

MAGGIE GALLAGHER

Multiple choice pro-creation

Erily frozen in the very act of conception, at least until New York Chief Judge Judith Kaye ruled Thursday they are dead meat, five embryos lay in a vault in Mather Memorial Hospital on Long Island. Five microscopic question marks waiting for an answer: Are we property or are we human life?

One thing we know they are not is part of a woman's body.

Years ago, Steven Kass ejaculated into a little cup while doctors removed his wife Maureen's eggs. The two pieces of themselves were mixed in the lab, and at the moment the sperm penetrated the egg, the act of union was halted — a developing human being's life put on hold. It was done with good intentions:

the normal passionate human desire of a married couple to have children of their own — to fling their very beings together into an unknown future. Several miscarriages and a divorce action later, the future has arrived.

Steven Kass has no desire to be turned into a dad, years after the divorce, by his ex-wife. Who can blame him? They had a deal, damn it, a contract drawn up by lawyers and signed by them both stating that, in the event of divorce, the "ownership" of the embryos would be determined by a property set-

tlement, or else by the courts.

What right does she have to renege now?

Meanwhile, Maureen Kass' heart is breaking; what mother's wouldn't? Her babies, her would-be babies. At 40, they are her only shot (unlike her ex-husband) at having children of her own body. All these tiny possibilities will be destroyed, turned over to the scientists who created them, turned into experiments to be used and discarded, by order of the court.

Traditionally men and women "consent" to parenthood by having

sex. For men, the law still insists that "you play, you pay." You have sex, and you voluntarily assume the risk of 18 years of child support (not to mention creating one sad, father-hungry kid).

But for women, *Roe vs. Wade* transformed having children from an act of the body to an act of the will: Now women (but not men) can decide not to be parents right up until the very moment the baby's head passes through the birth canal. The theory of human personhood enshrined in *Roe* can thus be best described as: If it's inside you, it's your body. If you can

see it, it's your baby.

But what happens when pregnancy takes place outside the woman's body? What do the Kasses as co-creators, or we as accomplices in these high-tech conceptions, owe these tiny beings?

The court in this case might have done many things. It might have ruled, as a lower court did, that the true meaning of *Roe* is that procreation is a woman's choice. Maureen Kass has as much right as a naturally pregnant woman to decide the fate of her embryos.

Or, striking a blow for gender neutrality, it might have ruled that both men and women have a right to decide whether they want to become parents.

Instead the court said, in essence,

unborn children are property, as properly subject to contract law as a set of dishes or the family bank account. Of course, what the law might have said, but didn't, is this: These are developing human beings who didn't ask to be created, certainly not in this unconventional and (to them) dangerous manner. The best interests of these developing children should be our highest priority. Trump the desires and interests of the parents who have chosen to place them in this precarious position. Give them a shot at life *and* a family. Donate them to another infertile couple. Case dismissed.

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