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Ethics and law in maternal-foetal surgery

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Abstract

Herein I provide a reflection on the ethical and moral complexities that surround foetal surgery. Foetal surgery is an ethically complex area within obstetric medicine, which requires clinicians to exercise their own judgement about morality and personhood in making decisions about treatment. I reflect on my experience of observing a foetal medical procedure as a student and summarise the complex ethical challenges that arise during such procedures. I provide learning points at the end of the discussion that should stimulate medical students and junior medical team members to reflect on their own practice and how they use their experiences of morally complex cases to improve their future practice.

Case summary

Whilst on my Obstetrics and Gynaecology rotation, I was fortunate enough to be present at an intrauterine laser ablation of placental vessels for the treatment of Twin-to-Twin Transfusion Syndrome. During the procedure I was informed by a supervising consultant of how the procedure is carried out and how likely it was to be successful. Reflecting on this case, I was able to consider the ethical and legal quandary presented by maternal-foetal surgery, with a primary focus on two key questions, namely:

- When does a foetus become a patient, and what is the moral status of the foetus in such a discussion?
- How can doctors and parents ethically and morally reconcile the in-utero treatment of twins in a situation where surgery is potentially life-saving for one, and could be considered an unnecessary risk for the other?

Discussion

The fact that maternal-foetal surgery is performed on two (even three or more) patients – the pregnant woman and the foetus/es which gestate/s within her – and that the surgery has separate risk and benefit profiles for each patient, inevitably leads to keen debate on its ethical aspects (1-3).

In the words of Rodrigues at al, "To have moral status is roughly to be worth of moral concern and respect" (4), a worth that, in most discussions on the subject, is based on the possession of certain properties, for example being alive or being sentient. Chervenak and McCullough, authors of the most widely accepted ethical framework for maternal-foetal surgery (5-7), base the moral duty owed by physicians to a foetus as a patient, a "dependent moral status" ie moral status achieved through social interaction, in this case, the patient-doctor relationship. This relationship can further be ethically summarised by the principles of autonomy, beneficence, non-maleficence and justice – the four principles of biomedical ethics of Beauchamp and Childress (8). Within this framework, someone becomes a patient, in essence when they present to a clinician with a medical problem that can be remedied. This ethical proposition illustrates that maternal-foetal medicine is underpinned by a paternalistic system of medical practice (9) and it is the justification summarised above that enables surgeries on the foetus as in the case I described. Clearly this is somewhat at odds with a purely legal argument that states that a foetus is not a person with rights, such as a right to treatment, until after birth (10, 11).

However, if we accept the supposition that a foetus is a patient worthy of moral concern in its own right, we may then logically question whether this will infringe important rights of the mother, herself an autonomous moral entity, particularly with regard to decisions about treating the foetus being taken out of the mother's hands, breaching her autonomy. Such discussions are inevitably uncomfortable, even abhorrent, but one argument that simplifies such discussion is the contention that a foetus is only a patient because of the mother's autonomous decision to present that foetus as a patient, requesting doctors to provide care for it (12). Further, under The Abortion Act (10: sec 1), the wishes of the mother must be considered by the doctor above the moral duty owed to the foetus as a patient. Importantly, the arguments discussed here do assume that a mother will look on her foetus with the same moral responsibility with which a doctor looks on their patient. If the mother does not, and has capacity (13: sec 3) to make a decision that doctors would argue would adversely affect the health of the foetus (such as smoking), there is little the doctor can do, out of respect for the mother's autonomy. Such considerations obviate the need for discussion relating to a conflict of interest that may arise between the rights of the mother and those of the foetus.

Certainly, in English law, although the foetus is recognised as a unique organism with interests, it is, importantly, not equal to a person, and as such its rights are subordinated to the rights of the mother in such discussions. Therefore, although it can be distasteful for clinicians, even if the mother makes a decision that seems in direct conflict with the interests of the foetus (for example refusing C-section even if it may mean foetal demise),

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then this decision must be respected, if no room is left for discussion and the mother's decision is final.

This debate is further complicated when we consider the potential implications of multiple-pregnancies. In this instance, doctors may be performing surgery on a patient (one of the foetuses), who will derive no benefit from it without consenting. It is the ability to consent that differentiates the mother and the otherwise healthy foetus in this case (14). We could rationalise this scenario in several ways, such that it is ethically defensible; one is to take a utilitarian view (15:pp 8-12) in that surgery that might save the life of one of the twins, and with the mother's consent, satisfies the needs of two out of three of the individuals involved, providing the greatest benefit. Further to this, we can justify the scenario in that the mother is allowed to make decisions in regard to the treatment of her children in their best interest, as enshrined in the law (16: sec 3). Lastly, as above, we can justify such actions by subordinating the rights of the foetuses to those of the mother, who is justified in making such decisions for her children. It is reassuring that currently only medically essential treatments are allowed in such scenarios, it would be a much more disconcerting prospect if the mother was consenting for surgery, eg, purely for the cosmesis of one twin.

A further complicating factor in this discussion is that of gender justice and the role it plays here. This consideration becomes particularly apparent with the recent legislative changes that have narrowed reproductive rights in many developed nations and are seen by some as a direct affront to gender justice, such as abortion law repeal in the United States (17, 18). Although such discussions generally centres around a woman's right to end her pregnancy, inevitably the narrative may soon include discussions relating to the ethical consideration owed to the foetus. Certainly, if the foetus is considered a person at fertilisation as indicated by restrictive abortion legislation, surely the rights owed to them should extend to situations in which the mother does harm to the foetus, for example in a case of smoking whilst pregnant. At a time when reproductive rights are threatened, it is essential that clinicians evaluate their moral standpoint in such discussions.

Learning points

In terms of how the case I witnessed was resolved, and how it will affect my future practice in regard to similar ethical problems, the case was handled satisfactorily by the medical team, the mother was counselled extensively about the surgery and given all the information enabling her to make a decision that both she and the team saw as being in the best interests of her two developing children. Because of this, trepidation about infringing the moral rights of each did not come to be an issue. In future, I will be much more aware of the ethical issues that surround pregnancy and the relevant interventions available. I will endeavour to make recommendations to patients based on sound moral judgement, such that both the patient and I can be confident that we are doing the right thing. In terms of recommendations I would make to my colleagues, I would say that certainly this is an area of keen debate, and even today there is a paucity of guidance on the topic, necessitating medical staff to make their own judgements in regard to issues described above – personhood, foetal rights and reproductive rights. Therefore, it is essential that medical staff consider the subject holistically and practise introspection to ensure they understand both the moral and legal standpoints of the healthcare climate in which they work, and also introspect on their own views so as to deliver a well-rounded and robust practice.

To conclude, I found delving deeper into the ethical considerations related to maternal-foetal surgery extremely interesting, not least because some of the ethical approaches lead to uncomfortable considerations for someone who seeks to practise medicine using a traditional ethical 'toolkit', so to speak. It gave me insights into the ethical discussion that is ongoing, in regard to maternal-foetal surgery, and which will continue to evolve along with the landscape within which doctors practise medicine. This demands that doctors working in such a field carefully consider their own moral compass. I feel this discussion has afforded me that opportunity. I gained an insight into what could be described as the relatively pervasive paternalistic standpoint that surrounds pregnancy; and now understand how important moral anticipation is for clinicians, in that discussing potential issues *before they arise* allows more cohesive functioning of the medical team, as well as strengthening the patient-doctor relationship.

The issues discussed here will become increasingly important for medical staff working in India as foetal surgery becomes more widespread and recognisable. Currently there is very little ethical guidance and certainly no legal frameworks upon which clinicians in India can base their decision-making. This is an area that will need to be addressed with urgency as foetal surgery, as both a specialty and area of ethical debate, continues to expand.

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