

It's time to rethink our attitude to abortion

New evidence will reopen the abortion debate. But when it does clinging on to old ideas would be a mistake

By James Mumford

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A new set of figures was published last week. The figures were released without much fanfare, but they are potentially explosive: a rising proportion of premature babies born at 23 weeks are surviving. More accurately, Britain's best neonatal units are saving them. Freedom of information requests from 25 hospitals revealed that 120 babies born at 23 weeks survived over the past four years (likely to be more given the limited sample size). In 2006 just 19 per cent of babies born at 23 weeks survived, according to one study. Last year, in specialist units like North Bristol's, all those foetuses born at 23 weeks survived.

This is wonderful news. But it is also controversial. It is controversial because under current laws foetuses can be aborted up to 24 weeks gestation. In the past that's when they were considered "viable". But what if today many more 23-week-old babies stand a chance of making it? Why should doctors terminate the life of a foetus now old enough to exist outside the womb?

Many human rights campaigners are seriously provoked by this contradiction. They argue the abortion limit should be lowered to at least 20 weeks. But despite the amazing advances in neonatology, there is reason to hesitate at this suggestion, to step back from the detail and see the whole picture. For the more fixedly you consider the whole phenomenon of human procreation – how human beings are brought into the world by their mothers – the more mistaken it seems to press for a change in the law on these grounds. Why so? Because to press for 20 weeks would be to accept the premise that viability is what should ground the right to life. It would be to click the "Accept" button confirming the terms and conditions of the debate, rather than questioning the entire way it has been framed since 1967.

Forty-seven years ago, when Parliament legalised abortion, they did not declare all pregnancy termination legal. They didn't hold that every creature resident in its mother's womb now lay outside the protection of the law. No, Parliament picked a point in pregnancy after which the state has a "compelling interest" to safeguard human life. Lawmakers opted for viability, described in an earlier piece of legislation (the Infant Life Preservation Act 1929), as the point at which the foetus was "capable of being born alive".

But why should being capable of being born alive – being able to survive the onset of breathing and oral feeding – be the make-or-break threshold? Viability may have solidified as a legal concept, but the science shows that in reality it's a moving target. That's precisely what the data coming out of neonatal units like Bristol's is telling us. In that case why should the permissibility of abortion depend upon something as unstable as the state of medical technology? Upon something differing from hospital to hospital within our own country, let alone between hospitals in developed and developing nations? So, say a hospital in Mali has a neonatal unit that lacks sophisticated technology. It follows that the unborn babies of women who live in that hospital's catchment area are not viable. But why should that affect their human rights?

More fundamentally, what feminist thinkers have shown is the fact that viability constitutes a profound category mistake. Human beings arrive in the world in a state of radical dependency. To insist they reach a stage of independence before we confer rights upon them is to assume, in the words of feminist political philosopher Seyla Benhabib, a "strange world" in which "individuals are grown up before they are born".

In 1973 the Supreme Court judge who wrote the majority opinion in *Roe v Wade*, the case which legalised abortion in the US, defined viability as the moment when the foetus is "potentially able to live outside the mother's womb (albeit with artificial aid)". The bracketed qualification is the giveaway, revealing viability to be a chimera. No foetus born at 23 weeks, or 26 weeks is any more "viable" than an infant of three weeks. They are all dependent, just dependent upon people other than their mother, upon "artificial aid".

But if not viability, then what? Controversial philosophers like the Australian Peter Singer have concluded the threshold must be pushed forward, beyond birth, to the moment when newborns show signs of self-consciousness (which he dates at "perhaps a month"). Rather than justify infanticide, it seems more reasonable to go backwards not forwards. But could that ever really be done? Certainly not by changing the law overnight. Social reform in this area would require rethinking our whole attitude to the unborn. It would require love, courage and community – not beyond the bounds of possibility.

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How we moderate