respect life

COLLISION COURSE

Technology May Prove to Be the Nemesis of Abortion Advocates

By
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In 1973, the Supreme Court in **Roe vs. Wade** legalized abortion by establishing the constitutional right of a woman to prevent the birth of her child. Ten years later, in **City of Akron vs. Akron Center for Reproductive Health,** six members of the court explicitly reaffirmed **Roe vs. Wade** and felt compelled to explain and justify the actual reasoning and constitutional foundation of that decision. The justification should be grounded on standards that can, both in principle and in fact, sustain and support their actions. With rapid advancements of technology in the fields of fetology, diagnosis and treatment, particularly as applied to the unborn child, the standard defies both the principle and facts used by the Court in establishing a constitutional right to abortion.

But Justice Sandra O'Connor, joined by Justices White and Rehnquist in her dissenting opinion in **Akron,** exposed the fallacies of the majority opinion and its precedent, **Roe vs. Wade.** Justice O'Connor acknowledged the shifting medical technology and standards in finding that "the Roe framework then is clearly on a collision course with itself." Justice O'Connor challenged the Court's reliance on such technology and standards:

"As the medical risks of various abortion procedures decrease, the point at which the State may regulate for reasons of maternal health is moved further forward to childbirth. As medical science becomes better able to provide for the separate existence of the fetus, the point of viability is moved further back to conception.

The Roe framework is inherently tied to the state of medical technology that exists whenever particular litigation ensues. Although legislatures are better suited to make the necessary factual judgments in this area, the Court's framework forces legislatures, as a matter of constitutional law, to speculate about what constitutes 'accepted medical practice' at any given time. Without the necessary expertise or ability, courts must then pretend to act as science review boards and examine those legislative judgments.

The court stated in **Roe vs. Wade** that "with respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb." The Court said "viability is usually placed at seven months (28 weeks) but may occur earlier, even at 24 weeks." Advances in neonatology since 1973 have lowered this to 24 weeks and, in some cases, to 21 or 22 weeks. These advances clearly call into question "viability" as a standard for existence independent of the womb. At the other end of the viability question, we have seen the necessity of confronting the survival of late-term fetuses. The use of prostaglandins does not guarantee the death of the fetus, and their survival only renews the question of the reality of abortion.

The time during which the unborn child is totally dependent on his or her mother's body is also continually becoming shorter because of advances at the other end of pregnancy. Artificial conception and in vitro fertilization are already realities; many believe that artificial placentas or other forms of extended life support outside the mother's body cannot be far behind. Thus the court's use of viability as a standard is becoming irrelevant; it is losing its significance with the advancement and development of support technology.

Ultrasonography has become an especially desirable procedure because it presents no discernable risk to the fetus. By measuring the reflection of transmission of ultrasonic waves, it locates, measures and delineates the deep structures within the uterus, making it possible to visualize the fetus. It assures the accurate determination of gestational age as well as diagnosis, thus becoming an important new non-invasive clinical tool.

The most rapidly expanding field of medicine today is fetology. The fetus has become a "patient" and clearly has assumed the role of a special "patients-rights" classification with all that is inherent in such a classification. Environmental threats of such things as drugs, caffeine, smoking, etc., have become all-important considerations in these patients' rights. *In utero* treatment represents a major new horizon for medicine. The removal of a 23-week-old fetus from the womb, successfully operating to correct a blocked urinary tract, and returning the child to the womb has now been accomplished. Nine weeks later, the child was born as a result of a normal birth process and is a normal and healty child. Kidney, heart, brain and lungs all admit of *in utero* treatment.

Based on all of the technological advances, what legal standards must now be employed to address the questions raised in **Roe vs. Wade**? Clearly, the conflict was present in 1973. Nothing new has developed except our ability to demonstrate in time and space the true humanity of the preborn child. We have never been able to reconcile the legal tenets used by the Court in **Roe vs. Wade** and the medical technology existing at that time, and certainly not with the technology that exists today.

(Photo by Jim Whitmer)

ADVANCES IN TECHNOLOGY and medicine have moved up the age of viability of a fetus outside the mother's womb, putting the logic behind abortion advocates' arguments into jeopardy.

Justice O'Connor's comments about a collision course clearly delineate the underlying conflict of the patient's rights of the unborn with the privacy rights of the mother. Nowhere is this more dramatically demonstrated than in the new theories of law designated as wrongful birth and wrongful life. The theory of such relief is based upon the legal rights of parents to prevent the birth of a child by holding that a woman has a constitutional right to abortion. Our advances in technology in ultrasound, intra- and extra-uterine surgery and amniocentesis have enabled us to become increasingly accurate in the detection and prediction of birth defects. Because of these changes in our technology, the courts have been called upon with increasing frequency to resolve claims by children with birth defects and by their parents. The parents, under wrongful birth claims, seek damages for the financial and emotional costs of raising an impaired child. A child, under a wrongful life claim, asserts that he or she would have been better off not being born, hence the compensation for birth in an impaired condition.

The frightening concept that birth can be "wrongful" is the direct and logical progression of a legal system that authorizes and sanctions the destruction of life through abortion. Wrongful life claims have required the courts to conclude that non-life is preferable to life with defects. "Wrongful life" has presented us with a frightening example of how the rapid and awesome advances in medical technology have been matched by the rapid and awesome advances in the application of a death ethic by our legal system.

Nearly all of the medical and legal arguments have been exposed as being insufficient in their foundation as a standard and have now brought us directly to confront the basic issue of the abortion question — abortion is a moral issue.

Our advances in the biological and medical sciences only increase our responsiblity to develop the criteria of respect, deference and promotion of every human being's primary and fundamental right to life. Our courts and our legislative bodies must accept their responsibility in these moral areas.

The fetus, the unborn, is a human being with a moral claim to protection from violence. The law must never establish justification for destroying the preborn child. The fundamental right to life belongs equally to all human beings and the more scientifically sophisticated we become, the more compelling our standard should be to protect the sanctity of life.

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