

Q&A: 'What is this, "The Handmaid's Tale"?' Exploring moral questions posed by controversial IVF ruling

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Is a frozen embryo a child? The Alabama Supreme Court says yes. In ruling this month that three couples who lost frozen embryos in a storage facility accident could sue for wrongful death of a minor child, the court wrote that the "natural, ordinary, commonly understood meaning" of the word "child" includes an "unborn child"—whether that's a fetus in a womb or an embryo in a freezer.

Hospitals and clinics across the conservative state have since paused in vitro fertilization services as they scramble to figure out the legal and ethical ramifications of the decision. Transport companies are also on hold as they assess the risks of carrying embryos out of state.

To better understand the ethics of IVF and what this ruling means for clinics, families and the more than a million embryos stored in freezers across the country, we spoke with Vardit Ravitsky, a professor of bioethics at the University of Montreal and president of the Hastings Center, an independent bioethics research institute in New York. The interview has been edited for clarity and length.

You became interested in the ethical issues of IVF as a college student, when a friend asked if you would consider donating an egg.

I was almost 20. I was absolutely fascinated by the notion of carrying a fetus that is not genetically related to you. What does that mean to be the biological mother of a fetus that is genetically not your child? On the flip

side, what happens when you give your egg to another woman and you have a genetically related child that is not yours?

The notion of genetic relatedness—IVF kind of broke that. You can now carry a fetus that is not yours; you can give your genetics to another person. That blew my mind, because it took the notion of motherhood that was the same for all of human history and broke it down into two components.

So technology can change our fundamental concept of human beings. And that's what's happening here. We're talking about a batch of cells on ice, and we call it a child. That just wasn't possible before.

Do people have a common understanding of what an embryo is?

Embryo, fetus and [newborn baby](#) are, first and foremost, medical biological terms. An embryo is the name we use in the beginning of the development, up to about 11 weeks pregnancy or nine weeks in embryonic development. Then, when it's more developed, we call it a fetus. When it breathes on its own, outside of a [female body](#), we call it a baby.

The separate issue is when do we accord these entities moral status? We can call them whatever we want; we can call them cells or we can call them children. That's a value-based, societal decision.

Do we treat embryos outside of the body morally in the same way that we treat them inside of the body? In most jurisdictions, we treat them differently.

For years, anti-abortion advocates in red states have pushed "fetal

personhood"—the idea that life begins at conception and fetuses are children entitled to legal rights. Now Alabama's Supreme Court has ruled that [frozen embryos](#) should be considered children. What [ethical questions](#) does this pose?

To imply or say explicitly that [frozen embryos] are children, in the same sense that fetuses are seen as children, to me, that's a very dangerous development.

Think about it logically: If you have a pregnancy and you do nothing, and there's no miscarriage, a baby will be born. If you have an embryo in a dish in a freezer and you do nothing, there will not be a baby.

I would like women to have access to abortion because I care about their health and autonomy and their freedom to choose. When it comes to frozen embryos, it has nothing to do with a woman and with her body.

The potential of these embryos to become babies or children depends on so many steps: They have to be thawed, they have to continue to develop, they have to be implanted in the uterus, the uterus has to accept them, pregnancy has to develop. These are all steps that can still go wrong. To think of them as children in the same way that we think about newborns or fetuses is just, to me, going so far in how we understand the concept of a child.

In a concurring opinion, Alabama Chief Justice Tom Parker wrote that the people of the state adopted the "theologically based view" that "human life cannot be wrongfully destroyed without incurring the wrath of a holy God, who views the destruction of His image as an affront to Himself." What does this mean for the future of IVF in conservative states?

Even if you say life begins at conception—for religious reasons or for

any other values that you hold—you could still assign different moral values to the two scenarios of conception: outside of the body or inside of the body.

But if you take the view that life starts at conception and you apply that to in vitro, you are potentially shutting down IVF facility care. For clinics, as we've already seen beginning to happen, there are risks of handling human embryos that are very fragile biological entities. If the law treats them as children, then clinics rightly freak out about all that could happen to them during fertility treatments.

Unfortunately, accidents happen in clinics: freezers malfunction, embryos get destroyed by accident. Sometimes they have to be tested, and the testing harms them.

Does treating embryos as children necessarily call into question clinics' ability to provide IVF?

Even if there's technically the possibility of continuing to provide IVF, under this framework of "embryos are children" ... if you're actually convinced that you're treating children under the microscope, the risks are so huge that I don't see how clinics will continue to function long-term.

What ethical and legal dilemmas do clinics face?

What is the extent and the nature of their liability if something happens to an embryo? Is it criminal liability? What part of the law would they be liable for?

Now, in the current reality, couples can agree to the destruction of their embryos, they can donate them for research, they can allow genetic

testing of those embryos. If this is a child that deserves independent protection, then what the couple wants becomes irrelevant.

If I owned a fertility clinic, I'd be very scared right now. If you treat embryos seriously as children, you cannot justify any level of risk. You cannot justify using them for training, for research. If we don't allow genetic testing, we're slowing down the quality of facility care, entire programs of research that are critical to biomedicine. The ripple effects are huge.

Could clinics be required to maintain all the frozen embryos they have in perpetuity?

Absolutely. If you don't know what to do with them, other than implant in the uterus and start a pregnancy, then the obvious alternative under this ruling is to keep them frozen indefinitely, which costs hundreds of dollars a year. Currently, if parents abandon their embryos and stop paying the storage fee, clinics can destroy them after five years. But if that's no longer an option, they will just accumulate and accumulate.

There are over a million frozen embryos in the U.S. today. And that number is growing all the time, because every time a woman undergoes a cycle, most often not all the embryos are used. So every cycle of IVF potentially leaves a few behind in a freezer. For clinics to carry that cost is a significant burden; IVF is already exceptionally expensive.

If a frozen embryo is viewed as a child, could it be interpreted as having a right to be implanted and born?

Absolutely yes. Celine Dion famously said that her frozen embryos in New York are children waiting to be born. You know Sofia Vergara

from "Modern Family"? Her ex named their frozen embryos and sued in their name—they were the plaintiffs—that they have a right to be born. He argued he can make that happen because he has created a trust in their name, he has a surrogate, he will father them, he will take responsibility; they will want for nothing. He said leaving them on ice is like murdering them.

The court in Louisiana dismissed the case on a technicality that the embryos were created in California. They didn't say, "You're being ridiculous!" So that line of thinking—that frozen embryos have a right to be implanted in order to be born—has already been tried in the U.S., and it wasn't even refuted fully.

What is this, "The Handmaid's Tale"? Catch women and impregnate them because [embryos] have a right to be born? Where do we stop?

So what's the fate of the more than a million embryos stored in freezers?

If state after state adopts this approach, then in those states, you will not be able to discard embryos or donate them for research or literally do anything with them, except seize them for reproduction. Will you be allowed to ship them to another state becomes the big question.

What does this ruling mean for patients in Alabama and other states with fetal personhood laws?

If I were in the middle of a cycle, and my eggs have not been retrieved yet, and I haven't gone through fertilization, I'd be questioning whether I want to continue in Alabama. Because I wouldn't know what I would be allowed to do with the embryos. If I had frozen embryos in Alabama, I would definitely look into shipping them to another state.

We have to remember that people going through IVF are very vulnerable. It's a high-stress situation anyway, without the added layers of complexity and fear. At a medical level, such stress when you're going through such an intricate process is definitely not in the best interest of patients.

As IVF clinics will shut down and move to other states, we'll start seeing reproductive tourism within the U.S., just like we're seeing with abortion. But the ethical problem with that is equity. Poor couples without resources will just not have access to IVF anymore.

It's been more than 45 years since the world's first baby conceived by IVF was born in the U.K. What was the significance of that technological development, and what were the key discussions when IVF was developed?

At the time, they were called test-tube babies. That's a term that we've luckily abandoned, because it implied that they're artificial children. Some people saw the actual methods of fertilizing the egg outside the body as violating the sacred nature of the creation of life. The Catholic Church was and still is against this, because of the method of conception.

The other concern was, "Oh, these children will be stigmatized. They will not be like other children." Beyond medical risks that we didn't know about at the time, how will they be viewed by society? Now it's so normalized. In some countries, 1 in 6 children is born from assisted reproduction.

Do you think this is a real turning point?

If you think globally, Catholic countries have grappled with the status of embryos for years. Germany, for example, does not allow the destruction

of embryos, because the embryos are defined as a person in the Constitution. And that's for the historical reason that they reject any kind of selection associated to life and will do anything to protect the dignity of human life. So this is new to the U.S., but it's not new in the world.

The shift has been from worrying about the technique, in itself, to worrying about who's using it: gay couples using it, lesbian couples using it, single people using it with egg or sperm donation.

A married heterosexual couple using it to overcome infertility has become a nonissue. It became just medical care, no moral issues associated, other than: What do you do with your leftover frozen embryos that still remain?

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