A new federal law signed by President George W. Bush on April 1, 2004, makes it a separate and distinct crime to end the life of a fetus during a violent attack on the mother. If violence against a pregnant woman causes the death of a fetus she is carrying, the offender could be convicted of a separate murder as well as the underlying assault. Both supporters and opponents agree that this law is significant in its recognition of legal rights from the earliest stages of development. Could there also be broader implications for health policy?

THE UNBORN VICTIMS OF VIOLENCE ACT

The most far-reaching feature of the Unborn Victims of Violence Act (Public Law No. 108-212) is the definition of the “unborn victims” it seeks to protect. The new federal crime applies when violence injures “a member of the species Homo sapiens, at any stage of development, who is carried in the womb.”

These words can be interpreted to include embryos from the point of conception. Under the Supreme Court’s 1973 Roe v. Wade decision (410 U.S. 113), which legalized most abortions, fetal rights are not fully recognized until the point of viability outside the womb. Most medical experts see viability as occurring near the end of the second trimester of pregnancy or at the start of the third. The new law both extends recognition of “rights” well before this time and significantly expands the scope of protection by recognizing a separate crime—whether or not the perpetrator knew that a female victim was pregnant.

The direct impact of the legislation will probably be limited because most violent crimes are prosecuted under state law, not federal law. The range of crimes to which it applies includes drug-related shootings, terrorist attacks, crimes committed on a military base, and threats to a federal witness. Supporters of the law contend that it will not affect abortions because prosecution is specifically excluded when an abortion is legally performed; however, opponents fear that the law could set a precedent that might ultimately undermine abortion rights.

IMPLICATIONS OF THE NEW LAW

Beyond the sphere of violent crime and debates over abortion, however, might the legislation’s expanded scope of protection have broader legal implications? There are a number of medical and research contexts in which fetal protection is an important issue. They include areas such as stem cell research, medical malpractice, and environmental protection. Although the law’s expanded definition of “protected” unborn victims is limited to harm related to a set of violent federal crimes, might it extend to medical issues such as these in the future? The actual effects will depend on the decisions of legislatures and courts over time, but it is possible to speculate on some possible outcomes.

Stem Cell Research

Some researchers are heralding stem cells as a potential cure for a range of debilitating degenerative diseases, including Parkinson’s disease, Alzheimer’s disease, and diabetes. Stem cells are derived from human embryos in the first weeks of development, usually from excess embryos that have resulted from in vitro fertilization. For the stem cells to be extracted, the embryos must be destroyed.

The protection of the new law applies to victims “carried in the womb”; therefore, the law would not directly pertain to embryos destroyed in stem cell research. However, laws have been enacted in a few states, with proposals pending in other states and in Congress, to outlaw stem cell research as a practice that destroys human life. Having a federal law in place that recognizes legal rights at this early stage of development could facilitate acceptance of these proposals by legislatures and judges.

Malpractice Litigation

Medical malpractice is not a crime; it is a basis for civil liability and applies as a matter of state, rather than federal, law. Therefore, the new statute would not directly cover acts of malpractice against a pregnant woman that also harms a fetus that she is carrying. However, some courts have recognized the rights of an unborn child—usually a fetus that has reached the point of viability outside the womb—to recover damages for medical mishaps. A federal law that recognizes legal rights as beginning at the earliest stages of development has the potential to make it easier for courts to accept the expansion of physician liability to apply to younger victims.

Environmental Protection

On a broader public health scale, environmental regulation seeks to control pollution that exposes the public to a range of toxins that are carried in the air and water. Many chemicals are considered toxic because of their actions as teratogens, or promoters of birth defects. Pollution that harms a pregnant woman with teratogenic, or possibly lethal, effects on her fetus might be seen as a crime against the fetus.

Although pollution is not one of the violent crimes addressed by the law, the precedent of recognizing legal rights from the earliest stages of development may influence regulators and judges who enforce the laws to take a more expansive view of environmental harm. It could also create new bases for private lawsuits against polluters. Similar implications might be raised for the regulation of toxic exposures that have the potential to affect pregnant women in the workplace.

THE ROAD AHEAD

Debates over the point at which human
life begins are highly emotional. Unfortunately, as medical knowledge advances, the problem does not seem to be approaching resolution; instead, opinions are becoming ever more intractable as new techniques in research and clinical care push disputes concerning abortion into new arenas of medicine and law.

When Roe v. Wade became law, in vitro fertilization was five years away and the therapeutic uses of embryonic stem cells were unimaginable. Even though the Unborn Victims of Violence Act is focused on a fairly narrow range of federal offenses, its influence could extend more broadly as a law addressing legal rights before birth. At a minimum, its implications will be the subject of debate. As other aspects of abortion debates have taught us, the ultimate outcome will reflect not so much factual questions of medicine and law but underlying values that determine how we interpret developments in these fields.