

HOW TO FATHER A CHILD WHEN DEAD

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Is it right for a wife to take sperm from a dying husband in order to create a child posthumously? Daniel Sokol discusses a recent case.

Here is a puzzle, based on a true story: last month, Stephen Blood, who died in 1995, became a father, but no child was born. How can this be? Doctors extracted Mr Blood's sperm a few hours after he died from meningitis in 1995, his wife then travelled to Brussels to conceive her sons after Britain's Human Fertilisation and Embryology Authority (HFEA) turned down her request, and Mrs Blood last month won an arduous legal battle to have her husband recognized as the father of her two children. Under the new law, a man is the legal father of a child conceived from frozen sperm even if conception occurred after the man's death. Advances in biotechnology make for convoluted brainteasers.

Mrs Blood's request to have her husband's sperm extracted is not uncommon. Posthumous sperm retrieval is becoming increasingly popular. Before the war in Iraq earlier this year, American soldiers fearful of death or debilitating injury were leaving deposits of semen in sperm banks. If retrieval techniques are relatively new, dating mostly from the 1990s, posthumous reproduction is centuries old. A woman could die in labour before the delivery of her baby, or a man could simply die from illness while his wife was pregnant. Although tragic, the death of a parent before the birth of the child is not, in itself, morally problematic, nor does it take away any claim to parenthood. For this reason, the new law recognizing posthumous fatherhood should be welcomed. But is there anything ethically wrong with retrieving sperm from a dead or dying man?

Let us examine another recent case: a 29-year-old man dies in the Intensive Care Unit following a car accident. His wife asks the doctors to retrieve his sperm. Should they accede to her request? The central concern relates to the husband's consent. Did he explicitly consent to the procedure, like the

American soldiers did when they donated their sperm before setting off to Iraq? Is the wife's repeated assurance that she and her husband had wanted children sufficient proof of consent? It seems to me that a husband's willingness to have children with his wife is far removed from consenting to post-mortem conception. Can such a general comment *reasonably* be applied to this particular situation? The wife's interpretation might, after all, differ from her husband's actual intent. In the absence of any conclusive evidence of consent, her request was refused.

Of course, some may argue that even with explicit consent posthumous sperm retrieval is wrong because it brings into the world a fatherless child. It is — they claim — both selfish and inconsiderate. The welfare of the child is indeed an important consideration, and conceptions likely to produce wretched children should, if possible, be avoided. Nevertheless, fatherless children do not, in my book, fall under the 'wretched' category. Many children raised in single-parent homes grow up to be happy people. Moreover, few parents have children for purely altruistic reasons. A couple may want a baby to reinforce their relationship, to create a family unit, to provide company for an existing child, or simply because the idea appeals to them. To have a baby *solely* for the baby's sake is probably unusual. Thus, even in 'normal' conceptions, selfish motives often play a part in the decision to procreate.

The law on posthumous sperm retrieval varies from country to country. In the United Kingdom, the HFEA requires explicit, written consent for the posthumous extraction of sperm. In the United States, where regulation on reproductive technology is not as stringent, some hospitals are willing to *infer* consent if certain criteria are met. In this age of technological wizardry, it is possible — in the words of Shakespeare — to 'make war against this bloody tyrant, time', but the war, in this country at least, must be waged in writing. So if you do decide to leave behind a genetic memento, be sure to write it down on more than a post-it note.

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