This has the result identified in Dr Boyle’s paper—that the same child may have different legal protection, depending on whether the child is still in the mother’s womb or has been prematurely delivered. However, I am not totally persuaded by Dr Boyle’s suggestion that a court might allow parents to withhold treatment against medical advice for a 25 week old neonate on the grounds that the child’s chances of surviving, or even of survival, were comparable with those in Re T (the liver transplant case). Courts have traditionally been much more conservative in considering applications to withhold treatment from critically ill neonates than from older patients. The case of Re T regards only one authority and the circumstances in that case were unusual (the parents were health professionals and well educated about the child’s condition; they did not live permanently in England and the medical evidence was not unanimous). On the other hand, the court did acknowledge in that case that the child’s interests were very much connected with the mother’s, which may bring closer together the competing interests in the law of abortion, child destruction, and homicide.

REFERENCES
5. For example, in the Australian jurisdictions that have followed the Infant Life (Preservation) Act 1929 (UK), Victoria and South Australia: Crimes Act 1958 (Vic) s 10; Criminal Law Consolidation Act 1935 (SA) s 82A(7)(B).
8. See R v Cambridge Health Authority; Ex parte B [1995] 2 All ER 129 (CA).
10. See Re T (wardship: medical treatment) [1987] 1 All ER 906 (CA) (discussed by Boyle, text to note 17).