

# Britain: Abortion rights under attack

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The right of women and their physicians to decide on abortion is under attack. Reverend Joanna Jepson, the curate of St Michael's Church in Chester, has won the right to a judicial review into a late abortion that she claims was unlawful.

Doctors based at Hereford National Health Service conducted an abortion on an unnamed woman after the 24th week of her pregnancy. The foetus had a cleft palate. Joanna Jepson objected to the abortion in 2002, but the police decided not to take the matter any further after taking advice from senior members of the Royal College of Obstetricians and Gynaecologists. Following this Jepson started legal action against West Mercia Police for not instituting a full investigation into the doctors concerned as a result of her complaint. The High Court rejected her initial application for a judicial review but this decision was reversed under appeal in December 2003.

The implications of this case are far reaching because the Abortion Act 1967 did not list the qualifying conditions for a late abortion. The wording was left deliberately vague so as to allow doctors to exercise clinical judgement on a case-by-case basis. This situation remained after the Abortion Act was revisited in 1990. If the curate's case is upheld this element of personal and medical independence is threatened and women may be forced to continue pregnancies where the foetus has physical or mental abnormalities.

It is unclear exactly how Reverend Joanna Jepson found out about this late abortion. She has no known personal relationship with the woman, no special medical knowledge and is not privy to any of the medical particulars of the case.

Ann Furedi, the chief executive of the British Pregnancy Advisory Service, said, "I think it is absolutely bizarre that the Reverend feels—knowing absolutely nothing about individual circumstances of this woman, that she can go on to take legal action around it."

Jepson's objections have been subjective and emotive in the extreme. She claims that the foetus was not suffering from a "serious handicap", so an abortion was unwarranted and therefore illegal under present legislation. She insists that a cleft palate is a trivial and even purely cosmetic condition. This opinion is based on the fact that Jepson herself was born with a mouth malformation that was rectified by surgery.

Her view ignores the weight of medical knowledge about the condition. The severity of cleft palate varies widely, and in some cases the deformity can be life threatening. Some experts also say that cleft lip and palate may be a marker for a multitude of severe congenital abnormalities. Doctors did not have the ability to detect this problem in a foetus until very recently. Possessing this

information now allows doctors to fully inform women of the condition, who are then able to take whatever action is deemed medically necessary.

Jepson also asserts that the abortion amounts to practicing eugenics. She told the BBC that she wants to see "a clarification of the law so that abortions do not take place for trivial reasons and so that discrimination against the disabled does not become widely accepted." She added, "This case is saying enough is enough.... We need to resist the belief that the value of human life lies in physical perfection."

Far from protecting individual rights against an imagined policy of eugenics, Jepson intends to remove any choice from the woman and her doctors and replace this with an actual policy of enforced pregnancy.

Whatever Jepson's intentions, a misplaced attempt to defend the rights of the disabled is not the primary motivating force behind this legal move to undermine the rights of women over their own bodies. It is backed by the religious right in order to assert its view that abortion is against God's will.

At the same time as Jepson is taking her case through the British courts, anti-abortion groups are intending to use the European Union constitution to deny women the choice of abortion when they are carrying a foetus with severe genetic disorders.

Professor Jack Scarisbrick, national director of the anti-abortion group "Life", claims to be very confident about winning the argument. He explained his position to the BBC, "If you have a law which says special needs children can be killed, you are clearly practising eugenics. It is weeding out substandard human beings."

The EU's Charter of Fundamental Rights outlaws eugenic practices, but this refers to selection programmes. It states, "This includes campaigns for sterilisation, forced pregnancies, compulsory ethnic marriage and all acts deemed to be international crimes in the statute of the international criminal court."

The director of the Centre of European Law at King's College London, Professor Piet Eeckhout, explains, "There is quite a lot of misunderstanding about this charter. The idea is not to restrict the individual or the individual's choice but rather to protect the individual."

In response to the claim that aborting a foetus with a severe abnormality was tantamount to eugenics, the chief executive of the British Pregnancy Advisory Service said, "Eugenics is about trying to eliminate certain types of people or characteristics from the population. It's a social movement. When women take the decision to end a pregnancy affected by Down's syndrome or spina bifida they are making a personal or individual choice. It

would be ridiculous for anyone to suggest that a woman making that decision is doing so with any eugenic intent.”

A late abortion is not performed lightly. It requires the agreement of two doctors and of the pregnant woman. She would have to consider the implication of the disability on the prospective child, on herself and other members of her family. This is not a policy of eugenics. Women are not forced to abort even if continuation of the pregnancy could be fatal to the mother. No matter what medical advice is given, at present the choice to terminate or not ultimately rests with the pregnant woman. It is this that is under threat.

Out of a total of 185,000 terminations that took place in Britain in 2002 only 110 were carried out after 24 weeks. There were just four terminations citing “severe abnormality” involving cleft lip and palate in 2001.

The number of late abortions is always extremely small and relatively static in relation to the number of abortions as a whole. Yet this is the chosen battleground of the religious right. As their total opposition to abortion has made little popular impact, the anti-abortionists are instead focusing on restricting women’s access to abortion. Late abortion is seen as a soft target.

Last year witnessed the most significant federal restriction on abortion in the US since it was made legal 30 years ago. President George W. Bush signed a bill banning a form of late abortion. The procedure known as dilation and extraction can be used safely up to nine months gestation. It was used only in extreme cases where a woman’s life was in danger because of a seriously malformed foetus. As of now women may at best become infertile because of unnecessary abdominal surgery to remove a foetus that is so malformed that it has no chance of life, or die trying to give birth to it.

The confidence of the religious right has increased substantially as a result of a successful campaign of media manipulation and misinformation that ran roughshod over the health of women and the medical professionals seeking to safeguard it. They used the emotive and indiscriminate term “partial birth” to attack the medical procedure and provide a law that can be used against other forms of abortion.

The media was complicit in revealing graphic descriptions of the abortion procedure and helped create a climate where a difficult life saving operation was described as equivalent to the torture and mutilation of babies.

This constant reference to the foetus as a baby has become common coin for the anti-abortion lobby.

A baby has an independent existence and is protected under the law. A foetus has no independent existence and is part of the mother. This understanding of the relationship between a foetus and the woman provides the bedrock to all the laws concerning reproduction. It determines that what has primacy in law are the rights of the woman to control her own body, including the right to decide whether to bring her pregnancy to fruition or to abort.

All challenges to abortion law therefore rest on the assertion that the foetus is a human being in its own right and therefore must be offered protection in law, rather than something that only has the potential for life and the development of consciousness. This assertion rests on religious, rather than scientific premises—that the

moment of conception is the expression of the divine spark and the creation of a “soul”.

This is now being put to the test by a case currently being considered by the European Court of Human Rights. A Mrs Thi-Nho Vo is arguing that the unborn child is protected by Article 2 of the Convention, which guarantees the right to life.

In 1991 Mrs Vo went to the Hotel-Dieu hospital in Lyons, France, for an examination when she was six months pregnant. On the same day a woman with the same name was due to have her contraceptive coil removed. Mrs Vo could not speak any French and the gynaecologist mistook her for the other patient. In attempting to remove the non-existent coil he pierced the amniotic sac and a therapeutic abortion had to be carried out.

The doctor was charged and acquitted of unintentional homicide. He was then convicted on appeal and sentenced to six months in prison and given a 10,000-franc fine. This was overturned on appeal on the grounds that the foetus was not a human being and therefore not entitled to legal protection.

Bruno Le Griel, the lawyer presenting the case for Mrs Vo, told the BBC, “I will be asking the court to recognise reality, that is to say the human life, a human being, begins at the moment of conception.”

If this case were successful it would not only affect the status of all current European abortion law, but could even impact on methods of contraception such as the “morning after” pill.

It is clear that Mrs Vo was devastated by the termination of her pregnancy, which was a tragic mistake. However, the anti-abortionists are utilising her understandable grief to change the status of women, making them subservient to their capacity to reproduce.

The control of reproduction, to be able to choose whether or not to have a child, with whom and under what conditions, is a basic democratic right. A spokesman for Marie Stopes International said, “We too would like to see a change in the law, but one which would allow abortion on request, thus removing this whole questioning of women about their motives.”

As scientific techniques advance, the point where a foetus is able to survive outside the womb becomes earlier. The religious right argues that the term late abortion must be altered accordingly. Scientific advances will also enable malformations to be identified earlier and possibly treated—preventing the need for some abortions and necessitating others. There are, therefore, a plethora of complex issues raised by the question of abortion. But the central issue is who decides whether a pregnancy should run full course. A woman must make that choice not any state or government.



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