Medico-legal aspects of antenatally detected malformed fetuses

S. Degen and A. Kurjak

Significant advances have been made in the successful antenatal diagnosis of fetal malformations. Understandably enough a number of legal problems follow from these achievements. At our centre in Zagreb we have,over the last two years, been studying this important problem. Natural human rights are based on the idea that from conception all men have an equal right to life. These natural rights are independent of time, race, culture or social development. Moreover, from these rights it follows that no man has the right to exclude another without his prior consent. Thanks to real-time ultrasound we now know that life begins very early and that the fetus is actually an individual from conception to birth.

Present attitudes to early fetal life

These can be divided into three different categories:

(i) the early fetus is merely an organ of the mother and is not a living human being;

(ii) from the moment of conception the fetus is a full human being with the same rights and the same value as a baby at birth;

(iii) a fetus is a potential individual and this potential increases throughout pregnancy to become actual at birth.

Legal problems

While medicine is international law is not, and different countries have different laws. However, there are at least four problems regarding antenatal diagnosis. These are injury to the mother, death of the fetus, non-fatal injury to the fetus and failure to diagnose a defective fetus. There is a feeling in several parts of the world, particularly in the United States, that the fetus might be invested with legal status. This might mean that it could bring an action for so-called"wrongul life" if parents did not agree to termination if the fetus were known to be affected. If parents have been informed through genetic counselling that they are at risk of having a child with a serious genetic disorder and have also been made aware of the possibility of antenatal diagnosis, could they defend their action in law if knowingly they subsequently have an affected child, as illustrated by a number of our cases?

We have so far considered that this is the prerogative of the parents but the question arises will this be

0300-5577/82/0102-0029 $ 2.00

so in the future? In our practice we have had parents who for religious or other reasons reject the idea of contraception or antenatal diagnosis with selective abortion. A further problem arises from the introduction of techniques for antenatal diagnosis. These techniques are complex and require considerable expertise. If a mistake is made and the child with a serious deformity is born, are those individuals who carried out the tests likely to be the subject of litigation? Undoubtedly, in the very near future, maybe even now, our profession will require expert legal guidance in these matters.

Some other problems are the following: what if high risk patients are told of the possibility of say,ultrasound and amniocentesis with selective abortion but, for religious or other reasons, take no action. Would they have any defense against an action by an affected child? Where negligence for example, by an operator, during an amniocentesis, causes harm to the fetus then the operator would be liable. Where the mistake results in an existing defect being missed he would not, but in this situation the parents themselves might have a case.

In daily practice it is important to differentiate between three levels of malformation: (1) incompatible for any type of independent life; (2) malformation requiring the life-time aid of another person, and (3) malformation correctable by minor surgery or physical therapy.

The first problem depends only on the decision of the mother. There should be no dilemma since in the interest of the family, a child incompatible for life should not be born. Opinions vary in the second case since this type of malformed child can have a realtively normal life after habilitation. The third case causes the greatest dilemmas as reqards the accuracy of the diagnosis, and the decision as to whether the pregnancy should be terminated or not.

We believe, therefore, that a team should be responsible for the decision to interrupt a pregnancy. In Zagreb a group of professionals has been working as a team for the last three years . We meet to make the final diagnosis which we then discuss with the mother or parents. We have worked with about 60 patients in this way and the information we have collected will be presented in a separate paper.

References:

1. DEGEN, S.: The right to life or death of a malformed fetus, in print (1982).
2. DEGEN,S.: Teratothansia - euthanasia, in: Contributions to antenatal diagnosis, CIOC, Rome, 1981.

Silvije Degen
Solovljeva 22
41000 Zagreb
Yugoslavia