Avoiding the battle or deliberately opaque?
Fair Labelling & accessible language in the abortion debate

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Abstract

A visual presentation of the outmoded, frequently opaque and confusing language used in abortion regulation, professional guidance, related literature and debate. This poster presentation will attempt to stimulate debate about the ethical, moral, practical and legal implications of the language and labels used and the case for/against continued opacity.

No specific position is taken on the rights of the embryo/fetus or on any right to abortion but it is argued that any legal protection that is offered should be reasonably defined.

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Offences

S58/59 Offences Against the Person Act 1861(E W NI)

- **To procure or cause 'abortion' & 'miscarriage'**
  - All forms of in utero harm & damage? Feticide vs TOP?
  - Start of protection - fertilisation or implantation?
  - First trimester reductions & absorption of fetal products.
  - Descriptive labels or differentiated offences? Who are they addressed to?
  - Symmetry of interpretation between offence /defence & other legislation.

Infant Life (Preservation) Act 1929 (E W & NI*)

- **'capable of being born alive'**
  - Scope of offence ?
  - Viability is an imprecise moral/legal determinant. It relativizes legal protection to knowledge/ competence of the health care professionals & the technology available. What are the other options (sentience /features)?
  - Still an offence if not covered by AA1967 or S1(1) ILPA 1929

Births and Deaths Registration Act 1953 (E W)

- **' a child after the 24th week … did not at any time… breathe or show any other signs of life'**
  - Viability/calculation of time/signs of life?

Defences

Abortion Act 1967 (as amended by S37 HFEA 1990) (E W S)

- **A defence to the law of abortion** but not homicide.
- S1(1) **'opinion formed in good faith'**
  - Existence of ground vs belief. Based on what facts?
- S1(1)(a) **pregnancy not exceeded its 24th week'**
  - Calculation of time?
- S1(1)(a) & 1(1)(c) **Balancing of risks**
  - Always an Inherent risk?
  - Risks to other embryos/fetuses? What is the legal position between embryos/fetuses?
- S1(1)(d) **'a substantial risk that if the child were born it would suffer from ..abnormality as to be seriously handicapped'**.
  - Subject to alleviation by medical or other means? Medical vs social models of disability.
  - Suffering – from whose perspective? Relevance of parental views?
  - Balance between severity & likelihood?
  - Assessment based on worse case clinical outcome or statistical likelihood?
  - Future risks of disability?
- S1(2) **'reasonably foreseeable environment'** . More discretion?
- S1(3A) **'treatment …in the use of such medicines'**
  - Medical abortions: when does treatment start/end?

Professional Guidance

The case for flexible (open) language? The British Medical Association (2007) argue that blanket rules cannot be applied to **'such sensitive and difficult decisions'** . The Royal College of Obstetricians and Gynaecologists (2010) argue that precise definitions of abnormality are **'impractical'** and lists of conditions are **'unrealistic'** .

Is the Abortion Act a pragmatic solution or an unjustifiable sidestep to an important ethical debate (Mavroforou 2006)? Should doctors define disability or their own defence? Finnis(1993) argues doctors have 'no standing to settle for the whole community …issues of meaning, consistency, humanity & justice' . The DPP has highlighted the lack of medical guidance on risk assessment & the consequent difficulties for prosecution(2013). Does legal oversight restrict choice and patient care?

Selective reduction/termination in multiple pregnancy
There is a lack of terminological consistency in relation to selective reduction/termination. Legendre et al (2013) argue for a clear distinction between selective reduction on grounds of improving maternal/fetal outcomes and selective termination on grounds of fetal abnormality. Mahowald (2002) addresses the obscuring nature of the language used – 'reduction' hides the fact of killing/termination albeit coupled with pregnancy preservation. Daar (1992) argues that 'abortion and selective reduction are sufficiently distinct to warrant distinct legal standards' . S5(2) AA 1967 is silent about the selection process absent abnormality.

Conclusions

1. There should be **clear, fair, accessible and consistent legal rules** on abortion (Hart 2012/Beauchamp 2013). Pregnant woman should be entitled to accessible laws that clarify whether they qualify for a lawful abortion (A, B, C v Ireland 2010). Equally doctors and health professionals should be entitled to access the scope of lawful activities and criminal sanctions.

2. Parliament should **create a single statutory framework** (where possible for the UK) defining offences & defences using consistent legal definition. Abandon old terminology & consider 'the deliberate causation of damage to or termination of in utero human embryo/fetal life' . There should be consistency with existing legislation and consideration of the causal nexus between conduct /damage and the type of damage required.

3. **Any legislation ought to clarify:**
   - The role of viability & provide a statutory definition (NCB 2006)
   - The calculation for pregnancy duration.
   - The starting point for legal protection.
   - The risk assessment process for any abnormality ground, relevant factors & the position on future risk of disability.
   - The role of parental/patient consent.
   - The legal position between fetuses in multiple pregnancies (addressing the 'life boat' dilemma whether in the language of rights or protection).
   - The legal position of selective terminations based on likely outcome for remaining embryos/fetuses.
   - A framework for resolving conflicts between doctors or parents or between these groups.
   - Whether the current GMC oversight is sufficient given the medical model adopted in this jurisdiction?