Conjoined twins and the right to life

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.

Examples of incomplete twins

FOETUS IN FETU

Kang Mengwu was born in 2009 with the tissues of her conjoined twin inside her.

A BODY BUT NO HEAD

Risal Jev was born in 2009 with a headless twin attached to his torso.

A HEAD BUT NO BODY

Minar 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.

Examples of incomplete twins

PARASITIC TWIN

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

TWO HEADS ONE BODY

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

LACK OF KEY ORGANS

Mary, one of the twins in Re A (Children) 2006, had a primitive brain, heart defects, and no functioning lung tissue. She depended on her twin for survival.

A preliminary issue before homicide arises is: “Are conjoined twins persons capable of being killed?”

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 mother’s body. However, many incomplete conjoined twins could not survive without their twins. In Re A (Children) 2006, Judge Weatherill considered this but said the fact that Mary was dependent on her sister for survival could not dispute the view that she was alive and separate.

Alive?

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 problematic with infants. The application of others sometimes yields illogical 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" - all incomplete conjoined twins would be persons protected by the criminal law of homicide.

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 Barlow, a holistic re-contextualisation 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.

Are there two persons or one (or perhaps not one but not two)?

The criminal law presupposes that victims of homicide are whole, integrated and individuated beings. Have conjoined twins, who are not individual? We regard ourselves sometimes as one being, sometimes as two, and sometimes not one.

With incomplete twins, it is difficult to know where to draw the line between one person that has an appendix, and two people that can be victims of homicide.

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.

Colleen Davis

Associate lecturer

Griffith Law School

Griffith University

Gold Coast campus

Queensland Australia

celena.davison@griffith.edu.au

PhD student

University of Queensland

Funding to attend this conference was provided by the Social and Legal Research Centre, Griffith University.