



Written by [Rebecca Terrell](#) on April 9, 2024

Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

Sanity and Sanctity in Alabama Supreme Court Unborn-life Ruling

The Alabama Supreme Court ruled in February that frozen embryos are considered children under state law. Specifically, they are “extrauterine children,” and anyone who destroys them, whether willfully or accidentally, can be held liable for violating state law.

The decision came about because of two wrongful-death cases brought in 2021 by three couples, each of whom had frozen embryos that were accidentally destroyed at a fertility clinic. The embryos were created through in vitro fertilization and were housed in a “cryogenic nursery,” awaiting implantation.

The justices cited both the Alabama Constitution and an 1872 state law in determining that the ability of parents to sue over the death of a minor child “applies to all unborn children, regardless of their location.”

The concurring opinion written by Chief Justice Tom Parker is jaw-droppingly reminiscent of the writings of America’s Founding Fathers. Parker evinces himself not only as a staunch advocate for constitutional principles, but also as keenly aware of the sacred obligation that he, a court justice, owes to his Creator.

The following excerpts of his remarkable statement are both edifying and enlightening. For readability, many of the legal references are omitted, but they, along with the entire ruling, can be found at the website of the Alabama Judicial System (<https://judicial.alabama.gov/>). Emphasis throughout is from the original.

A good judge follows the Constitution instead of policy, except when the Constitution itself commands the judge to follow a certain policy. In these cases, that means upholding the sanctity of unborn life, including unborn life that exists outside the womb. Our state Constitution contains the following declaration of public policy: “This state acknowledges, declares and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.” Art. I, § 36.06(a), (sometimes referred to as “the Sanctity of Unborn Life Amendment”).

As noted in the main opinion, these cases involve unborn life — a fact that no party in these cases disputes. Therefore, I take this opportunity to examine the meaning of the term “sanctity of unborn life” as used in § 36.06 and to explore the legal effect of the adoption of the Sanctity of Unborn Life Amendment as a constitutional statement of public policy.



alabama.gov/appellate/supremecourt

Supreme obeisance: Alabama Chief Justice Tom Parker is pictured here (front row, center), sitting with his associate justices.



Written by [Rebecca Terrell](#) on April 9, 2024

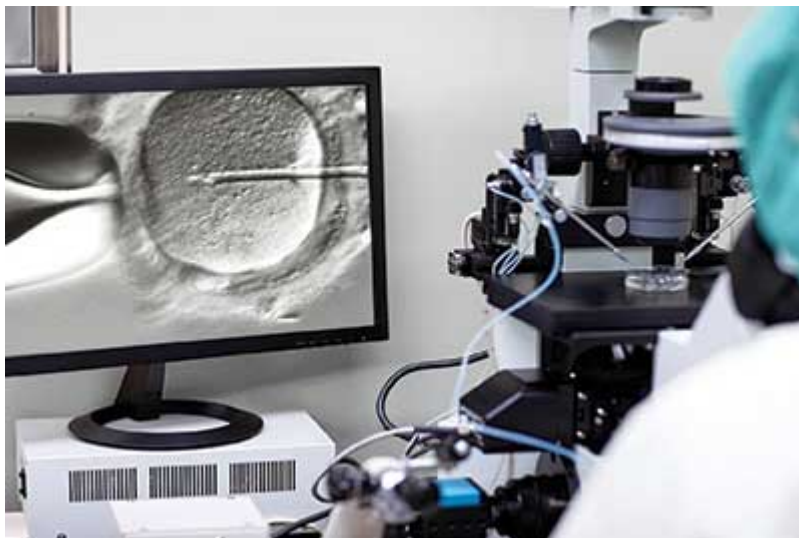
Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

The Alabama Constitution does not expressly define the phrase “sanctity of unborn life.” But because the parties have raised § 36.06 in their arguments, these cases call for us to interpret what this phrase means.

Section 36.06 specifically recognizes the sanctity of unborn life. Nevertheless, the phrase “sanctity of unborn life” involves the same terms and concepts as the broader and more common phrase, “sanctity of life.” Thus, the history and meaning of the phrase “sanctity of life” informs our understanding of “sanctity of unborn life” as that phrase is used in § 36.06.

At the time § 36.06 was adopted, “sanctity” was defined as: “1. holiness of life and character: GODLINESS; 2 a: the quality or state of being holy or sacred: INVIOABILITY b *pl*: sacred objects, obligations or rights.” Recent advocates of the sanctity of life have attempted to articulate the principle on purely secular philosophical grounds (arguing that “human life is fundamentally and inherently valuable” based on the “secular moral theory” that human life is a “basic good” that “ultimately comes not from abstract logical constructs (or religious beliefs)”). Such advocates have preferred to use the term “inviolability” rather than “sanctity” to avoid what one scholar calls “distracting theological connotations.” But even though “inviolability” is certainly a synonym of “sanctity” in that the meaning of the two words largely overlap, the two words cannot simply be substituted for each other because each word carries its own set of implications. When the People of Alabama adopted § 36.06, they did not use the term “inviolability,” with its secular connotations, but rather they chose the term “sanctity,” with all of its connotations.

In vitro fertilization: Contracts with fertility clinics include provisions specifying what will happen if embryos are not used within a specified time, with options to either donate to other individuals or research facilities, or “thaw and dispose.” (Morsa Images/Getty Images Plus)



This kind of acceptance is not foreign to our Constitution, which in its preamble “invok[es] the favor and guidance of Almighty God,” and which declares that “all men ... are endowed [with life] by their Creator.” [Here, Parker also references via footnote a line from the Declaration of Independence: “endowed by their Creator with certain unalienable Rights, that among these are Life.”] The Alabama Constitution’s recognition that human life is an endowment from God emphasizes a foundational principle of English common law, which has been expressly incorporated as part of the law of Alabama § 1-3-1, Ala. Code 1975 (“The common law of England ... shall ... be the rule of decisions, and shall



Written by [Rebecca Terrell](#) on April 9, 2024

Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

continue in force ..."). In his *Commentaries on the Laws of England*, Sir William Blackstone declared that "[l]ife is the immediate gift of God, a right inherent by nature in every individual." He later described human life as being "the immediate donation of the great creator."

Only recently has the phrase "sanctity of life" been widely used as shorthand for the general principle that human life can never be intentionally taken without adequate justification. The phrase was first used in the modern bioethical debate by Rev. John Sutherland Bonnell as the title to his 1951 article opposing euthanasia: "The Sanctity of Human Life." Glanville Williams later employed the phrase in his groundbreaking book, *The Sanctity of Life and the Criminal Law*, in 1957. The common usage of this phrase has continued into the 21st century, referring to the view that all human beings bear God's image from the moment of conception. See, e.g., "Manhattan Declaration: A Call of Christian Conscience" (at the time of this decision, this document could be located at: <https://www.manhattandeclaration.org>) (referring multiple times to the "sanctity of life" in response to abortion). [Parker footnotes that the "Manhattan Declaration" is an ecumenical document signed by "Orthodox, Catholic and Evangelical Christians."]

The phrase appeared only twice in our precedents before 2018. In 1982, Justice [James] Faulkner used it to describe the argument that so-called "wrongful birth" actions should not be cognizable at law because the "sanctity of life" precluded them. More recently, however, it was used in a 2014 special concurrence, *Ex parte Hicks* ("This case presents an opportunity for this Court to continue a line of decisions affirming Alabama's recognition of the sanctity of life from the earliest stages of development. We have done so in three recent cases [Ankrom, Hamilton, and Mack]; we do so again today.").

But the principle itself — that human life is fundamentally distinct from other forms of life and cannot be taken intentionally without justification — has deep roots that reach back to the creation of man "in the image of God." One 17th-century commentator [Petrus Van Mastricht in *Theoretical-Practical Theology*] has explained the significance of man's creation in God's image as follows:

[T]he chief excellence and prerogative of created man is in the image of his Creator. For while God has impressed as it were a vestige of himself upon all the rest of the creatures ... so that from all the creatures you can gather the presence and efficiency of the Creator, or as the apostle [Paul] says, you can clearly see his eternal power and divinity, yet only man did he bless with his own image, that from it you may recognize not only what the Creator is, but also who he is, or what his qualities are.

... God did this: (1) so that he might as it were contemplate and delight himself in man, as in a copy of himself, or a most highly polished mirror, for which reason his delights are said to be with the children of men. (2) So that he might, as much as can be done, propagate himself as it were in man.... (3) So that he would have on earth one who would know, love and worship him and all that is his, which could not be obtained in the least apart from the image of God ... (4) So that he might have one with whom he would live most blessed for eternity, with whom he would converse as with a friend ... Therefore, so that God could eternally dwell and abide with man, he willed him to be in some manner similar to him, to bear his image ...

Therefore, the image of God in man is nothing except a conformity of man whereby he in measure reflects the highest perfection of God.



Written by [Rebecca Terrell](#) on April 9, 2024

Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

Van Mastricht's assessment of the significance of man's creation in the image of God accords with that of Thomas Aquinas centuries earlier. Following Augustine, Aquinas [in the *Summa Theologica*] distinguished human life from other things God made, including nonhuman life, on the ground that man was made in God's image.

As Augustine observes, man surpasses other things, not in the fact that God Himself made man, as though He did not make other things; since it is written, "The work of Thy hands is the heaven," and elsewhere, "His hands laid down the dry land," but in this, that man is made to God's image.

Further, Aquinas explained that every man has the image of God in that he "possesses a natural aptitude for understanding and loving God," which imitates God chiefly in "that God understands and loves Himself." Thus, man's creation in God's image directs a man to his last end, which is to know and love God.

Man's creation in God's image is the basis of the general prohibition on the intention of taking of human life. ("Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man.") John Calvin, in expounding that text, explains:

For the greater confirmation of the above doctrine [of capital punishment for murder], God declares, that he is not thus solicitous respecting human life rashly, and for no purpose. Men are indeed unworthy of God's care, if respect be had only to themselves; but since they bear the image of God engraven on them, He deems himself violated in their person. Thus, although they have nothing of their own by which they obtain the favour of God, he looks upon his own gifts in them, and is thereby excited to love and to care for them. This doctrine, however, is to be carefully observed, that no one can be injurious to his brother without wounding God himself. Were this doctrine deeply fixed in our minds, we should be much more reluctant than we are to inflict injuries. Should any one object, that this divine image has been obliterated, the solution is easy; first, there yet exists some remnant of it, so that man is possessed of no small dignity; and secondly, the Celestial Creator himself, however corrupted man may be, still keeps in view the end of his original creation; and according to his example, we ought to consider for what end he created men, and what excellence he has bestowed upon them above the rest of living beings.

Likewise, the Geneva Bible, which was the "most popular book in colonial homes," includes a footnote to Genesis 9:6 that provides: "Therefore to kill man is to deface God's image, and so injury is not only done to man, but also to God."

Finally, the doctrine of the sanctity of life is rooted in the Sixth Commandment: "You shall not murder." Aquinas taught that "it is in no way lawful to slay the innocent" because "we ought to love the nature which God has made, and which is destroyed by slaying him." Likewise, Calvin explained the reason for the Sixth Commandment this way: "Man is both the image of God and our flesh. Wherefore, if we would not violate the image of God, we must hold the person of man sacred." These and many similar writings, creeds, catechisms and teachings have informed the American public's view of life as sacred.



Written by [Rebecca Terrell](#) on April 9, 2024

Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

In summary, the theologically based view of the sanctity of life adopted by the People of Alabama encompasses the following: (1) God made every person in His image; (2) each person therefore has a value that far exceeds the ability of human beings to calculate; and (3) 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. Section 36.06 recognizes that this is true of unborn human life no less than it is of all other human life — that even before birth, all human beings bear the image of God, and their lives cannot be destroyed without effacing his glory.

The People of Alabama have declared the public policy of this State to be that unborn human life is sacred. We believe that each human being, from the moment of conception, is made in the image of God, created by Him to reflect His likeness. It is as if the People of Alabama took what was spoken of the prophet Jeremiah and applied it to every unborn person in this state: “Before I formed you in the womb I knew you, Before you were born I sanctified you.” All three branches of government are subject to a constitutional mandate to treat each unborn human life with reverence. Carving out an exception for the people in this case, small as they were, would be unacceptable to the People of this State, who have required us to treat every human being in accordance with the fear of a holy God who made them in His image. For these reasons, and for the reasons stated in the main opinion, I concur.



Written by [Rebecca Terrell](#) on April 9, 2024

Published in the April 29, 2024 issue of [the New American](#) magazine. Vol. 40, No. 08

Subscribe to the New American

Get exclusive digital access to the most informative,
non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



Subscribe

What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.