Column: 1950s Reboot

Sex, consensual or involuntary, may lead to pregnancy. In humans, the individual carrying the eggs that may be fertilized during sexual contact is the female. The male contribution is a microscopic packet of genes that account for less than half of the total complement of genetic material used by the fertilized egg as its blueprint for development. This male contribution is usually delivered in a burst of fluid discharge lasting a few seconds and causing no residual alterations to or protracted demands on the donor. The person carrying the fertilized egg and providing an environment in which it can survive is a woman. The person whose body supplies all of the material and protection for survival and development of the fetus that grows from the fertilized egg is a woman. The person who endures as many as nine months of hormonal and physical distress and who may face life altering injuries or death as a consequence of the pregnancy is a woman.

One might think that the person harboring this growing fetus and providing every element necessary for the creation and proliferation of every cell that constitutes this product of sexual activity would have some say in this matter. In the 1950s, most American men felt otherwise. Pregnancy termination was viewed by religious leaders of several faiths as a frustration of their God's (or gods') will. State legislators considered abortion a felony, warranting imprisonment of the offender. Whether or not the

impregnated woman had been raped did not affect her responsibility to bear her assailant's child. Even if the woman was merely a child victimized by an adult, she was still obliged to experience the "opportunity" of childbirth. There were really no exceptions. The almost entirely male legislators passing these laws affecting the lives of millions of women insisted that they knew best, and the wisdom of their legislation was attested to by the almost exclusively male religious leaders who advised them.

That changed in 1973 when the Supreme Court of the United States decided that a woman named Norma McCorvey (a.k.a., Jane Roe) had a right to seek an abortion without governmental interference. The court ruled the Texas law prohibiting abortion was unconstitutional under the due process clause of the Fourteenth Amendment to the Constitution that provided a right to privacy. Because our court system moves more slowly than most glaciers, Ms. McCorvey did not get an abortion and delivered her third child in 1970, three years before the court decided she had the right to terminate that pregnancy.

Our freshly minted Supreme Court has decided that was all a blunder that they needed to correct. As one of the Justices writing for the majority pointed out, there is no reference to "abortion" in the constitution. In fact, if you look closely you will note there is no mention of the word "women" in the Constitution. State legislatures, they concluded, have every right to effectively ban abortions if they wish. That they all previously described "Roe v. Wade" as "established law" at their confirmation hearings is irrelevant, and they are willing to explain how that makes sense in a convoluted, legal discourse reminiscent of Judge Taney's defense of the Court's decision in the Dred Scott v. Sanford case. In that Nineteenth Century case, the Court argued that slaves were not people and consequently had none of the rights accorded people. In this Twenty-First century case, the Court appears to have concluded that a fetus is a person and must be accorded all the rights due a citizen.

Those of us old enough to remember life and school in the 1950s are having flashbacks. Women in my community had little or no access to birth control. The

preferred method of birth control was a hysterectomy, but only after a woman had an appropriately large family. Our doctors, all of whom were men, preferred a family size of five or six. Some of our more zealous religious leaders recommended ten children as the appropriate target. Birth control was simpler in the southern states. African-American girls and women often found themselves infertile after abdominal surgery. A routine appendectomy would be supplemented by an involuntary and undisclosed sterilization procedure of some sort.

This Court will also be revisiting another “established law” issue in the next two months: prayer in public schools. Given its nostalgia for the good old days, there can be little doubt it will rule in favor of re-establishing prayer in the public schools. The case before it is that of an assistant football coach in Bremerton, Washington, Joseph Kennedy, who insisted on leading his team in prayer at the 50 yard line after football games. He argued that he had a right to show his appreciation to his God for helping him through the rough patches in his life. No one on the football team was required to join him in prayer. Of course, all of the students chosen for the team enthusiastically participated in these non-silent prayers. This sort of activity was deemed unconstitutional in 1962. Odds favor this Supreme Court will also declare that 1962 decision was a terrible error.

Every student in our local public school was given the opportunity to pray in school. In fact, my public school teachers helped us distinguish the various faiths practiced by our classmates. The morning prayer was familiar to all Roman Catholics. The Jewish kids were perpetually at a loss. The Protestants did not do much better, and they added to the confusion by reciting versions accepted by their specific denominations. Of course we all came together on Christian holidays to learn festive songs in Latin. Our teachers were kind enough to review the underpinnings of their own faiths during class time. They were more concerned with our immortal souls than with our scholastic abilities, God bless them.

One must wonder what other return to the mores and morality of the 1950s we shall face in the America of the Twenty-First Century. The Constitution lacks several words other

than “abortion” and “women.” These include desegregation, birth control, sexual identity, global warming, pandemics, and other such issues that require government protections or interventions. How intrusive will this Court allow state legislatures to be in pursuit of votes from a variety of fringe groups? Will it declare the Proud Boys a legitimate political action group and the January 6 attack on the Capitol an exercise in free speech and the right to assemble and petition the government? Will it decide that the Jim Crow era laws that allowed states to rent out convicts to private firms for hazardous and often life-threatening work was within their purview? Will it simply nullify the gains made by all Americans over the past 70 years in the struggle for equity and self-determination? God help us if it does.

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