

Statement of
Msgr. James T. McHugh
U.S. Catholic Conference
Before
the Senate Health Subcommittee
on Human Experimentation

FETAL EXPERIMENTATION

On behalf of the United States Catholic Conference, I wish to take this occasion to add to the continuing discussion concerning research and experimentation on human fetuses and infants. In reality, the basic ethical norms governing experimentation on human beings apply as well to the unborn, the neonate and children, and the moral question is essentially the same. However, research and experimentation on the fetus is definitely linked to the question of abortion, and attitudes toward abortion tend to cloud the issue of the ethics of fetal experimentation.

At the outset it may be well to list the types of experiments and procedures that are commonly described as fetal experiments.

1. Injection of drugs or chemical substances into the fetus to monitor fetal reaction or to examine effects on the fetus after an abortion. This includes drugs or chemicals given to the mother to find out if they reach the fetus.
2. Surgical procedures on a fetus or aborted infant (viable or previable) to examine specific fetal organs.
3. Diagnostic procedures to determine the size and placement of the fetus in the womb. This includes sampling of the amniotic fluid to diagnose blood disorders, etc.
4. Tissue cultures using tissue from a living infant, a spontaneously aborted fetus or a fetus obtained by induced abortion.
5. Alterations of the RNA/DNA content so as to change the genetic structures of the embryo or fetus.

Statement of Msgr. James T. McHugh before the Senate Health Subcommittee on Human Experimentation.

No doubt there are other possible experiments, and a careful scientific explanation of these is necessary for informed judgement. Although in vitro fertilization touches on the area of fetal experimentation, it is not included in this analysis.

Unfortunately, a clear delineation of the question of fetal experimentation has been inhibited by the very poor handling of the issue in the press, and by the rather rigid position taken by spokespersons on both sides of the debate. Reports of and reference to pending cases in Boston are a classic example of obfuscation, and these cases have been used by scientists and by the general press to create an atmosphere of panic. A brief description of these two cases may serve to clear up some of the confusion and enable us to more sharply pinpoint the ethical questions regarding experiments on human fetuses.

Presently, there are two separate cases under Grand Jury investigation. The first involves charges against one physician for the death of an aborted infant of 24-28 weeks of gestational age. The doctor is reportedly charged with manslaughter for causing the death of this infant by neglect or by some positive act that killed the infant. In this case, the essential question is whether doctors are obligated to preserve the life of a living aborted child, or whether, since abortion is legally permissible, the doctors may kill or abandon the living aborted child.

The second case involves charges that a team of four doctors violated a Massachusetts grave-robbing statute by performing experiments on aborted fetuses. The doctors are reported to have given chemicals to the mothers

prior to abortion and then dissected the fetuses to measure concentration of the chemicals in the fetus. There are two questions involved here. First, is such pre-abortion chemical experimentation consistent with human dignity, and is it consistent with a "broad interpretation" of the Geneva Protocol of 1925 proposed by Senator Humphrey barring the use of chemical and bacteriological substances in warfare. Innocent unborn children deserve at least as much protection as combatants in war. Moreover, such experiments practically eliminates any possible change of mind for the woman. Secondly, should not experiments on dead aborted fetuses be subject to the same ethical or legal restrictions applicable to other human cadavers? If not, why?

Unfortunately, these cases have been grouped together, and charges have been made that "the Boston cases" will lead to controls on fetal experimentation and that "curtailing such experimentation now will seriously retard medical progress in many other areas." We contend that there is no proof for this assertion.

These cases are instructive because they clearly raise the question of the humanity of the fetus, and the judiciousness of ethical and/or legal restraint on experiments on the fetus.

First of all, the humanity of the fetus is assumed by all concerned, and the basic reasons given for any experiments on fetuses and infants are (1) to gain knowledge about the development of the fetus during pregnancy so as to insure a safe birth and healthy childhood, and (2) to broaden our informational base concerning human genetics so as to discover the causes and possible cures for genetic diseases. No doubt the objectives of most researchers are good, ie, the elimination or treatment of disease.

However, the good intention does not resolve the problem, and thus the need for discussion of the methods used, ie, the specific experiments. A simple utilitarian calculus is not sufficient.

The second issue is the judiciousness of ethical or legal restraint on fetal experiments. Here we are in the area of public policy decision making. Up until the last few years, there were virtually no laws regulating fetal experiments. With the escalation of the abortion debate and the increased scientific and technological competence in dealing with the unborn, a need for some type of regulation became apparent. One of the best examples of this was the ongoing effort of NIH to formulate regulations for fetal research. Other private foundations were attempting to do the same thing. However, the NIH discussions did not center on permitting or prohibiting fetal research, but on the appropriate criteria under which NIH would fund such research. For practical purposes, fetal experimentation has been taking place; and there has been no effort to pry into the research of or police the efforts of scientists. Even the Boston case affecting the four doctors resulted from an article they published in a scientific journal.

It is entirely appropriate that governmental agencies examine the ethical implications of the use of public funds. The government is responsible for protecting human rights as well as maintaining a social system that respects individual liberties. When there is a conflict, the minimal role of law is to protect human rights, even if some personal liberties are restrained. Moreover, the government serves the people by safeguarding society from the possible harm that may be inflicted by an individual or

group of individuals. Again, law is a teacher, and it has the capacity to direct the energies of society in socially constructive efforts. On the other hand, silence or inaction on the part of government can readily be regarded as tacit consent, endorsement or approval of what an individual or group may feel is appropriate in a particular case.

Thus, government funding of experiments on aborted fetuses and infants constitutes something of approval and encouragement of experiments, which place the fetus or infant in the category of experimental specimen. The issue is not simply the right or wrong of fetal experimentation - an ethical problem that exists regardless of federal funding - but rather the responsibility of government to encourage respect for human life, even when the unborn child or aborted infant has been rejected by its parents. The government must not accede to those who say that since a woman has decided on having an abortion, the fetus is of no value but to be experimented on, or the life of the aborted child is of diminished value and need not be sustained. Granting that some information may be gained by such experiments, the far-reaching implications are too great for government to abandon its responsibility to impose some restrictions.

Therefore, the first responsibility of government is to act as the guardian of every fetus from conception on. This is the basis for good maternal and child health care. It is the basis for developing alternatives to abortion. Thus when the mother decides on an abortion, the government, through appropriate structures of guardianship shall insure that no experiments take place on the fetus prior to the abortion, unless such experiments are to insure the survival of the fetus. Moreover, such a guardianship

system would also provide consent for the use of therapeutic procedures - even those which are deemed experimental - to assist the living aborted infant to maintain life and health with a view to survival.

There is no doubt that the opinions of the U.S. Supreme Court in *Wade* and *Bolton* (January 22, 1973) have created confusion in regard to the human rights of the unborn. The Court ignored or overlooked the scientific evidence that the human fetus is a human being who possesses basic human rights. The Court offered no philosophic justification for its moral judgment that the fetus is not a person in the whole sense and represents only the potentiality of life. In the absence of a thorough examination of the evidence and a totally unsatisfactory rationale for the denial of personhood, there is no reason why anyone should accept the opinion of the Court in regard to the humanity of the fetus.

Moreover, this particular opinion of the Court has been especially destructive because in denying personhood to the fetus, it tends to reduce the human fetus to the level of experimental animal. Precisely because of this, there is a more compelling need for regulation of fetal experimentation and fetal research. A reasonable precedent can be found for such government restriction in Senator Humphrey's amendment to the Military Procurement Authorization Bill banning chemical research on beagle puppies. The Senate, on basic humanitarian motivations, voted 76-12 to bar research on dogs. Certainly, then, government can reasonably prohibit research on live human beings, before or after abortion.

There are also other supportive reasons for a government policy of restriction rather than of encouragement or permissiveness. First of all, there is a tendency to overestimate the projected results of fetal experiments. Yet, much of the knowledge that is to be gained by experiments on the fetus or infant can also be gained by animal research. It may be more expensive and more demanding, but where the choice exists, animals should be used instead of fetuses or infants. There do not seem to be any genetic diseases where experimentation on live fetuses is required in order to continue present research efforts. Before proceeding then, we need much more specific scientific information as to what is possible and what are the attendant risks and dangers.

Secondly, much of the information needed to overcome genetic diseases is gained by sampling the amniotic fluid, not from fetal research. The basic research data in the efforts to overcome sickle-cell anemia and Tay-Sachs disease was accumulated prior to the recent use of the live fetus as a research specimen. Moreover, the presence of Tay-Sachs disease can be detected by sampling the amniotic fluid.

There is a serious question among specialists as to whether any serious gains can be achieved by widespread experimentation on aborted fetuses. Dr. James Miller, professor of pediatrics at the University of British Columbia, maintains that very little can be gained from general experimentation on therapeutically aborted fetuses. Dr. Kurt Hirshhorn of Mt. Sinai Hospital in New York agrees that therapeutic abortions do not yield much valid information. In April, 1973, Dr. Robert Berliner, NIH Deputy Director for Science, stated that "NIH does not now support research on live aborted

human fetuses and does not contemplate approving the support of such research. We know of no circumstances at present or in the foreseeable future which would justify NIH support of research on live aborted human fetuses."

Fourthly, a basic requisite for any experiment is the informed consent of the patient. That is impossible in cases of experiments on the aborted fetus or infant, because the fetus cannot consent and the mother has already decided on the death of the fetus. Thus, some system of guardianship, along the lines outlined above, is necessary to satisfy the requirement of informed consent for the fetus.

There is certainly a need for considerably more dispassionate discussion than has taken place up till now. We are told that fetal experimentation is necessary to save children's lives, to gain scientific knowledge, to overcome genetic diseases. These generalizations must be tested and proven before any effective dialogue can take place. Moreover, even when the individual assertion can be proven to some degree, it is often basically a utilitarian argument. If experimentation on the fetus is justified to gain knowledge or overcome genetic disease for others, then the same principle can be applied to experiments on other human beings, sick or well, old or young, dying or growing better, abandoned or rejected by others.

Moreover, the generalizations that permeate the present discussion fail to make necessary distinctions. We must distinguish:

- a) Experiments on live or dead fetuses.
- b) Experiments or procedures to save this particular fetus as compared to those that will presumably increase scientific knowledge so as to help others.
- c) Experiments that simply verify existing scientific facts as compared to experiments calculated to prove a scientific hypothesis.

d) Surgical interventions on the dead fetus from induced abortion to compare fetal organs with those of children or adults, or the examination of a specific organ from a spontaneously aborted fetus to find the cause of the spontaneous abortion.

e) Surgical interventions to legitimately investigate some pathology as compared to surgical interventions that allow surgical residents an opportunity to sharpen their surgical skills.

Granting that much more attention must be given to what is meant by fetal experimentation, what can reasonably be expected in terms of results and dangers, how some consent system can be fairly arrived at, and what are the long range implications of federal funding of fetal experiments, we submit the following as basic principles to guide the ongoing discussion.

1. Experimentation on the unborn fetus in the womb of its mother is to be prohibited unless such experimentation is necessary to insure the survival of the fetus or insure its health and well-being after birth.
2. All experiments and procedures on the fetus that survives an abortion are to be prohibited unless such actions are directed toward preserving the life of the fetus. This allows the use of techniques to save the fetus even though the chances of success are slim.
3. All experiments on the fetus, prior to or in the process of abortion are also to be prohibited. The rules of informed consent for human experimentation apply here, and the fetus cannot

give consent. Moreover, the consent of the mother, who has already decided to end the life of her yet unborn offspring, cannot be accepted as a fair or just decision on behalf of the unborn.

4. Experiments on the fetus prior to abortion that are to be completed after the abortion and death of the fetus are also to be prohibited. Once again, the unborn child cannot consent, nor can anyone else presumptively consent in his or her behalf.
5. There should be a general predisposition against experiments on dead fetuses after abortion. However, some distinctions must be made:

- a) Experiments on the stillborn child or spontaneously aborted fetus are permitted to determine the cause of death or spontaneous abortion and to insure survival of other infants. The norms apply here as would apply to an autopsy of an adult.

- b) Experiments on dead fetuses that are purely speculative and are performed simply to describe the human organs to scientists or medical students should be prohibited. The type of experiment considered here would be surgical exploration of organs, measured reactions to drugs, etc. The knowledge gained in this type of experiment can be gained from animal studies or from other cadavers. The reason for a more severe limitation of such experiments on dead fetuses is that in light of the value judgements reached by the U.S. Supreme Court in *Wade and Bolton*, the human fetus can too easily be reduced to the status of an experimental animal. Government should not allow this to happen.

- c) Specific experiments directed toward the elimination of a particular disease, may be permitted on the dead fetus, eg, tissue culture. In such a case, the intended purpose of the experiment should be carefully spelled out, there should be reasonable hope that specific scientific information that is otherwise unavailable will be obtained, and no other experiments may be carried out. Consent of the parents should be obtained. Once the scientific hypothesis is verified satisfactorily, such experiments should no longer be permitted.
- d) The physician who performs the abortion should never be allowed to perform or participate in the experiments on a dead fetus.

In conclusion, the preponderant scientific evidence establishes that the fetus is a living human being in its mother's womb, and often continues to live for at least a short time after certain abortion techniques such as hysterotomy. This procedure is the one employed when preservation of the fetus for experimentation is anticipated. However, we cannot allow a dedication to scientific inquiry to blind us to the reality of existing human life, nor can we justify denying the unborn child the rights and dignified treatment accorded other human beings simply for utilitarian reasons. The observation of the NAS group of molecular biologists calling for self restraint by scientists engaged in specific genetic experiments can be helpful in this area also. The group acknowledged that their concern was based on judgements of potential rather than demonstrated risk, and that

adherence to their recommendations might entail postponement or possible abandonment of certain types of scientifically worthwhile experiments. Nevertheless, the group concluded that their concern for the possible unfortunate consequences of indiscriminate application of certain techniques prompted them to urge fellow scientists to withhold specific experiments "until attempts have been made to evaluate the hazards and some resolution of the outstanding questions has been achieved." We urge a similar attitude in regard to fetal experiments.

Msgr. James T. McHugh
United States Catholic Conference
July 23, 1974