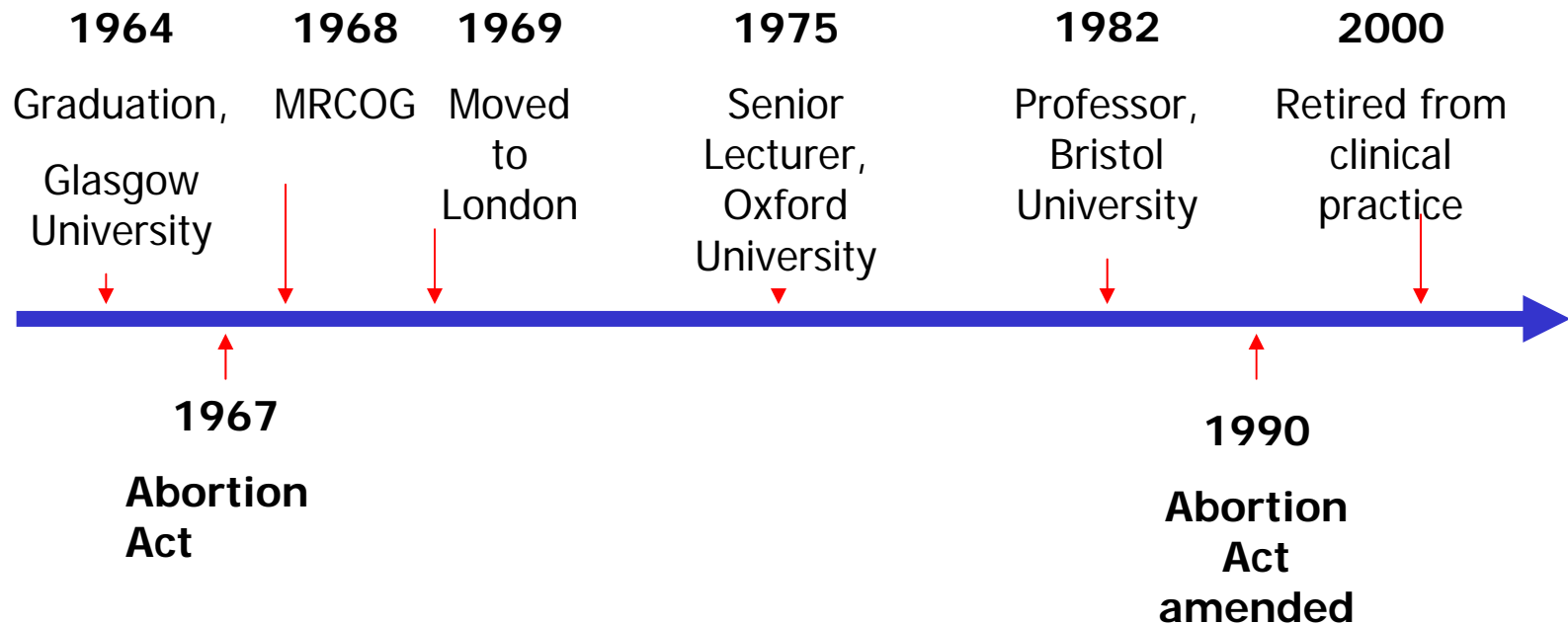


Abortion- the British Law, experiences with the law and unintended consequences, if any

Copenhagen, 29 April 2009

Professor Gordon Stirrat MA, MD, FRCOG
Emeritus Professor of Obstetrics &
Gynaecology
Senior Research Fellow, Centre for Ethics in
Medicine, University of Bristol

Time Line of personal career and abortion law





Personal reflections from career in Obstetrics and Gynaecology

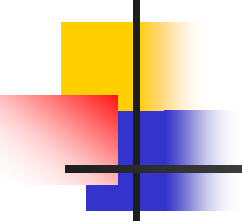
- The question of induced abortion still occupies a central place in contemporary moral debate
- The deliberate taking of human life must always be a very serious matter
- The legal definition of personhood must not be used to ignore the ethical issues

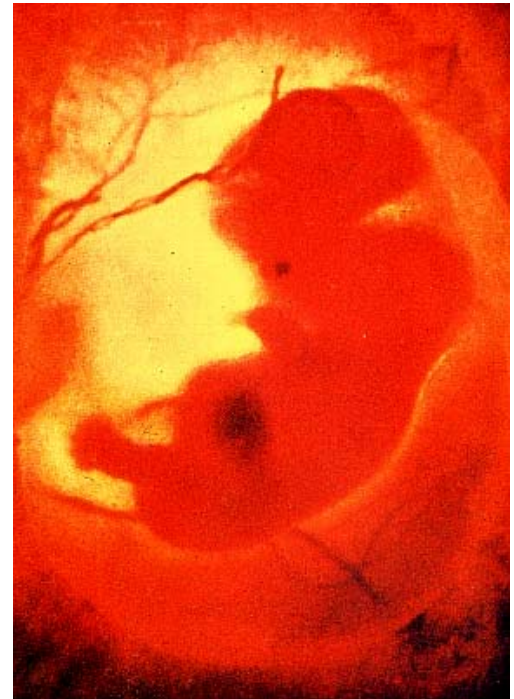


- The Law and Ethics

- Always involve PEOPLE
- Are FOR the general welfare of people



- 
-
- Whatever one's views on the status of the embryo/fetus its interests cannot be ignored in any discussion of the law on induced abortion





In England and Wales the law is set down by:-

- Case law
 - Law and the corresponding legal system developed through precedents set by decisions of courts and similar tribunals (also sometimes called 'common law')
- Statutory law
 - Written law set down by a legislature or other governing authority in parliament

Legislation *re* Abortion in England and Wales

- 1861: The Offences Against the Person Act:
 - Made abortion punishable by imprisonment of three years to life, even when done for medical reasons.
- 1929: Infant Life Preservation Act:
 - Amended the 1861 law
 - Abortion no longer a felony so long as it was performed 'in good faith for the sole purpose of preserving the mother's life'.

Legislation *re* Abortion in England and Wales

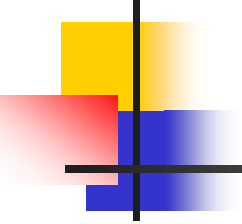


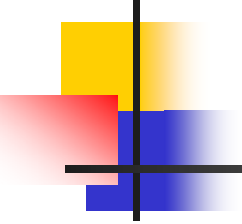
- The Infant Life Preservation Act (1929) made it illegal to kill a baby “capable of being born live.”
- The rebuttable assumption at that time was that the child should be presumed viable at 28 weeks’ gestation



Challenge to the law:

- In 1938: Dr Alec Bourne, a gynaecologist at St Mary's Hospital, London, operated to terminate the pregnancy of a girl aged 14 years and nine months, who had been criminally assaulted and raped by some soldiers in a London barracks.
- Bourne drew the attention of the police to his intervention.

- 
-
- Bourne was arrested then tried on a charge of procuring abortion
 - The judge told the jury that “if Bourne believed that continuation of the pregnancy ‘would make the woman a physical or a mental wreck,’ then he operated for the purpose only of preserving the life of the woman.”
 - He was acquitted.
 - His action was described by the *Lancet* as “an example of disinterested conduct in consonance with the highest traditions of the profession”.

- 
-
- As a result of the Bourne case, more and more abortions began to be practised in Britain in cases where the woman's physical or mental health was thought to be in danger.
 - This loophole in the law was interpreted increasingly loosely.
 - [though no actual figures are available before 1961]



Abortion Law (1967)

In 1966 a young MP, David (now Lord) Steel, successfully put forward a Private Member's bill to legalise abortion that led to Parliament passing the above law

Provisions of the Abortion Law (1967)

1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith-
 - (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated: or
 - (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.



Abortion Law (1967)

2. In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment:



'Conscientious Objection'

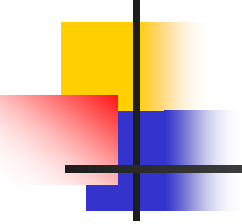
4(1) of the Abortion Act (1967) 'No person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorized by this Act to which he has a conscientious objection:

- [*Note*: It is advised that doctors who hold such views should refer applicants for abortion to another doctor]



Points to be noted:

1. *“A person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if” (etc)*
 - The law does not confer a right to an abortion in any given circumstances.
 - All the law does is to remove the penalty prescribed under the Infant Life Preservation Act (1929) as long as the conditions of the Abortion Act are complied with

- 
-
2. The Abortion Act (1967) did not state the stage of pregnancy at which termination of pregnancy becomes unlawful.
 - It merely cited the Infant Life Preservation Act (1929) in which it was illegal to kill a baby “capable of being born live.”
 - It was generally assumed that this was at 28 weeks’ but this was always a rebuttable presumption.



Human Fertilisation and Embryology Act (1990)

The HFEA Act (1990) included clauses amending the Abortion Act 1967

- It defined, for the first time, 24 weeks as the gestational age up to which abortion could be justified if the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of:
 - injury to the physical or mental health of the pregnant woman.
 - injury to the physical or mental health of any existing children of the family of the pregnant woman.



Human Fertilisation and Embryology Act (1990)

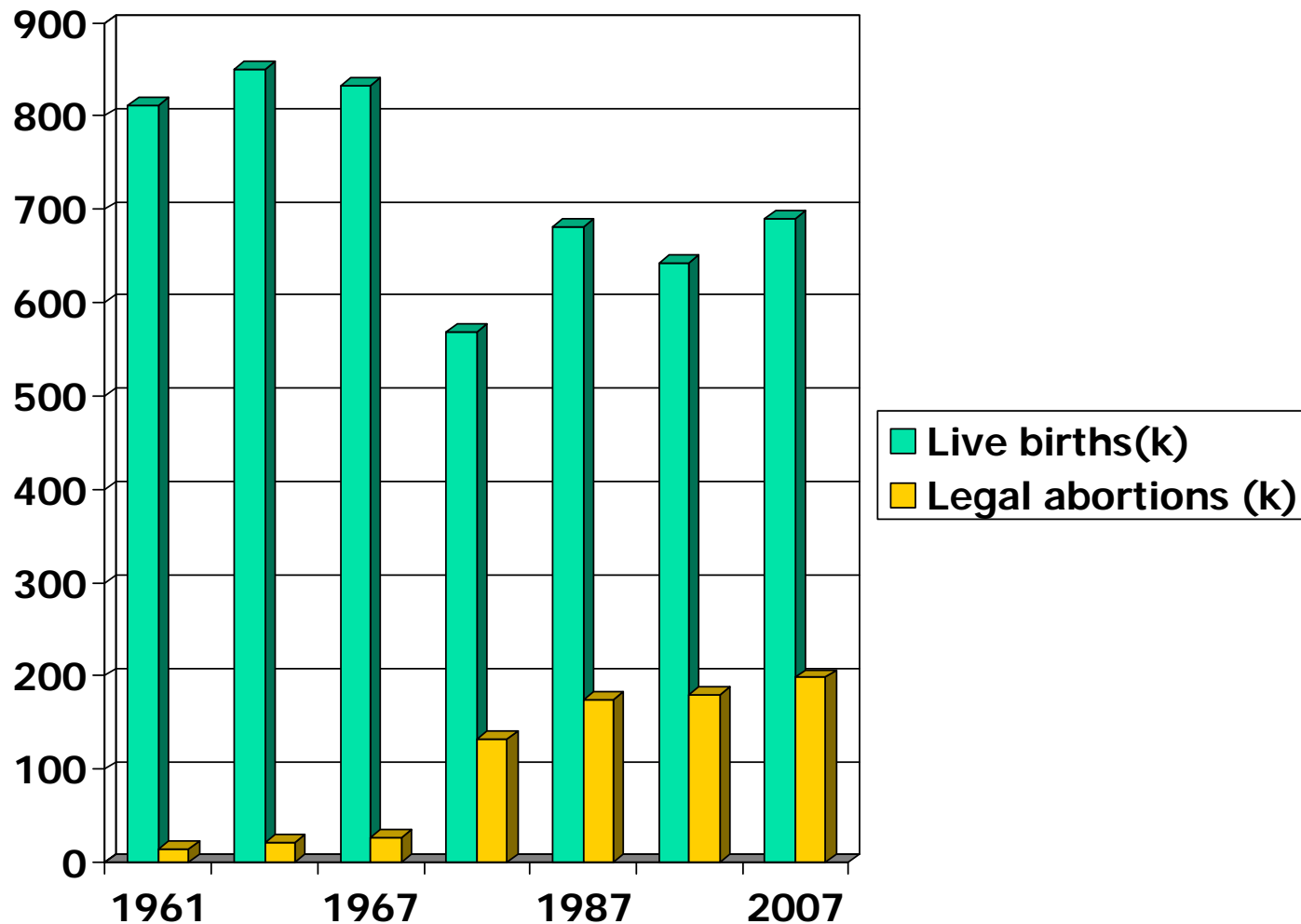
There is now no time limit if:

- The continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated.
- The termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman.
- There is a substantial risk that if the child were born it would suffer from physical or mental abnormalities as to be seriously handicapped



Some key facts on abortion in England and Wales :

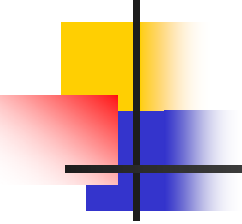
Numbers of live births and legal abortions in England and Wales (10^3)





In 2007, for women resident in England and Wales:

- the total number of abortions was 198,500, compared with 193,700 in 2006, a rise of 2.5%
 - the abortion rate was highest at 36 per 1,000, for women age 19
 - the under-16 abortion rate was 4.4 and the under-18 rate was 19.8 per 1,000 women, both higher than in 2006
- Official Department of Health statistics

- 
-
- 1,900 abortions (1%) were because of a risk that the child would be born 'handicapped'
 - 7,100 abortions for non-residents were carried (7,400 in 2006)



Gestation at which abortion carried out (2006)

■ Under 9 weeks:	54.9%
■ 9-12 weeks:	34.3%
■ 13-19 weeks:	9.2% [98.4%]
■ 20-24 weeks:	1.5% (<i>just under 3000</i>)
■ Over 24 weeks:	0.1% (ca 190)

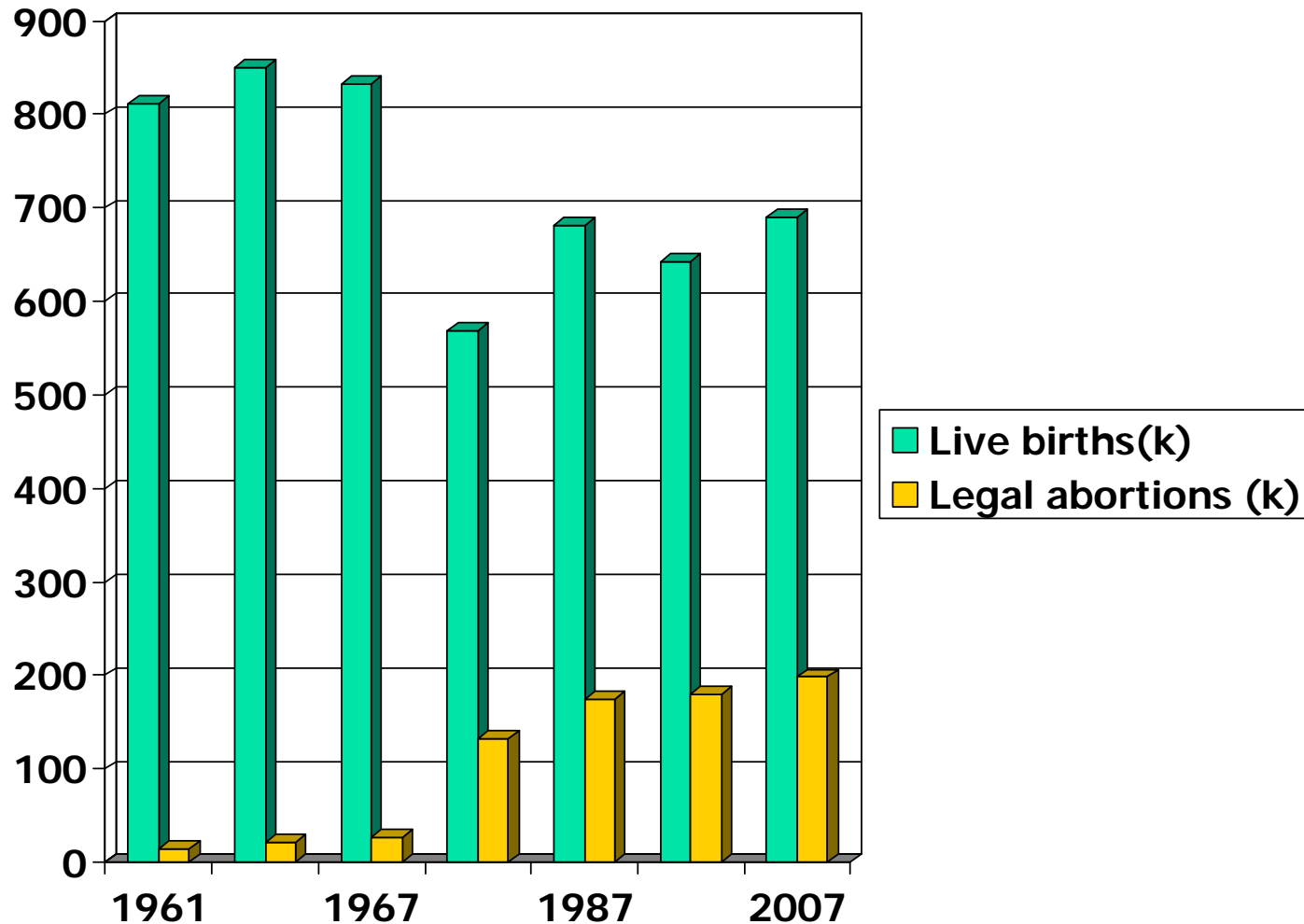


Intentions of the Abortion Act (1967)

- The will of Parliament, when the Act was being discussed, was to:
 - improve the lot of socially-disadvantaged women and their existing children,
 - reduce the number of 'unwanted pregnancies',
 - reduce the morbidity and mortality resulting from criminal abortion
- Have these been achieved?

Reduced number of 'unwanted pregnancies??

Numbers of live births and legal abortions in England and Wales (thousands)

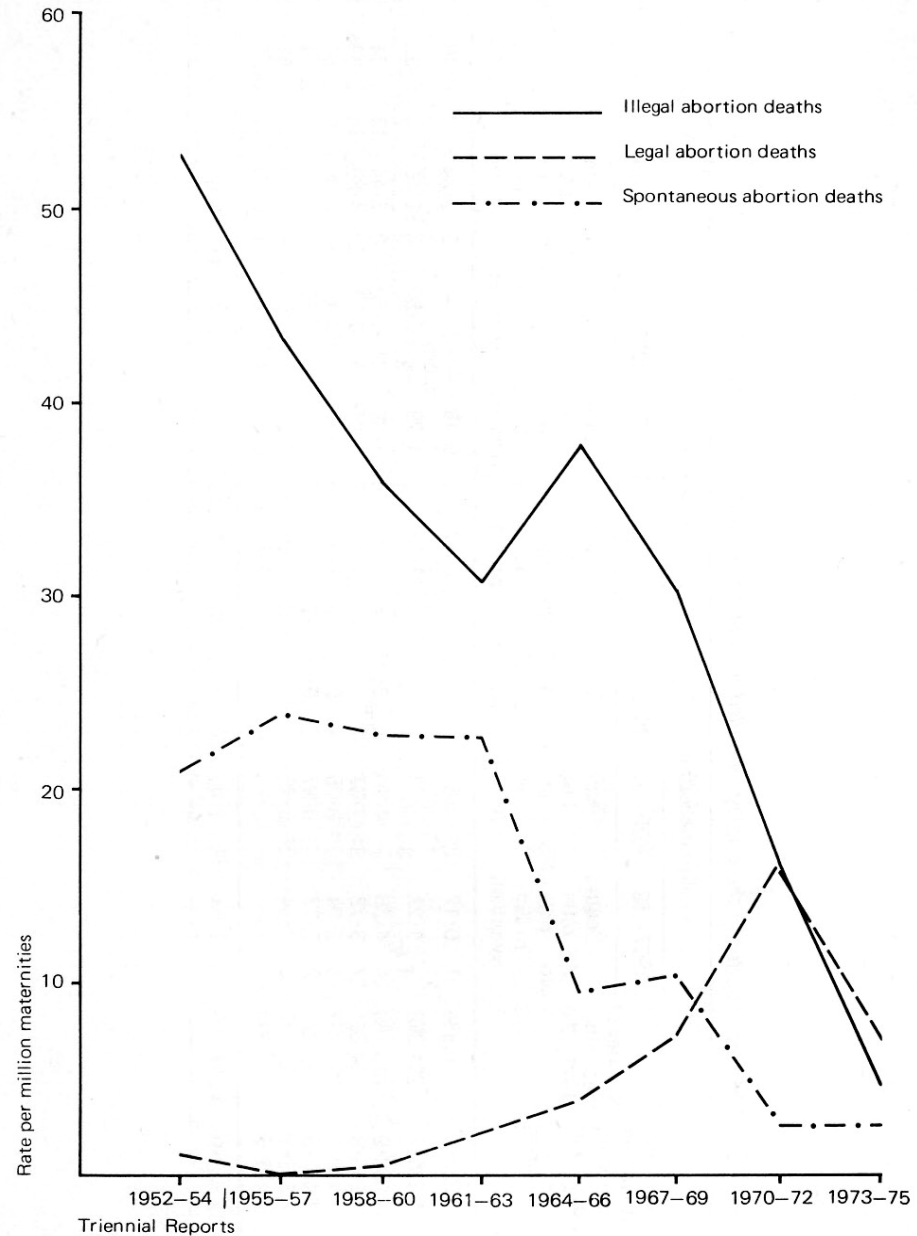


Teenage pregnancy rates in England (2007)

- 41.7 per 1000 girls aged 15-17
 - ↓10.7% since 1998
 - 51% ended in legal abortion
- 8.3 per 1000 girls aged 13-15.
 - ↓ 6.4% since 1998
 - 62% ended in legal abortion

■ Deaths from Illegal Abortion 1952-75

Figure 5A
Death rate per million maternities from abortion 1952-75





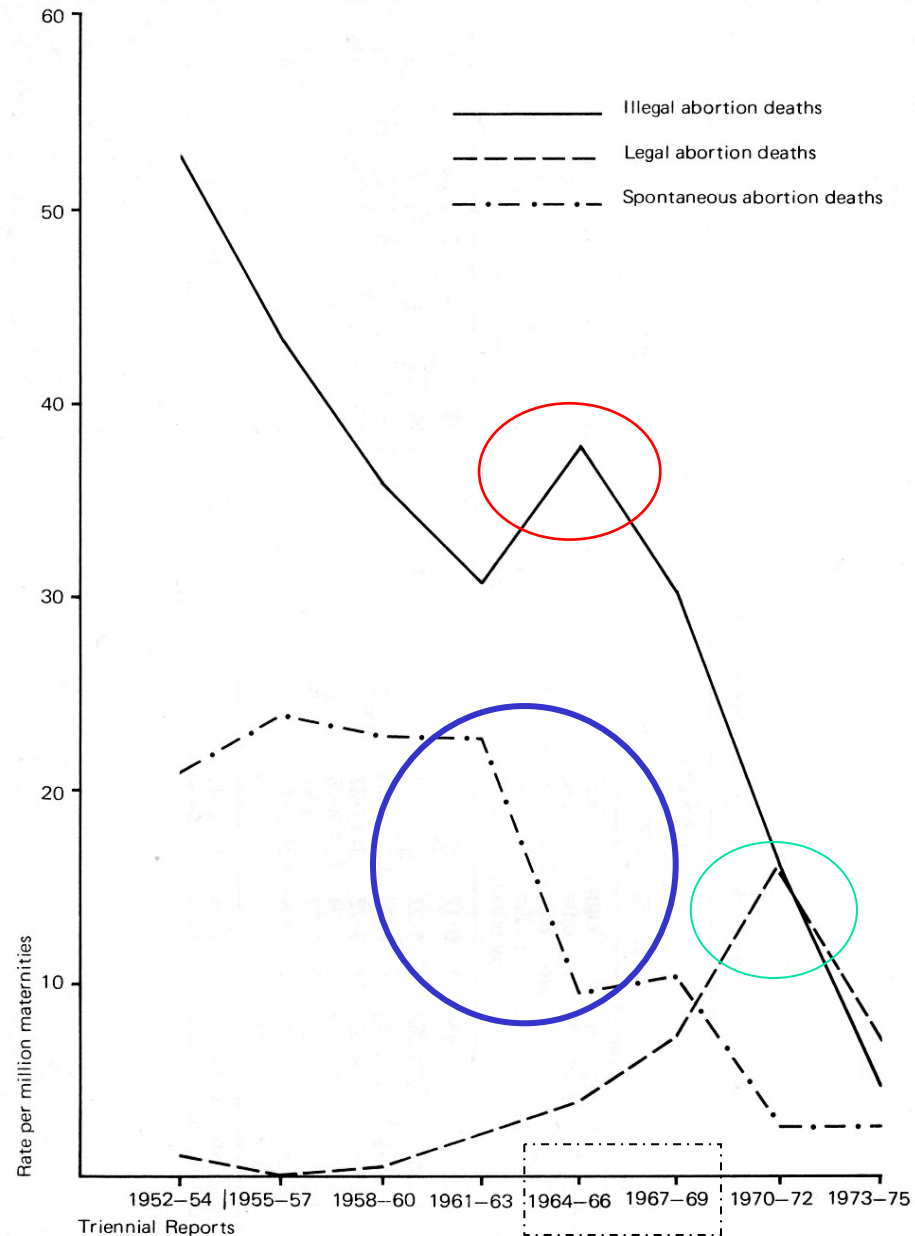
Unintended consequences?

- Unintended by whom?
- The Act itself has brought about a significant change in public opinion
 - Some people consider that, “if the law allows it:
 - it must be ‘OK’
 - It is my RIGHT to have it

Early unintended consequences?

- Deaths from Illegal Abortion 1952-75

Figure 5A
Death rate per million maternities from abortion 1952-75





Later 'unintended' consequences?

- The current number of abortions (*ca* 200k in 2007) was never envisaged by parliament.
 - Lord Steele has recently confirmed this
- How has the law come to be interpreted in this way?



How has the Abortion Law been interpreted?

Clause 1a. The continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated

How is this balance of risk to be assessed consistently?

- Statistically the risk to the mother of continuing any pregnancy, no matter how normal, is greater than the risk of a safe, early termination of pregnancy
- How can risk to the family be properly assessed?



Risk of 'Handicap'?

The law permits abortion if "*there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped*"

- What is meant by 'substantial risk' and 'seriously handicapped'?



Termination of pregnancy for fetal abnormality in
England, Wales and Scotland. London, RCOG
Press: 1996.

Assessment of Seriousness of a 'Handicap'
should be based on:

- The probability of effective treatment either *in utero* or after birth.
- The child's probable degree of self-awareness and of ability to communicate with others
- The suffering that would be experienced (both by the child when born or by the people caring for the child)
- The extent to which actions essential for health that normal individuals perform unaided would have to be provided by others.
- The probability of being able to live alone and to be self-supporting as an adult.



Gestational age

- By 1967 some infants born at under 28 weeks' survived and were, by definition, 'capable of being born alive'
- As neonatal intensive care has improved more and more infants survive

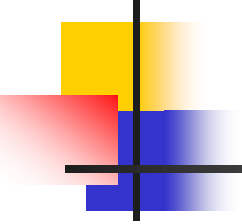


Survival and neurodevelopmental morbidity at 1 year of age following extremely preterm delivery over a 20-year period: a single centre cohort study

Riley K, Roth S, Sellwood M, Wyatt JS

Acta Paediatrica **97** 159-165: Published Online- 30 Jan 2008

- 1981-85 - no survivors at 22 or 23 weeks
 - 1996 - 5/7 (71%) ---do--
 - 2000 - 8/17 (47%) ---do—
-
- “The proportion of survivors with adverse neurodevelopmental outcome at 1 year of age showed no consistent change over the same period”

- 
-
- The issue of whether they survived intact or impaired, though important for the child and family, was (and still is) irrelevant in the context of the law on abortion