CONSENT FOR ABORTION

THE FETUS: WHOSE PROPERTY?

A three-judge Federal Court has ruled on August 15, 1973, in Miami, Florida, that a woman does not need the consent of her husband to obtain a legal abortion. It based its opinion on the Supreme Court ruling that no authority should interfere with a woman's right to handle this matter. The Miami ruling, though, raises a host of new issues which even the advocates of abortion on demand may well have to consider carefully. From a social scientist viewpoint, it certainly calls for a re-examination, probably modification, if not outright reversal.

The ruling goes far beyond removing the government as an agent in deciding what a woman and her physician may choose to do; it removes also the husband. It disregards that the marital contract binds two persons into a legal, social and moral entity, and treats individually with one of them—as if in this matter there was no difference if the woman did or did not enter the vows of marriage. The fetus is viewed not as the couple's creation, property, and an incipient future child of both. Rather it is treated as a sole and exclusive property of the woman, of which she can unilaterally dispose, somewhat like her fingernails, hair or a wart.

How far this decision moves from the core of existing laws can be realized when one notes that should a divorce occur, the same husband, would usually be required to pay alimony for a child to be born to his former wife if it was "his" fetus when the separation occurred. Also, should he die, the fetus would be entitled to a share of his estate. Finally, the ruling conflicts with a recent Supreme Court ruling which determined that mothers cannot hand out their children for adoption without the father's consent.

It might be argued in favor of the Miami ruling that the father may be unavailable, say, if he serves in the military overseas, or has vanished. And, that a physician cannot act as an investigative social worker; if a woman comes to him or her for help, the doctor cannot check out her marital status. But both matters can be handled in a relatively simple procedural manner. If a doctor would require the patient to sign a form that she is not married or her husband is not reachable, and there would be a legal penalty for falsifying such a statement, this should go a long way to take care of this "catch."

It might be argued that the whole legal point behind the abortion ruling is that the fetus is not yet a person, is not a child, but it's part of the woman's body. Hence she ought to be entitled to deal with it as she sees fit. But the law ought to recognize that the fetus has a different status than, say, toenails. It was brought into being by a joint act; it does bind the husband into a variety of commitments, which should be accompanied by some rights; it is a potential child, which both wife and husband have a title to, and it is the last stronghold of the family bond. (In many cultures, the pregnancy, not the legalized sexual liaison, is the basic consuming act of a marriage.)

Finally, it might be said that requiring a husband's consent would strain rather than solidify the family. Obviously, it will be said, if both wife and husband agree, nothing is gained, nothing is lost. But when they conflict, will this not just lead to more familial strife?

First, even for the couple which is in agreement, there is a value in explicitly recognizing the husband's role. It reaffirms his parental role and solidifies the marital bond.

And, when the pair is of divided views, say the husband is a Catholic and the mother not, a debate, even a fight, before abortion is undertaken, may be more supportive to the family's integrity than a unilateral act, confronting the husband, *post facto*, with a gross violation of his feelings and beliefs.

Some women activists argue that the fetus grows in the woman's body; the husband's contribution is miniscule; the woman invested her energy, time and resources in the fetus. But by this logic most lawn mowers will be the husband's property, and dishwashers—that of the wife. And, above all, it does not recognize that a pure biological approach will not do in these matters. Socially and culturally the evolving child should be viewed as a product of both parents, although one can readily agree that the woman's contribution is much greater at this stage.

It might be necessary to provide for a couple which cannot agree, with a way to reach a resolution, if only because abortions are better not delayed. Social work agencies, marriage counselors, even arbitrators, might be used. And, if all these fail, the wife will have to decide what she prefers, having a child or violating the marriage. (A separated, let alone a divorced woman, will require no one else's consent.)

Or, it might suffice to require that the husband be *informed* and *consulted*, but not to give him a right to co-decide, which in effect, amounts to a veto power. But such steps should be reserved as measures of last resort; basically, the arrangement should help uphold, not undermine, the family. AMITAI ETZIONI

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