What is abortion and what does the law say about it?

- An abortion is the removal of an **embryo** or **foetus** from the womb before it is able to survive independently.
- Sometimes this occurs naturally and is called **miscarriage**.
- **Induced abortions**, where the foetus is removed deliberately, were illegal in England, Scotland and Wales until a 1967 Act of Parliament. The act stated that, with the consent of two doctors, an abortion could be performed up to and including the 28th week of pregnancy.
- In 1991 an amendment to the act reduced the time limit to 24 weeks. Abortions may be authorized after 24 weeks if:
  1. there is grave risk to the life of the woman or risk of grave physical or mental injury to her by the completion of the pregnancy;
  2. there is evidence of severe foetal abnormality.

Attempts have been made in recent years to:
(a) make the wording of these exceptions more precise and
(b) lower the time limit in which most abortions are allowed to 22 weeks.

All attempts to alter the law have failed in the House of Commons. Those in favour of further changes have argued that medical advances mean that it is possible for a foetus to be delivered at 23 weeks and survive. They also argue that what is meant by ‘severe abnormality’ is poorly defined.

The law on abortion was changed in 1967 for a number of reasons:
1. The 1960s saw huge changes in social legislation in GB. The Abortion Act was part of a progressive social agenda pursued by the Labour Government that included the abolition of capital punishment, easing of regulations on divorce and the legalisation of homosexuality.
2. The reform of abortion laws was an important concern of the women’s rights movement of the 1960s. Feminists, such as Germaine Greer, argued that women had the right to control their own body. For some, the foetus was seen as being part of the female body in a similar manner to an organ. Feminists also made 3 other claims:
   - Making abortion legal would cut the number of deaths from ‘backstreet’ abortions.
   - Unwanted babies often live an intolerable life of poverty and social deprivation and the mothers who looked after such children were often abused and disadvantaged.
   - The ban on abortion was part of the male domination of the legal profession and, more broadly, the control of women by men.

The present Abortion Act prohibits **abortion on demand**. It lays down particular grounds on which 2 doctors can agree to the termination of a pregnancy. These grounds are:
- That the pregnancy is no more than 24 weeks and that the pregnancy involves a risk of injury to the physical or mental health of the woman, or any existing children in her family;
- To prevent grave permanent injury to the physical or mental health of the woman;
- The pregnancy involves a risk to the life of the women;
There is a substantial risk that the child would suffer from such severe physical or mental abnormalities as to be seriously handicapped.

In Britain there are about 200,000 abortions each year. Each year about 1500 women come to Britain for an abortion from Northern Ireland where the procedure is still illegal.

**THE STATUS OF THE EMBRYO**

Two main issues dominate the controversy over abortion:
1. the status of the **embryo**
2. the status of the **human body**.

There is general agreement that from conception the foetal material is a member of the species *Homo sapiens*, since genetically the embryo is biologically human. The argument centres on whether this embryo is a human being in miniature.

**Human potentiality**

Many philosophers, including **MICHAEL TOOLEY** and **PETER SINGER**, argue that the embryo is *not* a human being but it has the *potential* for becoming a human being. This notion of **human potentiality** is important. Potentiality recognises that the embryo is on the road to becoming a human being without the expectation that it will achieve that destination. Therefore it is allowable to abort an embryo. Some scholars point out that the body naturally rejects some embryos and as a result there should not be a link drawn between potential and its realisation. This is just how life is. Many people have the potential to be Olympic athletes but few achieve it!

Some thinkers counter this argument by stating that it is wrong to make a comparison between failure to realise potential and the prevention of potentiality. If a person chooses not to realise his or her potential this is a matter of personal judgement. Being prevented from realising potentiality is, for the embryo, not a matter of personal choice.

Various scholars, as well as the Supreme Court in America, have considered the potentiality criterion as the best option in judging whether abortion is moral and ought to be allowed in law.

**PERSONHOOD**

The issue of potentiality raises the issue of what is a ‘person’. This is the question of **personhood**. Scholars who argue in favour of abortion point to the status of the embryo, and later the foetus, as a **non-person**.

Personhood, it is argued, implies an ability to make decisions and to be in some way both independent and a social being.

This argument follows the views of **JOHN LOCKE** (1632-1704). Locke claimed that humans are **sentient** (able to experience sense or feeling). For Locke, sentience includes:

a. the capacity of choice (free will)
b. individuality
c. a social nature.
d. the **principle of reciprocity** – to be a person you must be able to give and take from a relationship.
It is claimed that a foetus does not have these qualities. It is therefore not a person in the usual definition of the term. It is assumed that the foetus is not a rational being capable of choice. There is also the presumption that the foetus is in some way on the road to personhood, but is not yet a person.

But what about people with severe disabilities? There are weaknesses in this argument. The most significant of these is the status of people affected by severe disability. Take, for example, a young man who is unable to move voluntarily. He is blind, deaf and unable to speak or communicate and has been bedridden from birth. How would this young man be classified? Is he a person in the same way in which an able-bodied young man is? Does he fulfil all the criteria of personhood mentioned above?

What about people in a coma? Those in favour of abortion, however, point out that even people with severe disabilities have an awareness of the situation. They have sentience. But this is much harder to justify in the case of people in a coma. Such people are generally unaware of their situation and are dependent on medical assistance.

What about animals? The sentience criterion has a further problem. Jeremy Bentham held that animals are sentient beings and this view is widely accepted today. Yet sentient animals are killed for food. It might therefore be considered illogical to state that a foetus can be killed because it is not a sentient being, if you consider it acceptable to slaughter animals which are sentient beings for food.

Self-consciousness
SINGER and TOOLEY develop another criterion that distinguishes the foetus from a human. They argue that humans have self-consciousness while a foetus only possesses consciousness. Consider the issue of pain and pleasure, so central to utilitarianism. Singer argues that a foetus may experience pain but does not understand it. The foetus cannot rationalize it. Humans can understand in a way that foetuses cannot. A scan might show a foetus in apparent pain. This only proves that the foetus has consciousness. It does not show that the foetus understands what pain is, what causes the pain and what can be done to relieve it. It might, though, be argued that the same is also true of those in a coma or of newborn babies. They experience pain but are, in all probability, incapable of rationalizing their experiences.

Principle of moral equivalence
Tooley adds another justification for abortion, based on his belief that the foetus is not a person. He calls this the principle of moral equivalence. Take a foetus and examine its physical attributes at the term an abortion is due to be performed. Compare its physical state with another creature, e.g. a cat or a dog. If humans find it morally justifiable to experiment or kill another sentient being possessing similar characteristics to the foetus, then there is no moral reason not to abort. The reverse is also true.

Tooley’s ideas have been criticised on 2 levels:
1. The difficulty of knowing the equivalence of different creatures;
2. Even if this were possible, humans are different from all other creatures.
THE STATUS OF THE HUMAN BODY

Abortion raises another important question – the status of the human body. Who does your body belong to? It may appear at first sight that an individual owns his or own body, but the answer is not so straightforward. The teaching of Christianity and Plato says that the material body is on loan to the individual. It is a gift of God: “Naked I came from my mother’s womb, and a naked shall I return there; the Lord gave, and the Lord has taken away; blessed be the name of the Lord” (Job1.21).

This text was familiar to John Locke, but he rejected it. He developed what today is the basic liberal concept of body ownership:

- Nature, which God made, has given humans certain rights, including the right to own their own body.
- Without this right, many of the features of personhood would not occur. E.g. the use of reason would not be possible if someone else controlled our body.
- Humans have a natural inclination to develop and improve their situation in life. This would not be possible if someone else owned our body.

The principle of ownership-as-use
Locke says that humans possess things for a reason - to improve their lives. As a result, property exists to be used for self-improvement. This is the principle of ownership-as-use – a thing belongs to an individual because that person uses it. If you do not use it, you lose it! Locke applies this idea of ownership-as-use to the body, implying that the body is property, like owning a car or a TV. The body is there to be used for self-improvement.

Locke’s ideas can be applied to abortion;
- Firstly, a woman considering an abortion has an absolute right to decide what happens to her body.
- The woman must also consider if an abortion will improve her situation in life and that of her family.
- The foetus is no different to any other part of the woman’s body. We have property rights over our body from birth to death. The individual does not lose any rights when anatomical changes occur. In the same way, you don’t lose property rights to a car if you modify it or crash it.

But should a woman’s body be compared to a car?

Some scholars argue against the comparison of a thing and the human body. They reject the ownership-as-use principle. Take the case of a person in a coma. That individual cannot do anything, and certainly not anything useful, for his/her self-development. Does that individual cease being a person and so lose property rights over his/her body? Some argue that this is the case. Life-support machines can be turned off and intravenous drips removed without the permission of the individual. Some scholars, though, are uncomfortable with such measures.