## Ethics and law in clinical practice: maternal-foetal surgery

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No competing interests or funding support to disclose

# Abstract

Here in I provide a reflection on the ethical and moral complexities that surround foetal surgery. Foetal surgery is an ethically complex area within obstetric medicine and one that requires clinicians to exercise their own judgements about morality and personhood in making decisions about treatment. I reflect on my experience of observing a foetal medicine procedure as a medical student and give a summary of the complex ethical arguments that accompany such procedures. I provide learning points at the end of the discussion that should aid 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 practice in the future.

# 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 works mechanistically and how likely it is to be successful. Reflecting on this case, I was able to consider the ethical and legal quandary maternal-foetal surgery presents, with consideration of a couple of important questions, namely; when does a foetus become a patient and what is the moral status of the foetus in such a discussion? Moreover, as a corollary to this question, how can doctors and parents ethically and morally reconcile the in-utero treatment of twins in a situation where, in one, surgery is potentially life-saving and, in the other, could be considered an unnecessary risk?

# Discussion

The fact that maternal-foetal surgery is performed on two patients (if not three), the pregnant women and the foetus(es) which gestates within her, and that the surgery has separate risk and benefit profiles to each patient, inevitably leads to the area being one of keen ethical debate.(1-3)

Moral status can be defined as, ‘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 recognised ethical framework for maternal-foetal surgery,(5-7) base the moral duty owed by physicians to a foetus on their position as patients, a ‘dependent moral status’ i.e. moral status achieved through social interaction, in this case, the patient-doctor relationship. This relationship can be further 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 illustrated that maternal-foetal medicine is underpinned by a paternalistic system of medical practice(9) and it is the justification summarised above that enables the surgeries on the foetus such as that in the case I describe. 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 they are born.(10,11)

However, if we accept the supposition that a foetus is a patient worthy of moral concern in its own right, we then logically may question whether this will infringe on important rights owed to the mother, herself a morally concernable patient, in particular in regards to decisions about treating the foetus being taken out of the mother’s hands, removing her autonomy. Such discussions are inevitably uncomfortable, even anathemic, but one argument that simplifies such discussion is the proposal that a foetus is only a patient because of the mother’s autonomous decision to present that foetus as a patient, requesting doctors provide care for it. Further to this, as with other maternal-foetal ethico-legal considerations, for example The Abortion Act,(10) the wishes of the mother must be considered above that of the moral duty owed to the foetus as a patient by the doctor. Importantly, the arguments discussed herein 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 (12) to make a decision that doctors would argue would damage the health of the foetus (such as smoking), there is little the doctor can in fact 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 owed to the Mother and those owed to the foetus. Certainly in English Law although the foetus is recognised as unique organism with interests, it is importantly not equal to a person and as such it’s 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) then this decision must be respected, if no room for discussion is left and the Mother’s decision is final.

This debate is further complicated when we consider the potential implication of multiple-pregnancies. In this instance, doctors may be performing surgery on a patient 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.(13) There are a number of ways we could rationalise this scenario such that it is ethically defensible; one is to take a utilitarian view (14) in that surgery that might save one of the twin’s lives, 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 mother is allowed to make decisions in regard to the treatment of her children in their best interest, as enshrined in law. (15) And 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 much more disconcerting a prospect if the mother was consenting for surgery purely for the cosmesis of one twin.

A further complicating factor in this discussion is that of gender justice and the role it plays herein. This consideration becomes particular 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. Although such discussions generally centre 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 then 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 practice in regard to similar ethical problems moving forward; 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 in the best interests of her two developing children. Because of this, trepidations about infringing upon the moral concern owed to 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 interventions available during it. I will endeavour to make recommendations to patients based on sound moral judgement such that we can both 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 breadth of the area and practice introspection to ensure they understand both the moral and legal standpoint of the healthcare climate in which they work, but also 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 practice medicine using a traditional ethical ‘toolkit’, so to speak. It gave me insight into the ethical discussion that is, even now, still ongoing in regard to maternal-foetal surgery and surely will yet evolve as the landscape within which doctors practice medicine changes, necessitating doctors working in such a field to 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 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 the patient-doctor relationship.

The issues discussed herein 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.

Word count- 1657

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