

Hats Off to the Supreme Court of Alabama

by [Walter E. Block](#) (October 2024)



The Newborn Child (Georges de La tour, 1645-48)

According to the law in Alabama, the fetus is a human being, with all the rights enjoyed by any other person in that state: “On February 16 (2024), the Alabama Supreme Court [ruled that frozen embryos](#) are children under state law, meaning the embryo has rights consistent with a person living in the United States.” Thus, not only is the fetus a human being with

all the rights properly accorded thereto, but this applies, also, to the fertilized egg, whether residing inside the woman or in its frozen state.

As a result, several IVF treatment clinics in that state have ground to a [complete halt](#). This is because, typically, many more fertilized eggs are created in this process than are needed by the infertile couple and those that are unused are discarded. Those responsible fear that under the new law, they will be considered criminals, if not actual out and out murderers.

Here is yet another challenge/problem. Assume that there was a nurse at an Alabama hospital, let us call her "ButterFingers," who dropped a flask containing numerous frozen fertilized eggs. As a result, all of these very small human beings perished. Subsequently, all of the facilities in the Yellowhammer State that provide this service ceased to do so. The fear was that the aforesaid ButterFingers, and all other possible killers of early stage fetuses, would be considered very serious lawbreakers. This follows logically, if we take literally this Alabama Supreme Court decision, and how else should we take it?

This challenge seems daunting, but there are ways to obviate this conclusion. Consider, first, ButterFingers. Hospitals and clinics cannot be held to any other standard but that "they will do their best." An 85 year old man comes to the emergency room complaining of chest pain. He has a massive heart attack while on the operating table. A team of physicians did their level best to save his life. He dies despite their best efforts. They are a bunch of murderers? Not if common sense, let alone legal sanity, prevails.

ButterFingers, too, was doing her best. We may assume that she did not purposefully drop the flask and kill all these very young human beings. She is no more guilty of committing a crime than a surgeon who mistakenly left a scalpel in a

patient's stomach. Or of one who mistakenly mixed up medicines and killed a sick person. People in the medicinal industry are human beings, and our species is the mistake-making animal.

On the other hand, of course, if any of these faux pas were done on purpose, then all bets are off. These actions would of course be criminal. (Ditto for implementing DEI in medical schools and admitting inferior students when more gifted ones were available, and conferring degrees on the former so as to achieve "equity." Sick people deserve doctors based on skill and merit; they should not be chosen so as to make doctors "look like America." This violates the medical principle of "First, Do No Harm.")

But what of the more problematic practice of IVF: "discarding" unneeded fertilized eggs? This, indeed, constitutes a serious challenge for the Alabama Supreme Court finding. How can it be dealt with? One possibility is to implement and utilize libertarian theory. In this regard it is predicated upon the notion that there are no positive obligations. Proper law should only proscribe negative obligations: none of us may commit murder, rape, theft, assault, fraud, kidnapping, etc. If we do, we should be punished to the full extent of the law. But we are not obliged to do good, even in behalf of helpless people. No one should go to jail for failing to be a Good Samaritan.

So here we have a hospital with dozens of very small people, all located in the freezer section of one of its refrigerators. This institution should be obliged to offer them to anyone who wishes to adopt them as parents. (This would not be a positive obligation; rather, it would be a defense against the charge of precluding: keeping unhomesteaded values, small frozen people in this case, away from those who wish to be their guardians through adoption). If there are no takers, or, there are still some remaining who (this word is the correct appellation) are unwanted, then they may indeed, at least according to libertarian law, be

“discarded” e.g., killed. But this would not be murder, for that would be unjustified killing, and this action would be justified.


Why is this decision of the Alabama Supreme Court the correct one? When does human life actually start? Not with birth, for that is just a very slight change of address, from inside the woman to directly outside of her. Nor when the heart is beating, for persons undergoing a heart transplant, for a time, have no beating heart. Nor, yet, when there is an absence of brainwaves, since people have come back from lack of same. Only when the sperm enters the egg is this miracle of human creation achieved. Hat's off to the Supreme Court of Alabama.

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to have played chess with Friedrich Hayek and once met Ludwig von Mises, and shook his hand. Block has never washed that hand since. So, if you shake his hand (it's pretty dirty, but what the heck) you channel Mises.

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