di Cassazione)[20] and the Italian Constitutional Court (Corte costituzionale) (D'Amico, Liberali 2023; Liberali 2023, 557; Angelini 2023, 4),[21] which concurred on the following arguments: the lack of an absolute ban and the specificity of the consent to MAP (Cordiano 2020, 525; Petta 2022, 1016; Faccioli, 17; Perrino 2024a, 439).

According to case law, the Italian rules do not provide for an express prohibition of post-mortem reproduction but Art. 5 of the Italian Law on MAP requires that the patients must both be alive at the time the fertilization cycle is started. Therefore, if the patients were both alive at the time treatment began, the procedure meets the subjective requirements of the law, regardless of the male patient's eventual death in the final stages of the procedure. Cryopreservation and implantation constitute only two stages of a whole MAP cycle that begins with the retrieval and fertilization of gametes. The cycle is already legitimately underway but can be, for a few days or a few years, suspended.

Secondly, consent to MAP becomes irrevocable after fertilization, so the eventual death of one of the two patients is irrelevant. Moreover, the purpose of consent is emphasized, following the principle of finality: there is no function other than reproductive function that can justify the retrieval of reproductive cells in Italy. The legal act serves to establish filiation; it constitutes the manifestation of the will not only to undertake a therapeutic course of action but – above all – to assume parental responsibility voluntarily and consciously over the child born. Furthermore consent, as already stated by case law for the continuation of the cycle of MAP during a couple crisis, is given in the interest of the future child and, like

17 Trib. Bologna, sez. I, 16 gennaio 2015, in *De Jure*.

18 Trib. Lecce, 24 giugno 2019, n. 2190, in *D&G*, 8 agosto 2019.

19 App. L'Aquila, sez. I, 20 giugno 2022, n. 875, in *De Jure*.

20 Cass. civ., sez. I, 15 maggio 2019, n. 13000, in *Giur. It.*, 2019, c. 1506.

21 Corte cost., 24 luglio 2023, n. 161.

many of the rules contained in Law No. 40/2004, safeguards the dignity of the human embryo.

The Constitutional Court sharply outlined the dichotomy of the man's irrevocable consent and the woman patient's always revocable consent in assisted fertilization procedures. It is true to the Constitutional court that the rule of law prohibits the withdrawal of consent after fertilization and this restricts his self-determination in treatment, but his determination to start MAP matures in a context in which he is made aware of the possibility of cryopreservation, and he also gives his consent to this eventuality. Thus, once the patients have agreed to freeze the embryos, it must be expected that meanwhile something may happen to patients. On the other hand, the woman can always withdraw consent because there is a need for coordination between the Italian law on MAP and the Italian law on abortion: if the woman can terminate the pregnancy then she can also withdraw consent to MAP before the pregnancy. In this sense, the 2015 guidelines implementing the Italian law on MAP provide explicitly that the female patient may request embryo transfer at any time.

In addition to these arguments, the Italian Constitutional Court moves from a new consideration, namely the particular way in which MAP affects a woman's body. The female patient undergoes more invasive therapies and treatments than those reserved for the male patient. Unlike her partner, she is forced, the court argues, to undergo severe risks and suffering. The female patient undergoes these time-delayed procedures after placing her trust in the man's expressed determination as well. Thus, the irrevocability of consent preserves the psycho-physical identity of the woman involved.

After emphasizing the relevance of the female patient's body, however, the Constitutional Court goes on to state how the consent given is also functional in protecting the dignity of the in vitro embryo (Perrino 2024a, 439). According to the Court, the law and informed consent to MAP promote life and are placed to protect the dignity of the human at every stage, under Art. 2 of the Constitution of 1948,[22] even the bearer of a 'principle of life'. Therefore, a compression of man's free self-determination for the protection of the embryo's primary interest in being born is not unreasonable. The embryo's interest is not affected by the death or separation of the parents: the loss of a shared project between the future parents after fertilization isn't relevant, since the female patient's willingness persists and given the existence of an interest in the embryo's birth.

For all these reasons, the right of succession is not invoked and the child born will be the child of the parent who died before its conception and birth. However, the question of his or her inheritance

22 The Italian Constitution was promulgated in 1947, while it entered into force in 1948.

rights remains open, since he or she was conceived after the father's death: in fact, the unborn child can only succeed to the father's rights by will.

The last ruling seems to usher an unprecedented and necessary valorization of women's self-determination and a renewed reflection on the female body in the procreative experience, also in contrast to the previous decisions (Angelini 2023, 8). However, these conclusions are reached by negatively marking the MAP techniques, as the court had already done with abortion. In particular, it is stated that these procedures, to which the female patient submits herself, in the full and free exercise of her constitutionally protected self-determination, entail for the woman "the serious burden of making her corporality available, with an important physical and emotional investment in parenthood involving risks, expectations, and suffering" (Liberali 2023, 562; Angelini 2023, 8). Not only that, because the decision emphasizes the role of the female patient's body and self-determination, but then proceeds to balance the embryo's, who is not yet a person and has not yet rights, interest in being born and the male patient's, who is yet a person, right to self-determination.

7 The Case Law Approach in Japan: Prohibiting Post-Mortem Reproduction and Acknowledgement of Filiation, Even Without a Legislated Ban

The absence of a clear ban, the liberalization of the procedure for cis-heteronormative couples, and a legal framework based on the legal parenthood of the social parents who manifested their informed consent are the factors that created the perfect environment for several court cases on the matter (Doan et al. 2020, 257). Since 2003 until recent years, there have been several legal cases concerning post-mortem reproduction, mainly in relation to post-mortem fertilization procedures performed on frozen reproductive cells, in which the surviving patient already performed the fertilization and the embryo transfer but later asked for parenthood acknowledgment and registration in the child's birth certificate considering the pre-deceased social parent, partner and patient (Sabatello 2014, 40; Mayeda 2006, 2). Judges were not called upon to determine whether the child should have or could have inheritance rights nor if he or she should receive any social security benefit as the child of the deceased biological/social parent nor if the MAP procedure should or could be performed in Japan, accordingly with the Japanese law on the matter (Sabatello 2014, 39). However, the issue of the admissibility of the treatment carried out after the death of one of the two patients was analyzed indirectly by the judges, as a factual and legal prerequisite for the decision requested by the party.

In 2003,[23] a widow used her husband cryopreserved reproductive cells in a MAP cycle, since he froze his cells to preserve his fertility before a cancer treatment. He gave consent to the cell extraction, but not to MAP. The male patient died a year after the cell deposit, later the embryo was formed, the transfer was completed, and the baby was conceived and was born 18 months after the male patient's death. The female patient, who is the legal and biological mother of the child, filed the paternity suit, after her local city office refused to add the male patient's name to the birth certificate. Both the local city office, and the Matsuyama District Court rejected the paternity suit and refused to recognize the dead male patient as the father, even if the baby was born through MAP using the male patient's cells. According to the judge, the Japanese Civil Code of 1898 provides legal recognition for filiation, considering the biological filiation and the ordinary presumptions of paternity, Art. 820 of the Japanese Civil Code. So, a child may be considered legitimate if his or her birth comes within 300 days after the spousal relationship is terminated[24] and this relationship could be terminated by death. The Japanese Civil Code of 1898 doesn't provide other rules and it doesn't consider the case of post-mortem filiation by MAP. Since only the presumption of fatherhood within 300 days, within the death and the birth, could be applied, the filiation could not be recognized.

Later, the woman appealed[25] and in 2004 the Takamatsu High Court reversed the decision, by considering the prior consent sufficient even if not current.

The Takamatsu High Court decision was challenged again before the Second Petty Bench in 2004,[26] but the request was dismissed, by considering the Japanese Civil Code's provisions on the presumption of paternity. According to Second Petty Bench decision of 2004, the Japanese legislation has a gap on post-mortem reproduction and for this reason it is impossible to establish a parent-child relationship based on the consent to reproductive cell retrieval, since the birth occurred years after the male patient's death. The court adds

23 Matsuyama District Court, 12 November 2003, 判例時報 *Hanrei-jihō* 1840 (2003), 85.

24 The 300-days rule is a provision implemented by the Japanese Civil Code of 1898, Art. 820, and it is a rule provided to identify the person who will be responsible for the child's maintenance. The same rule is provided by the Italian Civil Code of 1942, Art. 232. However, this presumption has been recently revised in Japan: according to the new reform and staring from 2024, the husband is presumed to be the father of any child born during marriage, and any child born within 300 days from divorce is considered to be the former husband's. Children born 200 days after marriage or remarriage are attributed to the current husbands. Even after the reform, the child born through post-mortem reproduction would become the father's legitimate son and his heir.

25 Takamatsu High Court, 16 July 2004, 判例時報 *Hanrei-jihō* 1868 (2004), 6.

26 Second Petty Bench, 4 September 2004, 民集 *Minshū* 60, 7.

that the pre-deceased male patient would not have any parental authority over the child since he died before the child's birth, and, for this reason, the child will not enjoy the father's custody, care, or support. Moreover, the child would not become his father's heir, according to the 300-days rule (Goodman 2017). According to the concurring opinion on the case by Justice Takii Shigeo,[27] parenthood is also based on the environment provided by the adults in which the child would grow physically and mentally. Even considering the best interests of the child, the child could claim kinship with the male patient's relatives and to gain rights and obligations of support, but the parenthood acknowledgment and registration in the child's birth certificate do not have any legal implication or effect.

The Second Petty Bench decision of 2004 is based on Art. 820 of the Japanese Civil Code and on the informed consent to MAP, while appears reluctant to interfere in the enactment of laws or principles as a matter of separation of powers (Caldironi 2024, 23) and considering the traditional conceptualization of the family as an institution mainly associated with a heteronormative structure. The Japanese Civil Code regulates parental acknowledgment for children who were born after the parent's death; however, the Civil Code was enacted before the MAP regulations implementation and, for this reason, the Japanese Civil Code does not consider this case in which filiation is based on consent and not on the natural conception. These rules could be extended beyond the space of ordinary application, but the Second Petty Bench does not follow this path. Finally, yet importantly, the concurring opinions by Justice Takii Shigeo and by Justice Imai Isao highlight that it is necessary to consider the appropriateness of a procedure in which the baby is born, taking into specific account the male patient's living consent, implying that this consent is void after his death.

Again, in 2008 the Japanese Supreme Court[28] was asked to rule on the matter in a similar case and adopted the same decision considering similar arguments: according to the decision, the recognition of the filiation relationship must be established by law and, therefore, it is up to the Japanese law, not to the judge, to determine whether the child born after the male patient's death will be legally regarded as the father's child. So, in the absence of a legislative choice in this regard, filiation cannot be established, considering the welfare of the child, the necessary awareness of all those who were involved, social customs, and ethical positions on the subject.

27 There are two concurring opinions on the case: one by Takii Shigeo and the other by Justice Imai Isao.

28 Supreme Court of Japan, Grand Bench, 4 June 2008, Supreme Court Reports, Civil cases (最高裁判所民事判例集) 7 (60), 2563.

7.1 The Case Law Approach in Japan: MAP During the Couple's Crisis and After Transition

Other cases of contingencies should be considered to consider the consistency of jurisprudential trends.

In 2005 the Tokyo High Court decided a case in which a couple of patients had access to MAP but later had a fight and broke up. The female patient asked to have access to the frozen samples to have a child. On the matter the Tokyo High Court stated that filiation resulting from the use of MAP is subject to a special regime. Unlike biological filiation, there is an additional component which is relevant for filiation: the patient's consent to MAP. For this reason, even if two parties dissolve their marriage, then it is always necessary to consider the role of their consent to MAP, to verify whether it is still valid, and finally determine, in the event of a marital breakdown, to whom to entrust the child. In the 2005 case the Tokyo High Court entrusted the minor to the mother; nevertheless, a presumption of legitimate filiation was held to apply because of the consent expressed by the father.

In 2005 the Osaka High Court[29] was called to rule on a similar case. The female patient had undergone MAP without the partner's consent, the procedure was successful and she became mother. Nevertheless, after the child's birth, the male patient asked to be recognized as the child's father. Despite his recognition, the Osaka High Court denied the existence of a filiation legal relationship, because whenever MAP is used, the basis for filiation is consent. If the procedure, on the other hand, was carried out without valid consent from the two patients who want to become parents then the filiation cannot be established. So, the Osaka High Court adopted a decision based on the protection of self-determination in reproductive treatments, to respect the actual decision of the patient with his or her informed consent. Consent is considered at the time of the beginning of the procedure and not at the time of its conclusion. However, this decision values patients' self-determination in treatment, considering informed, current, and aware consent, but does not consider how the woman's body is involved in MAP: the judges who decided these cases did not consider the different type of contribution that the male and female patients provide to MAP and that it is quite difficult to perform MAP specifically for women. So, these decisions appear to be detrimental for women who cannot conceive naturally and invested their cells, their money and their time in the IVF cycle. Moreover, it should be noted that this reasoning takes a negative view of single parenthood and of less traditional

29 Osaka High Court, 9 June 2005, 判例時報 *Hanrei-Jihō* 1938 (2005), 8.

families, considering the cis-heteronormative married couple as the sole model for the Japanese family (de Alcantara 2024, 97).

In 2022 a trans woman asked the Tokyo Family Court[30] to acknowledge her parenthood, since her son was born through MAP by using the sperm she froze before transitioning. The Court rejected her claim, so she appealed the decision and the Tokyo High Court upheld the lower court's decision, ruling that, as in the other scenarios affected by the contingency, the situation is not regulated by the Japanese law on filiation by MAP. Since there is a lack of normative referent that allows the court to consider the transition of the biological parent, who gave consent, she will be recognized as a parent, but as a father of the child and not her mother. Between this and the previous cases there is one key difference: the patient's consent to MAP persists and has not lapsed with a couple crisis or death. Instead, the gender assigned to one of the two patients changed during the course of the procedure. So, according to the Japanese judges, this change would seem not to affect the validity of the informed consent given and renewed by the patient. Thus, the adherence to the strictest interpretation, the use of the principle of separation of powers, and the emergence of the regulatory gap allows the courts to grant some parental rights to the parent but especially to the child born after the reproductive contingency.

8 Conclusion

Italy and Japan share a rapidly aging society and a political will to reinforce a traditional model of family through the national rules. However, the lack of a regulation on reproductive contingencies generates doubts in the interpretation of existing rules, contained in laws on MAP and the Italian and Japanese Civil Code. These doubts have led to legal disputes over the management of reproductive contingencies, in similar cases in Italy and Japan, which have received different solutions from the courts.

The Italian jurisprudence adopts a seemingly progressive approach for the implementation of some MAP procedures, even after the intervention of some contingencies after informed consent to treatment and allows the recognition of the filiation. From this approach comes the possibility of acknowledging the filiation even towards those male patients who have withdrawn their consent or who are already deceased and cannot provide a valid and current consent to MAP. The reasoning of the Italian judges moves from an innovative consideration of the woman's body in MAP proceedings, as well

30 Tokyo Family Court, 28 February 2022, in TKC Law Library, LEX/DB, Ref. No. 25591787.

as from the special protection accorded to the human embryo, while devaluing the rules of the Italian Civil Code regarding succession, the lack of regulations on the management of reproductive contingencies and MAP-born succession in the Italian MAP law.

The Japanese jurisprudence, instead, adopts a stricter approach in accordance with the current legal norms: the lack of discipline on the management of reproductive contingencies leads to the search for norms for the resolution of disputed cases. So, these norms are identified in the Civil Code and compliance with them cannot lead to the declaration of child status between non-consenting or invalidly consenting parent and MAP-born child. The respect for the principle of separation of powers becomes crucial, especially for the regulation and implementation of reproductive rights on which there is no international consensus.

The comparison between the two disciplines and how they were applied determines some doubts which still remain unsolved. In Italy, as in Japan, the handling of contingencies does not find rules in the laws, however, the Italian courts have allowed certain procedures and consequently allowed even posthumous attribution of child status, while the Japanese courts have ruled this out because attributing child status would be useless without the care and inheritance rights that come with it. So, do MAP births in Italy have an empty child status because it lacks its contents? The 300-days rule, provided by the Japanese Civil Code and used by the Japanese jurisprudence to solve the cases, is also provided by the Italian Civil Code. Why was this rule not even considered by the Italian judges? Is it to be inferred that when applying Italian law on MAP then the rules of the Italian Civil Code cannot apply? If this is true, then it is unclear what inheritance rules should then apply and what inheritance rights should be given to those born with MAP. Also, is it true that Italian jurisprudence considers the special involvement of the woman's body in MAP proceedings, or is this an argument used to justify other purposes, such as paternalistic protection of embryos and fetuses? It the women's bodies argument just a way to reinforce the traditional family model for women who have cryopreserved reproductive cells and embryos with their husbands and partners but then it turns out that women's bodies are completely ignored when they are singles or they are affected by structural infertility, such as homosexual women, or they are affected by greater infertility condition which force them to ask for third parties reproductive cells?

The comparison also allows to reflect and look to the future. The Japanese case law appears to be consistent in its pronouncements, respecting the separation of powers and the legal provisions. In contrast, the Italian case law seems to value different arguments depending on the case. It must now be understood whether Italian case law and Japanese case law will be consistent in dealing with the latest

contingency: the prosecution of a MAP treatment after the patient's transition. The issue has already been decided by the Tokyo High Court in Japan and showed the consistency of the Japanese case law. At this point, it will need to be checked whether the Italian case law, in the case now pending before the Italian Constitutional court,[31] will value the role of the woman's body in MAP even when the patient is trans.

Bibliography

Alkorta, I. (2021). "Spanish Legal Reproscape: The Making of a Bio-Industry". *Law, Technology and Humans*, 3(1), 123-32. https://doi.org/10.5204/lthj.1489

Angelini, F. (2023). "La Corte costituzionale mette al centro nei percorsi di PMA il corpo della donna e conferma l'irreversibilità del consenso dell'uomo dopo la formazione degli embrioni. Commento alla sentenza n. 161 del 2023". *Nomos*, 3, 1-13.

Balestra, L. (2005). "La legge sulla procreazione medicalmente assistita alla luce dell'esperienza francese. Veronesi, U. (a cura di), *La fecondazione assistita. Riflessione di otto grandi giuristi*. Milano: Corriere della Sera, 67-90.

Brahams, D. (1983). "The Legal and Social Problems of in Vitro Fertilisation: Why Parliament Must Legislate". *New Law Journal*, 51(4), 236-47. https://doi.org/10.1177/002581728305100406

Brunetta D'Usseaux, F. (2007). "Sulla revoca del consenso all'impianto dell'embrione conservato". *Nuova giur. civ. comm.*, 1, 1238-51.

Caggiano, I.A. (2017). *Tipologie di procreazione, stato di filiazione e conseguenze patrimoniali*. Pisa: Pacini Giuridica.

Caldironi, M. (2024). *A discrezione del legislatore. La libertà della politica secondo il diritto vivente*. Modena: Mucchi Editore.

Cordiano, A. (2020). "Post-mortem Homologous Fertilization: Parental Patterns in the Dialectical Comparison Between the Costraints of Biology and Rules on Consent". *The Italian Law Journal*, 1(6), 341-62.

D'Amico, M.; Liberali, B. (2016). *Procreazione medicalmente assistita e interruzione volontaria della gravidanza: problematiche applicative e prospettive future*. Napoli: Edizioni Scientifiche Italiane.

D'Amico, M.; Liberali, B. (2023). "La tutela della 'corporalità' e dell''investimento fisico ed emotivo' femminili: una scelta davvero a tutela della donna (e dell'embrione)?". *Nuova giur. civ. comm.*, 6(39), 1348-52.

d'Avack, L. (2012). *Il progetto filiazione nell'era tecnologica. Percorsi etici e giuridici*. 1a ed. Torino: Giappichelli.

d'Avack, L. (2015). *Il potere sul corpo. Limiti etici e giuridici*. Torino: Giappichelli.

d'Avack, L. (2022). "La fecondazione post-mortem: un diritto giurisprudenziale". Ruffolo, U.; Savini Ricci, M. (a cura di), *Le nuove frontiere della responsabilità medica. Enti e operatori sanitari dalla legge Gelli-Bianco all'era post-pandemica*. Milano: Giuffré, 459-73.

Dani, L. (2024). *La regolamentazione post mortem degli interessi non patrimoniali tra atto e contratto*. Napoli: ESI.

31 Trib. Como, 24 luglio 2024, n. 186.

De Alcantara, M. (2024). "Legal Protection of Nontraditional Families in Japan". *Human Research* [人文科学研究], 20, 97-113.
https://teapot.lib.ocha.ac.jp/record/2004133/files/jinbun20_08_marcelo_de_alcantara.pdf

De Rosa, E.R. (2022). "La procreazione medicalmente assistita post mortem. Un confronto italo-spagnolo". *Actualidad Juridíca Iberoamericana*, 2(17), 578-603.

Doan, H.T. et al. (2020). "Post-mortem Reproduction from a Vietnamese Perspective - an Analysis and Commentary". *Asia Bioethics Review*, 12, 257-88.
https://doi.org/10.1007/s41649-020-00137-z

Faccioli, M. (2021). "La procreazione assistita post mortem tra divieti normativi, soluzioni giurisprudenziali e prospettive di riforma della l. n. 40/2004". *Biolaw Journal*, 3(9), 1-17.

Ford, M. (2008). "Evans v. United Kingdom: what implications for the jurisprudence of pregnancy?". *Human Rights Law Review*, 1, 171-84.
https://doi.org/10.1093/hrlr/ngm041

Freeman, M.D.A. (1986). "After Warnoch-Whither the Law?". *Current Legal Current Legal Problem*, 33-55.
https://doi.org/10.1093/clp/39.1.33

Fukuda, N. (2003). "Comparing Family-Friendly Policies in Japan and Europe". *Journal of Population and Social Security*, Supplement, 1(1), 31-45.
https://www.ipss.go.jp/webj-ad/webjournal.files/population/2003_6/2.Fukuda.pdf

Fukuda, N. (2003). "Governmental Support for Families with Children: Japan and Europe". *Journal of Population Problems*, 1(59), 7-26.

Goodman, C.F. (2017). *The Rule of Law in Japan: A Comparative Analysis*. 4th ed. The Hague: Kluwer Law.

Grubb, P.; Pearl, D. (1986). "Medicine, Health, the Family and the Law". *Family Law*, 16, 227-40.

Iorio, G. (2024). *L'interpretazione della legge civile*. Torino: Giappichelli.

Ishii, M. (2014). "Surrogacy". *Iji-hō hanrei hyakusen, Bessatsu Jurisuto* [医事法判例百選], 219, 188-9.

Jackson, E. (2001). *Regulating Reproduction. Law, Technology and Autonomy*. Portland: Bloomsbury.
https://doi.org/10.5040/9781474200448

Jackson, E. (2008). "The Human Fertilisation and Embryology Bill". *Expert Review of Obstetrics and Gynaecology*, 3, 429-31.
https://doi.org/10.1586/17474108.3.4.429

Jackson, E. (2016). *Medical Law: Text, Cases, and Materials*. 4th ed. Oxford: Oxford University Press.

King, R.B. (2009) "Redefining Motherhood: Discrimination in Legal Parenthood in Japan". *Pacific Rim Law and Policy Journal Association*, 18(1), 189-216.

Kinjō, K. (2012). Chapter 2 Gamete donation [*Dai 2 shō Haigushi teikyū*, 第 2 章 配偶子提供]. Suganuma, N.; Morinaga, S. (eds), The Japanese Bioethics Series: Reproductive Medicine [*Siriizu Seimei rinrigaku: Seishoku iry*, シリーズ生命倫理学]. Tokyo: Maruzen Publishing, 24-44.

Kokado, M. (2015). "A New Phase in the Regulation of Assisted Reproductive Technology in Japan". *Zeitschrift für Japanisches Recht*, 40(20), 211-32.

Krause, H.D. (1985). "Artificial Conception: Legislative Approaches". *Family Law Quarterly*, 16, 185-206.

Lenti, L. (1993). *La procreazione artificiale. Genoma della persona e attribuzione della paternità*. Padova: Cedam.

Liberali, B. (2023). "La cristallizzazione del consenso maschile nella fecondazione assistita e la sua trasformazione in strumento di tutela dell''investimento, fisico ed emotivo', della donna". *Studium Iuris*, 6(29), 557-71.

Lie, M.; Semba, Y. (2021). "Assisted Reproduction with Donated Eggs and Sperm: A Comparison of Regulations on Assisted Reproduction in Norway and Japan". Lie, M.; Semba, Y. (eds), *Comparative Perspectives on Gender Equality in Japan and Norway. Same But Different?*. New York: Routledge, 191-205.
https://doi.org/10.4324/9781003185222-12

Lock, M. (1998). "Perfecting Society: Reproductive Technologies, Genetic Testing and the Planned Family in Japan". Lock, M.; Kaufert, P.A. (eds), *Pragmatic Women and Body Politics*. Cambridge; New York; Melbourne: Cambridge University Press, 206-39.
https://doi.org/10.2307/2807990

Mayeda, M. (2006). "Present State of Reproductive Medicine in Japan – Ethical Issues with a Focus on Those Seen in Court Cases". *BMC Medical Ethics*, 7, 1-16.
https://doi.org/10.1186/1472-6939-7-3

Miwa, K.; Hayashi, K. (2021). "The Current Status of Regulation Regarding Artificial Reproductive Technology in Japan and the Trends in Legal Development". *Research and Legislative Reference Bureau National Diet Library*, 16-17.
https://dl.ndl.go.jp/view/prepareDownload?itemId=info%3Andljp%2Fpid%2F11504420&contentNo=1

Muraoka, Y.; Kakudo, M.; Kazuto, K. (2024). "The Role of Male Consent in Assisted Reproductive Technology Procedures: An Examination of Japanese Court Cases". *Asian Bioethics Review*, 16, 165-83.
https://doi.org/10.1007/s41649-023-00274-1

Neyer, G. (2003). "Family Policies and Low Fertility in Western Europe". *Journal of Population and Social Security*, supplement, 1, 46-93.

Orestano, A. (2021). "Procreazione assistita, crisi della coppia e revoca del consenso all'impianto dell'embrione". *Giur. it.*, 12, 2613-21.

Parker, D. (1987). "Legislation on Human Infertility Services and Embryo Research". *Family Law*, 17(4), 140-68.

Perrino, S.P. (2024a). "A 'walking contradiction': il consenso informato irrevocabile alla PMA". *Familia*, 3, 439-59.
https://www.rivistafamilia.it/2024/10/14/fascicolo-4-2024-sfogliabile/

Perrino, S.P. (2024b). "Il contratto di 'deposito' delle cellule riproduttive umane". *Dirittifondamentali.it*, 3, 249-74.
http://dirittifondamentali.it/2024/11/13/il-contratto-di-deposito-delle-cellule-riproduttive-umane/

Perrino, S.P. (2024c). "Until Death Do Us Apart, Except for Reproductive Cells: The Post-mortem Reproduction, Filiation and Parenthood". Adroher Biosca, S.; Campuzano Diaz, B.; Palao Moreno, G. (eds), *Un Derecho Internacional Privado Centrado En Los Derechos De Las Personas*. Valencia: Tirant Lo Blanch, 207-26.

Petta, C. (2022). "Procreazione medicalmente assistita post mortem, status filiationis e diritti successori del nato". *Actualidad Jurídica Iberoamericana*, 17, 1016-49.

Piciocchi, C. (2008). "La disciplina giuridica della procreazione medicalmente assistita nell'ordinamento francese". Casonato, C.; Frosini, T.E. (a cura di), *La fecondazione assistita nel diritto comparato*. Torino: Giappichelli, 107-30.

Repo, J. (2012). "The Governance of Fertility Through Gender Equality in the EU and Japan". *Asia Europe Journal*, 10, 199-214.
https://link.springer.com/article/10.1007/s10308-012-0322-6

Riva, N. (2010). "Diritti e procreazione assistita: le ragioni della legge n. 40/2004". *Sociologia del Diritto*, 37, 39-64.
https://doi.org/10.3280/sd2010-001002

Riva, N. (2012). *Diritti e procreazione medicalmente assistita. Un esame della normativa italiana*. Roma: Aracne.

Rodriguez Patron, P. (2011). "Voluntad de la mujer versus nasciturus". D'Aloia, A. (a cura di), *Il diritto e la vita. Un dialogo italo-spagnolo su aborto ed euthanasia*. Napoli: Jovene, 137-44.

Rosina, A. (2021). *Crisi demografica. Politiche per un paese che ha smesso di crescere*. Milano: Vita e Pensiero.

Rubio, R. (2011). "El estatuto jurídico de la vida por nacer". D'Aloia, A. (a cura di), *Il diritto e la vita. Un dialogo italo-spagnolo su aborto ed euthanasia*. Napoli: Jovene, 147-71.

Sabatello, M. (2014). "Posthumously Conceived Children: An International and Human Rights Perspective". *Journal of Law and Health*, 1(27), 30-67.

Shimazu, I. (1974). "Cases and Legislations Concerning Artificial Insemination: Comparative Study of Japanese Law". *Hitotsubashi Journal of Law and Politics*, 7(8), 8-28.

Shirai, C. (2010). "Reproductive Technologies and Parent-Child Relationships: Japan's Past and Present Examined through the Lens of Donor Insemination". *International Journal of Japanese Sociology*, 19, 18-34.
https://doi.org/10.1111/j.1475-6781.2010.01126.x

Tozzo, P. (2021). "Oocyte Biobanks: Old Assumptions and New Challenges". *BioTech*, 10(1), 1-14.

Tozzo, P.; Fassina, A.; Nespeca, P.; Spigarolo, G.; Caenazzo, L. (2019). "Understanding Social Oocyte Freezing in Italy: A Scoping Survey on University Female Students' Awareness and Attitudes". *Life Sciences, Society and Policy*, 15(1) 1-14.

Uedaa, N.; Kushi, N.; Nakatsuka, M.; Ogawa, T.; Nakanishi, Y.; Shishido, K.; Awaya, T. (2008). "Study of Views on Posthumous Reproduction, Focusing on Its Relation with Views on Family and Religion in Modern Japan". *Acta Med. Okayama*, 62(5), 285-96.

Valongo, A. (2019). "Profili evolutivi della procreazione assistita post mortem". *Dir. succ. fam.*, 2, 525-47.

Vertommen, S.; Pavone, V.; Nahman, M. (2022). "Global Fertility Chains: An Integrative Political Economy Approach to Understanding the Reproductive Bioeconomy". *Science, Technology, & Human Values*, 47(1) 112-45.

Vine, E. (2022). "Trans Woman Denied Legal Parenthood of Genetic Child in Japan". *Bionews*, August 20.
https://www.progress.org.uk/trans-woman-denied-legal-parenthood-of-genetic-child-in-japan/

Walsh, E. (1985). "Warnock and after". *Family Law*, 15, 138-9.

Referenced Legislation

Rules on Medically Assisted Reproduction, Law No. 40/2004 [*Norme in materia di Procreazione Medicalmente Assistita, Legge 19 febbraio 2004, n. 40*].

Act on Assisted Reproductive Technology Offering and the Special Provisions of the Civil Code Related to the Parent-Child Relationship of a Child Born As a Result of the Treatment (2020) Law No. 76/2020 [*Seishoku Iryō Minpō Tokureihō, Reiwa 2 nen hōritsu dai 76*, 生殖補助医療の提供等及びこれにより出生した子の親子関係に関する民法の特例に関する法律 令和二年十二月十一日法律第七十六号].

Art. 118 Code of Civil Procedure, Act No. 109 of June 26, 1996 [第百十八条外国裁判所の確定判決は、次に掲げる要件のすべてを具備する場合に限り、その効力を有する, 民事訴訟法, 平成八年六月二十六日法律第百九号].

Referenced Case Law

Tokyo High Court, 29 September 2006, 民集 *Minshū* 61, 2.
Trib. Vigevano, 3 giugno 2009, in *Dir. fam. succ.*, 2009, 1847.
Trib. Bologna, 31 maggio 2012, n. 1522 in *Foro it*., 2012, I, c. 3349.
Trib. Roma, sez. II, 28 giugno 2013, n. 14146, in *Nuovo dir. civ.*, 2016, 1, p. 139 ss.
Trib. Roma, 8 maggio 2019, in *Foro it.*, 2019, 1, c. 1952.
Trib. Bologna, sez. I, 16 gennaio 2015, in *De Jure*.
Trib. Lecce, 24 giugno 2019, n. 2190, in *D&G*, 8 agosto 2019.
App. L'Aquila, sez. I, 20 giugno 2022, n. 875, in *De Jure*.
Cass. civ., sez. I, 15 maggio 2019, n. 13000, in *Giur. It.*, 2019, c. 1506.
Corte cost., 24 luglio 2023, n. 161.
https://www.cortecostituzionale.it/
Matsuyama District Court, 12 November 2003, 判例時報 *Hanrei-jihō* 1840 (2003), 85.
Takamatsu High Court, 16 July 2004, 判例時報 *Hanrei-jihō* 1868 (2004), 6.
Second Petty Bench, 4 September 2004, 民集 *Minshū* 60, 7.
Supreme Court of Japan, Grand Bench, 4 June 2008, Supreme Court Reports, Civil cases [最高裁判所民事判例] 7 (60), 2563.
Osaka High Court, 9 June 2005, 判例時報 *Hanrei-Jihō* 1938 (2005), 8.
Tokyo Family Court, 28 February 2022, in TKC Law Library, LEX/DB, Ref. No. 25591787.
Trib. Como, 24 luglio 2024, n. 186, in *Osservatorio Ondif*.
https://tinyurl.com/yt8h9rbb