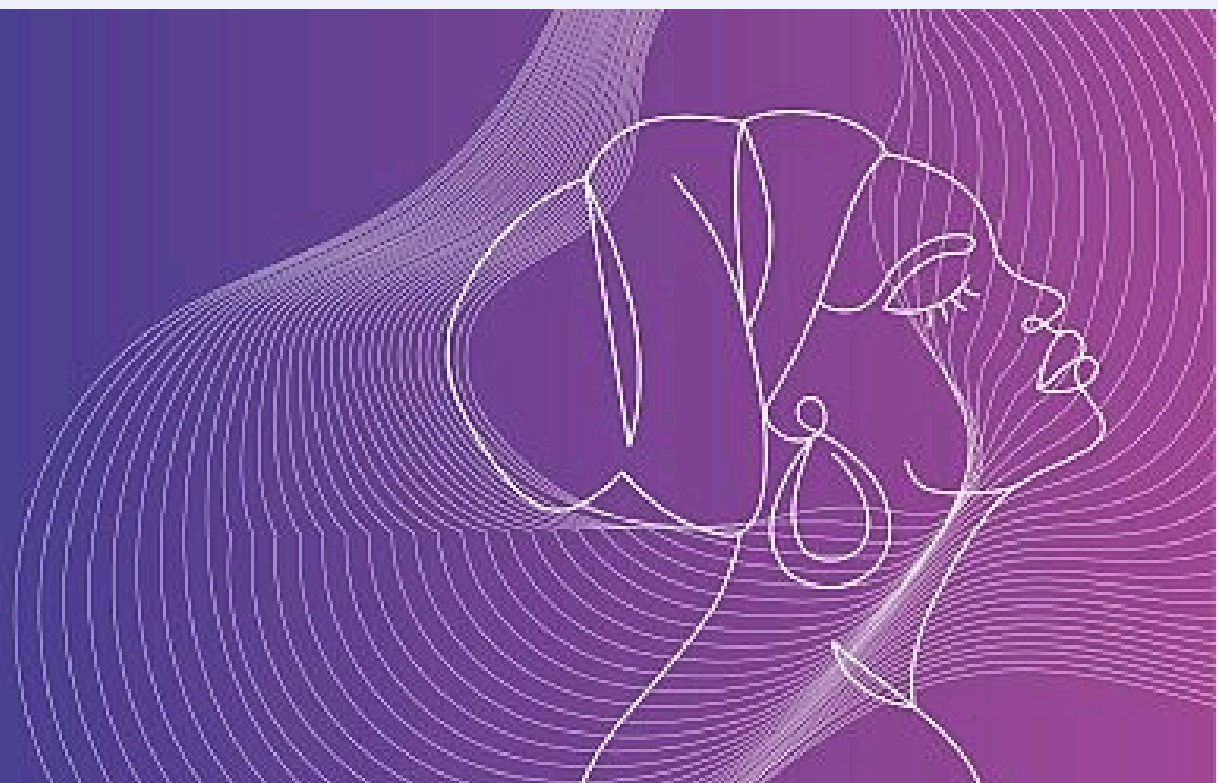




Abortion and foetal abnormality: an outdated legal inconsistency perpetuating ableist stereotypes

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1. Introduction and background

The Abortion Act 1967¹ allows for termination on the grounds of foetal abnormality without time limit – s1(1)(d), brought in as part of the Human Fertilisation and Embryology Act 1990.² In 2022 this law was challenged in an unsuccessful judicial review (*Crowter*³), with the appellants arguing that the law ‘perpetuates and reinforces negative cultural stereotypes about people with disabilities’, and is therefore against their human rights. I argue that the judicial review could have been successful, and consider reasons why s 1(1)(d) should be amended if it is to protect reproductive autonomy whilst aligning with current scientific advancements, ethical standards, and public attitudes.

“AT THE MOMENT OUR ABORTION LAW SAYS THAT PEOPLE WITH DOWN SYNDROME HAVE LESS VALUE. THIS IS NOT JUST ABOUT HAVING A JOB OR A FLAT. IT IS ABOUT BEING ABLE TO LIVE. IT IS THE MOST IMPORTANT THING.”
Heidi Crowter, 2022³

2. Aims and objectives

This research is a medico-legal dissertation that explores legal and ethical standpoints in order to analyse the judgement in *Crowter*³, specifically with regard to Article 8. Article 8 is a section of the Human Rights Act 1998⁴ pertaining to the right to a private life. It is used in a variety of ways, and although the *Crowter*³ appeal was unsuccessful, it raised a number of important questions around disability discrimination, what disability is, the balancing of rights, and the implications of the law as it stands. This research explores these questions, and challenges the conclusions reached in the case.

3. Method and approach



The analysis starts by examining the idea of inconsistency in the law with regard to choice, often used as a defence for s1(1)(d)¹. Then, in the section titled ‘Foetal interests: life unworthy of life?’, the perpetuated stereotypes are considered. Furthering this, the two sections on medicalisation explore the ideas that underpin the legal messaging and practical enacting of the law. I combine arguments presented in the case itself with my own research and analysis.

4. Results of analysis

INCONSISTENCY IN THE LAW

- A key argument for the Abortion Act 1967's¹ existence as it stands is that it enables reproductive autonomy, however if this was the central reasoning, it follows that the law would be much more permissive
- The Abortion Act 1967¹ exists so that abortion can be performed legally, but I argue that it is not centred on the reproductive autonomy of the pregnant person, leaving this autonomy worryingly unprotected
- Both the UN and the WHO recommend total decriminalisation of abortion⁵

MODELLING DISABILITY

- The medical model (which I argue aligns with the law as it stands) is more binary, constructing disability as a problem to be either pitied or overcome
- The social model views disability and the barriers faced by people with disabilities as largely socially constructed
- UNCPRD⁶ combines aspects of the two models - mirroring many in the disability studies sphere

FOETAL INTERESTS: LIFE UNWORTHY OF LIFE?

- The Infant Life Preservation Act 1929⁷ still exists, therefore awarding foetuses older than 24 weeks some form of legal status (even if it is not the same as that of a born child)
- The way that the law treats foetuses with the risk of a disability versus those without is fundamentally different
- Statutory language matters - and the use of the words ‘suffer’ and ‘handicapped’ are particularly important

POWER GIVEN TO MEDICINE

- The ultimate decision about what can be defined as a ‘serious handicap’ in order to satisfy s 1(1)(d)¹ lies with the clinician
- History of medicine and disability is fraught - Willowbrook experiments, forced sterilisation, forced institutionalisation⁸
- RCOG guidelines⁹ seem to reflect a more medical model of disability, neglecting to mention social support as a alleviative measure when considering the seriousness of a potential disability

5. Conclusion

This research led me to conclude that there is clear logical evidence to support the argument that the legal messaging warrants a breach of article 8 rights, and that Heidi Crowter could have been successful. In the modern context that she finds herself in, where attitudes to disabilities of all kinds have come a long way from those that existed when s 1(1)(d)¹ was brought in, she has strong grounds to say that the law is simply ‘incompatible and irreconcilable’³ with the current social climate. Attempts to remove selected types of foetuses (such as those with Down syndrome) from the remit of s1(1)(d)¹ will only deepen the problem. If these medico-legal questions are not considered, greater availability of selective termination and modern day eugenics may be ushered in, whilst leaving the autonomy of the pregnant person unprotected. Though it will not be easy, a regulated, modern framework for the termination of pregnancy must be developed if we are to truly promote autonomy whilst reflecting current social attitudes to disability.