

Conjoined twins and the right to life

"The past provides many instances where the law refused to see a human being when it should have. The future may provide instances where the law will be asked to see a human when it should not. The challenge for future generations will be to define what is most essentially human."
Baker v State (96-032); 170 Vt. 194; 744 A.2d 804, 809 (Amesbury Ct)

Some infant conjoined twins rely on shared organs or their twin's organs to survive. In cases where these organs cannot support two babies, both will die if they are not separated. However, the death of one twin is inevitable during surgery. States protect citizens' right to life by making unlawful killing a criminal offence. Both doctors and parents face possible murder or manslaughter charges over the death of the sacrificed twin, and also if they fail to save the other twin.

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A preliminary issue before homicide arises is :
 "are conjoined twins persons capable of being killed?"

Examples of incomplete twins

FOETUS IN FETU



Kang Mengru was born in 2009 with the foetus of her conjoined twin inside her.

A BODY BUT NO HEAD



Risab Dev was born in 2009 with a headless twin attached to his torso.



Lakshmi Tatma was born in 2005. Her twin had a stomach, chest cavity and a functioning kidney but the twins shared a vagina, urinary tract and anal canal.

A HEAD BUT NO BODY



Manar Maged's conjoined twin had a brain but no body. The twin displayed signs of independent consciousness. She blinked, tried to suckle, smiled and cried.

The law in Australian states and in England is that only "persons" who are "born" "alive" can be victims of murder or manslaughter.

Born?

All incomplete conjoined twins are born - they are completely separated from their mothers' bodies. However, many incomplete conjoined twins could not survive without their twins.

In *Re A (Children) (conjoined twins: surgical separation)* [2000] 4 All ER 961, 996 Ward LJ considered this but said the fact that Mary was dependent on her sister for survival could not displace the view that she was alive and separate.

Alive?

[T]he person killed must be a 'reasonable creature in being ... at the time of the killing... child is accounted a reasonable creature in being when it is born alive'.
 W. Blackstone, *Commentaries on the Laws of England* 198
 Some Australian states follow the common law, above. Others have Criminal Codes. For example Queensland Criminal Code s 292: 'child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother...'

Different criteria, including breathing and circulation, have been applied by courts to determine if an infant is alive. If breathing is the required standard, twins such as Mary, who had no functioning lungs, would not be "alive". Ward LJ rejected this standard in *Re A (Children)* in favour of the broader standard that requires signs of life. All of the incomplete twins depicted meet this standard.

Person?

Are incomplete twins persons in the eyes of the law or merely appendages that can be removed without fear of criminal sanction?

The law does not define what it is to be a natural person. The literature suggests doctors, lawyers and ethicists have different views as to which conjoined twins are persons. A variety of standards or criteria have been suggested for determining whether a particular being is a person. They include physical appearance, higher cognitive ability, self awareness, ability to value life, personality, potentiality, and having a brain. The application of some of these criteria is problematical with infants. The application of others sometimes yields incongruous results.

If the broadest standard is adopted - that "an offspring of human parents cannot reasonably be considered to be other than a human being, and therefore a person"¹ - all incomplete conjoined twins would be persons protected by the criminal law of homicide.

¹*Commonwealth v Cass*, 392 Mass. 709; 467 NE 2d 1324 (1984)

Existing legal principles are not helpful in determining whether conjoined twins are persons that have a right to life and are protected by the criminal law. According to Barilan, a holistic reconceptualisation of the conjoined state must be found. However, this may not be helpful unless the criminal law recognises the conjoined state, and the law of homicide is clarified in this context.

SHARED KEY ORGANS



Emma and Taylor Bailey are now 3. They will die if not separated because their shared heart cannot support them both for too much longer.

Examples of incomplete twins

PARASITIC TWIN



This partly formed twin grew in size as its twin grew.

TWO HEADS ONE BODY



Abby and Brittany Hensel were born in 1990. They have two hearts, two stomachs, three lungs and a single set of organs below the waist.



These Indonesian twins, born in 2009, each had a head and a heart but shared all other organs.

LACK OF KEY ORGANS



Mary, one of the twins in *Re A (Children)* 2000, had a primitive brain, heart defects, and no functioning lung tissue. She depended on her twin for survival.