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Introduction

> I have had numerous women, young ladies, say to me, words along the line of thank you for what you did. I haven't had an abortion, I hope I need never need one, but I know that it is there should I need it. And this has given me the courage, the drive, to go on and have a career to do what I wanted to do, in the knowledge that it wouldn't all be brought to a stop by an unplanned pregnancy.[1]

> The 50 years of the Act has really, in our view, corrupted morals. It's corrupted the medical profession. It's destroyed nine million lives of the actual babies who have lost their lives. But then there is a huge number of women out there who are suffering through abortion.[2]

In 2017, two laws that had profoundly shaped the UK each reached their fiftieth anniversaries. The Sexual Offences Act 1967 had partially decriminalised same-sex male sexual acts in England and Wales. It was widely celebrated as an important milestone towards sweeping away the discriminatory attitudes of the past. Amongst the many major events organised to mark its passage were a BBC season of programming, 'Gay Britannia',[3] the Tate's exhibition on Queer British Art[4] and the British Museum's exhibition 'Desire, Love, Identity'.[5] The traditionally conservative broadsheet newspaper, *The Telegraph*, issued a guide to the best LGBTQ events.[6]

In partially decriminalising abortion in Britain, the Abortion Act 1967 has had an impact on modern UK history that was equally profound. Part of the

[1] Diane Munday (formerly Abortion Law Reform Association and Birmingham (later British) Pregnancy Advisory Service) interviewed by Jane O'Neill, 10 November 2017.

[2] John Deighan (Society for the Protection of Unborn Children) interviewed by Jane O'Neill, 29 January 2018.

[3] BBC, 'Gay Britannia'.

[4] Tate Britain, 'Queer British Art 1861–1967'.

[5] British Museum, 'Desire, Love, Identity: Exploring LGBTQ Histories'.

[6] 'Sexual Offences Act Turns 50: The Best LGBTQ Culture Events on in Britain this July', *Telegraph*, 30 June 2017. Other events were held at The National Archives and the National and the Old Vic theatres: The National Archives, '1967 Sexual Offences Act: 50 Years On'; Liverpool's Walker Gallery: Liverpool Museums, 'Coming Out'.

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same permissive wave of reforms introduced under Harold Wilson's Labour Government, the Act has been described as 'one of the finest, most humane and far-sighted pieces of legislation in the twentieth century',[7] and a 'landmark of social legislation' that ended 'the sordid injustice of well-to-do women paying for abortions on demand in private clinics and less fortunate souls risking life and limb in the hands of back-street abortionists'.[8] However, its anniversary was marked by little celebration beyond a few conferences and exhibitions organised by campaigners. A small number of BBC programmes were broadcast, placing a heavy focus on ethical debate.[9] All in all, the tone was muted and equivocal, suggesting 'an occasion for sombre reflection, not celebration'.[10] Indeed, some went further. In a speech outside the House of Commons to mark the anniversary, the Abortion Act's greatest parliamentary critic, Lord Alton, suggested that, with over eight million pregnancies by then ended under it, '[a]bortion has caused more human destruction in the UK than Nazi Germany … only the Black Death has extinguished a greater proportion of our nation'.[11] While the UK public has moved to accept liberal abortion laws and Lord Alton's view is today firmly in the minority,[12] it is difficult to think of another law that has remained on the statute books despite being the subject of such fierce and sustained contestation over so long a period. Another Liberal, David Steel, piloted the Abortion Act through Parliament. He reports still receiving 'fan letters and hate letters, every week. Fifty years on.'[13]

In this book, we offer a biography of this fiercely contested law. The events that led to its conception have already been well documented and, as such, our account of them will be brief.[14] Our story rather begins in earnest in April 1968, when the Abortion Act came into force. The battles that had preceded its introduction would be nothing to those that followed thereafter: these would involve some of the largest mass protests and most intense and prolonged political lobbying ever seen in the UK and repeated attempts at further reform in Parliament. Further, long after it passed onto the statute books, the Act

[7] 'Let the Act Act', *Medical News Tribune*, 13 February 1970.
[8] Boothroyd, *Betty Boothroyd: The Autobiography*, 196.
[9] E.g. *Abortion on Trial*, which asked 'if the law is fit for purpose in 2017', and a special episode of *The Moral Maze*. BBC2, 'Abortion on Trial'; BBC Radio 4, 'The Moral Maze: 50 Years of the Abortion Act'.
[10] '50 Years After the Abortion Act, Why Can't We Still Have a Proper Debate on the Issue?', *Spectator*, 21 October 2017.
[11] Alton, 'Truth Should Speak to Power'.
[12] See National Centre for Social Research, *British Social Attitudes*, no. 34, and discussion in Chapter 4, pp. 113–14.
[13] David Steel interviewed by Jane O'Neill, 5 February 2018.
[14] The most detailed account is that of Hindell and Simms, *Abortion Law Reformed*. See also Keown, *Abortion, Doctors and the Law*; Sheldon, *Beyond Control*; Farmer, *By Their Fruits*.

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would continue to acquire legal meaning through a complex process of ongoing struggle and negotiation between women, doctors, service providers, officials and campaigners, conducted under the harsh spotlight of media attention; occasionally these disputes would reach the ultimate arbiters of legal meaning: the law courts. And all of this would take place against the backdrop of a rapidly evolving Britain, with the Act itself playing an important role in driving changes and the stories told about it changing apace. A study of the Abortion Act is necessarily also a study of changing gender and familial norms and the growth of a visible disability rights movement. It is a study of the declining authority of the church in framing moral debates and a corresponding rise in belief in science as a way of ordering our world. It is a study of changes within that science – including new treatment methods and diagnostic and *in utero* visualisation technologies – and shifting medical relationships and clinical practices within evolving institutional settings. Finally, it is a study of changing political ideologies, including ideas of nationhood, and the disputed constitutional settlement between England, Wales, Scotland and Northern Ireland.

In short, a biography of the Abortion Act is also the story of the modern UK.

The Run Up to Reform

It is sometimes assumed that the Abortion Act was the result of feminist campaigns. This is not true. In later years, the demand for safe, legal abortion would indeed become a key plank in the demands of the second-wave feminist movement. In the 1960s, however, the case for reform was primarily rooted in concerns with public health and social justice and, to a lesser extent, eugenics.[15] Attempts to reform abortion law had begun in earnest in the 1930s with the formation of the Abortion Law Reform Association (ALRA), but these were interrupted by World War Two.[16] It thus took until the early 1950s before reform was first discussed in Westminster and until the mid-1960s before the 'first grand debate on abortion'.[17] By this time, ALRA had been reinvigorated by a younger generation of activists, including three – Madeleine Simms, Diane Munday and Dilys Cossey – who would go on to work indefatigably on the issue for decades to come. Simms would also co-author *Abortion*

[15] See generally Hindell and Simms, *Abortion Law Reformed*; Brookes, *Abortion in England 1900–1967*. For an impressively detailed exploration of the links between the abortion law reform and eugenics movements, albeit systematically overplaying the significance of this factor at the expense of others, see Farmer, *By Their Fruits*.
[16] Hindell and Simms, *Abortion Law Reformed*, chapter 2.
[17] Ibid., 136.

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Law Reformed, which remains the definitive account of the passage of the Abortion Act.[18]

This new generation of campaigners worked hard to build public support for reform. Munday recalls going to Downing Street to lobby Harold Wilson, then newly appointed as Prime Minister. He told them, 'this is a petty, middle-class Hampstead-type reform. Go away and tell me that it's something people want and we might look at it.'[19] They set to. Simms became '*the* champion letter writer':

> She would write to the *Guardian*. The *Guardian* published the letter. And then, Madeleine wanted the correspondence to continue. She would then write another letter, pretending it was from a retired Major in a county town, right-wing person, and put the opposite point of view. And then that gave her the ability to write in a second time, keeping up the argument![20]

Munday was likewise 'a writer of memos and looker at facts, not a marcher and flag-waver'.[21] She took on the bulk of public speaking, addressing hundreds of meetings at a time when even the word 'abortion' remained taboo,[22] and always dressing for her audience, sporting what her husband called her 'speaking hat'.[23] The meetings were a revelation, with her willingness to talk about her own abortion opening 'floodgates'. At her first meeting, at Hatfield Townswomen's Guild,

> one after another of them, thirty of them at least, of the fifty or so that were there, came up to me in the interval and said something like, 'you know dear, I had an abortion, it was back in the 30s, my husband had lost his job and we already had five children. We couldn't afford any more'. That was the common picture . . . Everybody you spoke to, if they hadn't had one themselves, or a daughter, they knew somebody who had. And many of them said, I looked after a friend, or my sister or somebody, when it went wrong.[24]

While a later cartoon would picture a young Liberal MP, David Steel, riding in on a white charger to deliver abortion law reform,[25] the ground was thus laid for him. Indeed, when Steel entered Parliament, in a by-election in 1965,

[18] Ibid.
[19] Munday interviewed by O'Neill.
[20] Caroline Woodroffe interviewed by Jane O'Neill, 26 October 2017.
[21] Munday interviewed by O'Neill.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] BPAS Archives, cartoon of David Steel in Birth Control Trust, *Abortion: Ten Years On*, May 1978, 3.

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he knew little about abortion but nonetheless 'ticked the box' on an ALRA leaflet sent to all parliamentary candidates.[26] When he won third place in the Private Members' ballot, guaranteeing him the necessary parliamentary time to introduce a Bill of his own choosing, Steel deemed the opportunity too precious to waste on 'a minor cause or tilting at gigantic windmills', determining to 'take up one of the great social reforms'. Capital punishment and divorce law reform had been addressed already, and opinion in his constituency was against reform of the law criminalising sex between men. Thus, by 'a process of elimination', he decided to tackle abortion.[27] Two works had also exerted a powerful influence on his thinking. *Abortion: An Ethical Discussion*, produced by the Church of England, had admitted the moral permissibility of abortion in some limited circumstances;[28] and Alice Jenkins' *Law for the Rich* had described the 'plight of desperate women who are faced with the prospect of an unwanted birth', while 'safe surgical termination remained the prerogative of the rich'.[29] With his Bill, Steel thus aimed to 'stamp out from this country the scourge of criminal abortion', with all the public health benefits that would entail.[30]

While Steel was young and inexperienced, he quickly established himself as an astute politician, later going on to lead the Liberal Party for many years. He also had other attributes that made him an ideal sponsor for an abortion bill: he was a good-looking, Christian son of the Manse, who – in the midst of the campaign – became a father for the first time.[31] Steel was also blessed with good luck: his Bill fell within an unusually long parliamentary session, and key members of the Wilson Government were sympathetic.[32] Further, public and parliamentary opinion were ready for reform. A previous Bill introduced by Lord Silkin had succeeded in the House of Lords, demonstrating the existence of cross-party support for reform. A recent German measles epidemic and the thalidomide scandal had each led to well-publicised cases of children born with serious levels of impairment and were still fresh in people's minds.[33] At a time before a recognisable disability rights movement, the birth of a disabled child was widely seen as a tragedy for all concerned, with abortion offering a 'respectable' solution to a public health problem.[34] Opinion was also shaped

[26] Steel interviewed by O'Neill.
[27] Steel, *Against Goliath*, 60.
[28] Church of England Board for Social Responsibility, *Abortion: An Ethical Discussion*.
[29] Jenkins, *Law for the Rich*, 21, 29. See Steel, *Against Goliath*, 60–61, for the influence on his thinking.
[30] *Hansard*, House of Commons (HC), 7 February 1975, vol. 885, cols 1764–67.
[31] Hindell and Simms, *Abortion Law Reformed*, 156–57.
[32] Steel interviewed by O'Neill; Steel, *Against Goliath*; Hindell and Simms, *Abortion Law Reformed*.
[33] Following reports of British thalidomide cases, a national opinion poll revealed that almost 80% of people were in favour of abortion where a child might be born 'seriously deformed': Hindell and Simms, *Abortion Law Reformed*, 87.
[34] Reagan, *Dangerous Pregnancies*, 104; Simms, 'Britain', 34.

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by a growing concern with the 'population question', with fears that overpopulation might '[engulf] mankind in the foreseeable future'.[35] Fertility control was seen as an essential means to address poverty, giving people the possibility 'of restricting the size of their families in proportion to their personal resources'.[36]

At the time that Steel was considering his options, abortion was subject to onerous criminal prohibitions in the common law in Scotland[37] and the Offences Against the Person Act 1861 in the rest of the UK. The 1861 Act provides a maximum sentence of life imprisonment for any pregnant woman or third party who, with the intention of procuring a miscarriage, 'shall unlawfully administer . . . any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent'. A lesser penalty (up to five years imprisonment) applies to the unlawful supply or procurement of the means to commit such an offence.[38] No distinction is drawn between abortion earlier and later in pregnancy, nor between a woman who ends her own pregnancy and a third-party abortionist. Nor was any explicit statutory exception provided for cases where abortion was necessary to save a woman's life or health, with a fragile and ambiguous sphere of legality for doctors who chose to end a pregnancy in such a case carved out by the common law.[39] While this exception permitted wealthier women to have 'Harley Street legal' abortions in conditions of safety, those who could not afford the fees were left to seek out the services of local backstreet abortionists, who might attempt to dislodge a pregnancy using a rubber tube, sharp implement or injection of soapy water. It was generally these medically unqualified abortionists, sought out by poorer women, who were prosecuted for illegal abortion.[40]

It is impossible to know how many illegal abortions took place before the passage of the 1967 Act, with estimates ranging from 10,000 to 250,000 per year.[41] Likewise, we cannot know how many women died or were permanently injured as a result of procedures that went wrong: official sources record 35–40 deaths each year; others have suggested far higher numbers, with death

[35] Brudenell, 'Foreword', ix–xi. See generally Ehrlich, *The Population Bomb*.

[36] Jenkins, *Law for the Rich*, 82; Hindell and Simms, *Abortion Law Reformed*, 225.

[37] See generally Davis and Davidson, '"The Fifth Freedom" or "Hideous Atheistic Expediency"'.

[38] Offences Against the Person Act 1861, sections 58 and 59.

[39] Under *R* v *Bourne* [1938] 3 All ER 615, 'procurement of miscarriage' was deemed lawful where a doctor ended a pregnancy in good faith to preserve a woman's life, including where necessary to prevent her from becoming a 'mental or physical wreck'. See Bourne, *A Doctor's Creed*, chapter 5. In Scotland, a doctor who acted in good faith would be seen as lacking the relevant criminal intention that might render them liable to prosecution: see Gordon, *The Criminal Law of Scotland*; Davis and Davidson, '"The Fifth Freedom" or "Hideous Atheistic Expediency"'.

[40] See generally Potts et al., *Abortion*, chapter 7; Dickens, *Abortion and the Law*; Ferris, *The Nameless*, chapter 3; Hindell and Simms, *Abortion Law Reformed*, 14.

[41] Dickens, *Abortion and the Law*, 73; *Report of the Committee on the Working of the Abortion Act* (*Lane Report*), vol. 1, 506. See Potts et al., *Abortion*, 83–87 and Farmer, *By Their Fruits*, chapter 2, for contrasting considerations of the evidence.

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certificates written in such a way as to preserve the good name of the family.[42] However, dealing with the consequences of illegal abortion are vivid memories for those who worked on gynaecology wards before the introduction of the Abortion Act.[43] For this study, we interviewed a retired doctor, David Baird, who remembers that the hospital where he worked in the early 1960s had a ward reserved for the treatment of septic abortion. Having spent time overseas, he returned after 1967 to find it repurposed for infertility treatment services.[44]

These factors contributed to a broad consensus in favour of the need for clarification of abortion law and, perhaps, some limited further liberalisation. Beyond that, however, the consensus fell away. First, medical opinion was deeply divided as to the shape that any reform should take.[45] Second, while the Church of England admitted the acceptability of abortion in some limited circumstances, the Catholic Church was implacably opposed.[46] These twin influences – medicine and religion – would remain key forces in disputes regarding the Abortion Act throughout the years to follow, themselves being subject to change in ways that would have a profound influence on the Act's development.

The Medical Termination of Pregnancy Bill 1966

Steel's Medical Termination of Pregnancy Bill was drafted by 'Britain's foremost scholar of criminal law', Professor Glanville Williams.[47] The president of ALRA and a vice president of the Voluntary Euthanasia Society, Williams was a deeply utilitarian thinker, humanitarian and 'radical outsider'.[48] While Williams believed in abortion on request, the consensus within ALRA was that that would be attempting to go 'a bit too far'.[49] The Bill that he drafted for Steel thus provided that abortion would be lawful only under conditions of strict medical control: where it was performed by a doctor on NHS or other approved premises and where two doctors believed in good faith that abortion was necessary to avoid serious risk to life or of grave injury to a woman's health; that there was substantial risk of physical or mental impairment in a

42 Ferris, *The Nameless*, 73–75; Dickens, *Abortion and the Law*, 113, puts the number of deaths from criminal abortions in excess of 200 per year; Glanville Williams, *The Sanctity of Life and the Criminal Law*, 194, hints at a still higher figure.
43 For a moving set of interviews with women and doctors, see *Kind to Women*, 2018.
44 David Baird interviewed by Gayle Davis, 13 November 2017. See also David Steel on the health impacts of the Abortion Act, *Hansard*, HC, 7 February 1975, vol. 885, cols 1764–67.
45 See Keown, *Abortion, Doctors and the Law*; McGuinness and Thomson, 'Medicine and Abortion Law'; Amery, 'Social Questions, Medical Answers'.
46 Pope Paul VI, *Humanae Vitae*, 1968.
47 'Glanville Williams, 86, Teacher and Authority on Criminal Law', *New York Times*, 21 April 1997.
48 'Obituary: Professor Glanville Williams', *Independent*, 17 April 1997.
49 Dilys Cossey interviewed by Jane O'Neill, 4 October 2017.

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child; that a woman's 'capacity as a mother would be severely overstrained by the care of a child'; or that she was a 'defective' or had become pregnant under the age of 16 or as a result of rape.[50] The reform was intended to move abortion 'into the hands of the medical profession', where it would be openly performed in safe and hygienic conditions, eliminating the scourge of unsafe backstreet provision and offering relief in limited, deserving cases.[51]

Introducing the Bill, Steel emphasised that he was not legislating for abortion on request. Rather, he aimed to stamp out backstreet abortion, eliminate the uncertainty and unfairness of existing law, and provide relief for women struggling with the demands of repeated motherhood.[52] How to draw a satisfactory line between those cases deemed deserving of relief and those that were not would prove the thorniest problem facing him and a particular bone of contention in the debates to follow. His Bill offered the House of Commons its first opportunity for a full-length debate of abortion, and it would be subject to amendment as it progressed through its various legislative stages: Diane Munday remembers that '[e]ach time it went in, it came out a different Bill'.[53]

The major grounds for opposition to the Bill were neatly encapsulated in the first speech made against it. In what would become a pervasive feature of speeches opposing permissive abortion laws over the years to follow, the accomplished barrister William Wells MP (Lab) began by dismissing the relevance of his Catholic faith. He emphasised that those who opposed the Bill were 'not only upholding the common tradition of Christianity, but [were] protecting principles which stand at the very root of an ordered society'.[54] While accepting the need to address the issue of backstreet abortions, Wells made three key points that would be repeated time and again in the months and years to follow.

First, Wells argued that the Bill threatened the independence of the medical profession, placing any doctor who opposed abortion in an invidious position. Still worse was the position of nurses, with the risk that Catholic girls from Ireland would in future be told, 'Do not go and nurse in England because you will have to do things which are against your conscience.'[55] These comments foreshadowed a range of other concerns regarding the role of doctors expressed in the debates to follow. Most importantly, while the Steel Bill provided that abortion would need to be certified by two 'registered medical practitioners', it imposed no further requirement regarding their specialty,

[50] Medical Termination of Pregnancy Bill 1966; see Hindell and Simms, *Abortion Law Reformed*, appendix 1.
[51] *Hansard*, HC, 13 July 1967, vol. 750, col. 1348.
[52] *Hansard*, HC, 22 July 1966, vol. 732, col. 1075.
[53] Munday interviewed by O'Neill.
[54] *Hansard*, HC, 22 July 1966, vol. 732, col. 1081. See also St John-Stevas in HC, 22 July 1966, vol. 732, col. 1153.
[55] *Hansard*, HC, 22 July 1966, vol. 732, col. 1084.

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length of service or NHS affiliation. The desirability of imposing such restrictions as a safeguard against abuse was narrowly rejected in each House but would remain a lively point of dispute in the years to come.[56]

Second, implicitly acknowledging the acceptability of abortion for reason of fetal anomaly, Wells worried that the Bill would result in the 'destruction of potentially healthy babies'.[57] Most of those who spoke against the inclusion of a fetal anomaly ground likewise opposed it on the basis that, given the inaccuracy of then-available screening and testing techniques, there was a risk of 'the slaughter of thousands of potentially healthy children to avoid the birth of a few deformed ones'.[58] Giving his maiden speech, Edward Lyons MP (Lab) was almost certainly the first MP to share a personal experience of abortion within Parliament, and indeed he would remain the only one to do so for another 50 years. His willingness to speak on this subject reflects widespread acceptance of the permissibility of abortion for fetal anomaly.[59] Having decided on termination following his wife's exposure to rubella, Lyons reported that they had then encountered 'diverse, contradictory and evasive reasons for refusal', before finally finding a doctor prepared to operate. He attacked a law 'that seeks to force the production of blind and twisted babies and drives members of a high and proud profession in fear to shifts and evasions'.[60]

Finally, Wells argued that the Bill undermined respect for the sanctity of human life.[61] While a principled moral concern with the sanctity of life has remained a major driver of opposition to abortion (as we will see), this reason would be only rarely explicitly stated within Parliament in later years.[62] For now, it was contested by one of Steel's key medical supporters in Parliament, Dr John Dunwoody MP (Lab), who replied that there is 'more to life than merely survival', and that 'far from undermining respect for the sanctity of human life this Bill could enhance respect for human life in the fullest sense of the phrase'.[63]

All of these points were closely contested. However, in a period when 'family planning' remained controversial,[64] the most fiercely disputed aspect

[56] See generally Hindell and Simms, *Abortion Law Reformed*.
[57] *Hansard*, HC, 22 July 1966, vol. 732, col. 1084.
[58] St John-Stevas in *Hansard*, HC, 29 June 1967, vol. 749, col. 1050.
[59] It was 2018 before another MP broke this silence; see Chapter 7, p. 251.
[60] Lyons in *Hansard*, HC, 22 July 1966, vol. 732, col. 1090.
[61] *Hansard*, HC, 22 July 1966, vol. 732, col. 1080.
[62] See generally Chapters 3 and 7.
[63] *Hansard*, HC, 22 July 1966, vol. 732, cols 1096–97.
[64] It was only with The National Health Service (Family Planning) Act 1967 that local health authorities in England and Wales were empowered to give birth control advice regardless of marital status and on social as well as medical grounds. Given the discretionary nature of the legislation, wide disparities remained between local authorities. The Health Services and Public Health Act 1968 made the same provisions for Scotland, with provision in Northern Ireland not following until 1972. See Cook, *The Long Sexual Revolution*, especially chapter 14; Davidson and Davis, *The Sexual State*, chapter 6; McCormick, 'The Scarlet Woman in Person'.

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of the Steel Bill was inevitably that it permitted abortion for non-medical reasons. Then newly elected, Jill Knight MP (Con) would become a leading opponent of the Abortion Act and a powerful parliamentary advocate for 'family values', being best remembered today as the architect of the notorious 'Clause 28' prohibiting promotion of 'the teaching of the acceptability of homosexuality as a pretended family relationship'.[65] Knight was keen to emphasise that she was not a Catholic and, moreover, that she supported abortion in some circumstances.[66] Indeed, she would probably have abstained in any vote on abortion law had she not been persuaded to take an interest by the consultant gynaecologist and psychiatrist at her local hospital.[67] Thus persuaded, however, she would become and remain active on the issue for another five decades.[68] In an intervention for which she would later be 'pulled up' by the Speaker of the House of Commons for being 'too emotional',[69] Knight argued that the Bill was 'so wide and so loose that any woman who felt that her coming baby would be an inconvenience would be able to get rid of it':

> There is something very wrong indeed about this. Babies are not like bad teeth to be jerked out just because they cause suffering. An unborn baby is a baby nevertheless. Would the sponsors of the Bill think it right to kill a baby they can see? Of course they would not. Why then do they think it right to kill one they cannot see?[70]

Concerns with abortions on what would come to be called 'the social ground' were raised repeatedly. Some of those who opposed reform worried, like Knight, that it would permit selfish, irresponsible and promiscuous women to end pregnancies for reasons of mere convenience.[71] Its supporters emphasised, rather, the need to help women in serious and extreme circumstances, such as the 'distracted multi-child mother, often the wife of a drunken husband'.[72] Moreover, they noted the potential consequences not just for the women themselves but also for the family unit and for society of refusing them relief.[73] Renée Short, Barbara Castle and Jo Richardson were 'three galvanic redheads' whose 'fiery brand of well-informed socialism' enlivened the Labour

[65] Local Government Act 1988, Section 28. See generally Baroness Knight of Collingtree interviewed by Mike Greenwood, 9 May 2012.
[66] *Hansard*, HC, 22 July 1966, vol. 732, col. 1100.
[67] Knight represented Birmingham Edgbaston, making it likely that the two doctors involved were the gynaecologist Hugh McLaren and the psychiatrist Myre Sim, each of whom practised in Birmingham and figure in Chapter 2. Knight interviewed by Greenwood.
[68] Knight remained an MP until 1997, when she was appointed to the House of Lords, retiring only in 2016.
[69] Knight interviewed by Greenwood.
[70] *Hansard*, HC, 22 July 1966, vol. 732, cols 1100, 1107.
[71] Sheldon, 'Who is the Mother to Make the Judgment?'.
[72] Lyons in *Hansard*, HC, 22 July 1966, vol. 732, col. 1089. See generally Sheldon, 'Who is the Mother to Make the Judgment?'.
[73] See generally Sheldon, 'Who is the Mother to Make the Judgment?', 3–22.

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Party in the 1970s[74] and represented a central pillar in defence of the Abortion Act.[75] Short painted a vivid picture of 'unfortunate unwanted children born into inadequate homes, disabled children [and] mentally defective children' who 'pass through multiple foster homes' before emerging 'more difficult and more disturbed . . . delinquent adolescents' who would become 'the parents of more unwanted delinquent adolescent children in the next generation, generating another cycle of cruelty and neglect'.[76]

Campaigning around the Bill was intense, requiring 'superb organisation'. Diane Munday recalls making use of a small flat in Petit France, almost opposite to the House of Commons, with MPs stocking it with 'mattresses, sleeping bags, the lot':

> We had a rota of supporting MPs sleeping in there. And people on schedules. Peter Jackson was our whip, he was an MP, telling them the next shift could . . . five of them could go out because there were five on their way over. So we always got people who were wide enough awake to speak. I was speech writing . . . It wasn't the done thing to behave like that but I knew then that we wouldn't have got the Act without it – we fought for every clause which would have got whittled away, whittled away.[77]

Over the years to come, attempts to reform and defend the Abortion Act would offer a textbook case in parliamentary strategizing and procedural creativity.[78] For now, the reformers' efforts paid off. At the end of the second reading debate, MPs voted for the Bill to go forward by a majority of almost eight to one, with Enoch Powell MP (Con) querying the small number passing through the 'no' lobby by asking, 'Where are the Romans?'[79] This sizeable majority had two major consequences. First, the Bill's opponents 'were jerked out of their lethargy'.[80] While David Steel moved into 'endless meetings with all manner of bodies for and against the bill', his opponents also organised.[81] The Society for the Protection of Unborn Children (SPUC) was established in January 1967. It emphasised that it was 'non-Catholic', initially going so far as to bar Catholics from sitting on its Committee, and that its membership included 'humanists, agnostics, and some Christians and Church of England people' united by their strong opposition to 'taking human life'.[82] There were

[74] 'Renee Short: Fiery Labour MP for Wolverhampton', *Independent*, 20 January 2003.
[75] Albeit with Castle's role remaining behind the scenes; see Chapter 2.
[76] Short in *Hansard*, HC, 22 July 1966, vol. 732, col 1162. See generally Farmer, *By Their Fruits*, on the eugenic aspects of the case for reform.
[77] Munday interviewed by O'Neill.
[78] See Chapters 3 and 7, especially p. 107.
[79] Quoted in St John-Stevas, *The Two Cities*, 30.
[80] Hindell and Simms, *Abortion Law Reformed*, 165.
[81] Steel, *Against Goliath*, 64.
[82] SPUC founder, Elspeth Rhys Williams, quoted in *Guardian*, 14 February 1967. See further Marsh and Chambers, *Abortion Politics*, 57; Lovenduski, 'Parliament, Pressure Groups, Networks and the Women's Movement', 58.

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also seven senior gynaecologists on the Committee, including Aleck Bourne, who had played an important earlier role in clarifying abortion law, and Hugh McLaren and Ian Donald, who would play an active and influential role in debates for years to come.[83] SPUC did not oppose the Bill outright. Rather, it aimed to amend it so as not to 'open the floodgates to abortion on demand', to amplify the voices of doctors who opposed a liberal law, and to educate the public about the 'unpalatable realities' of abortion.[84]

A second important consequence of the large numbers who voted in favour of the Steel Bill at its second reading was to give Steel a large majority of supporters on the House of Commons Committee that would now scrutinise it clause by clause.[85] Steel – a careful and strategic politician – responded by filling his 22 seats on the Committee with constituency neighbours, as many doctors as possible and two 'senior women', Renée Short (Lab) and Joan Vickers (Con).[86] While opponents of the Bill on the Committee were consequently few in number, they included four MPs who would take particularly prominent roles in later debates: Norman St John-Stevas, Jill Knight and Bernard Braine (all Con) and Leo Abse (Lab). This meant that just three seats on the Committee were occupied by women, reflecting the small number (26) of female MPs at that time. With abortion not yet generally accepted as an issue of special concern to women or one on which they had particular authority to speak, this was not raised as a matter of concern. This would change.[87]

Norman St John-Stevas would emerge as the most articulate opponent of the Steel Bill and, later, a powerful critic of the Abortion Act, attacking it both within Parliament and in a regular column in the *Catholic Herald*.[88] A colourful politician with 'outstanding intellectual gifts'[89] and 'the flamboyant mannerisms of an Edwardian aesthete',[90] St John-Stevas had two important loyalties: Catholicism and Conservativism.[91] Working with SPUC, he enlisted the help of Catholic societies to collect an impressive 530,000 signatures opposing the Bill, with the resulting petition needing to be delivered by shopping trolley.[92] While Steel's solid majority on the Committee ensured that the Bill emerged just as he had intended it, St John-Stevas did persuade him to accept the addition of a conscience clause, allowing those who objected to

[83] *Guardian*, 14 February 1967. On Bourne's earlier role, see footnote 39.
[84] *Guardian*, 14 February 1967.
[85] Committee membership reflects the division at the second reading, resulting in 22 people who had supported the Bill (selected by Steel), three who had opposed it and five who had abstained. See Hindell and Simms, *Abortion Law Reformed*, 180–81.
[86] Steel, *Against Goliath*, 63.
[87] See Chapter 3.
[88] Steel, *Against Goliath*, 64.
[89] 'Lord St John of Fawsley – Obituary', *Guardian*, 5 March 2012.
[90] 'Lord St John of Fawsley', *Telegraph*, 5 March 2012.
[91] St John-Stevas, *The Two Cities*, 13, 22.
[92] Hindell and Simms, *Abortion Law Reformed*, 96–97.

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abortion to opt out of participation in treatment.[93] 'Somewhat to the irritation' of ALRA, Steel also accepted one other significant amendment at this stage on the advice of the eminent doctor and Regius Professor of Midwifery at the University of Aberdeen, Sir Dugald Baird.[94] Baird had witnessed first-hand 'the tyranny of excessive fertility', with high maternal mortality resulting from repeated childbearing, lack of advice on family planning and lack of access to safe abortion during the Depression of the 1930s.[95] Convinced that social and medical considerations were inseparable, he persuaded Steel of the merits of amending the Bill to replace three of the more specifically worded grounds for abortion in favour of a ground containing just 'a general phrase about the wellbeing of the woman'.[96] As it reached its final stages in the House of Commons, the Bill thus contained just two grounds for abortion: one permitting it on the basis of substantial risk of serious fetal anomaly and one where abortion posed a risk to a woman's 'well-being', with the doctor permitted to take into account her 'total environment actual or reasonably foreseeable'. ALRA felt so badly betrayed by Steel's action in deleting the other two clauses without prior consultation that it considered withdrawing its support from the Bill.[97]

At this point, the Bill's progress could also easily have stalled for another reason: a Private Member's Bill is easily blocked by its opponents unless the Government creates additional space for it in the tight parliamentary schedule. Now Steel's good fortune in having supportive individuals in key Government roles became crucial. He met with Richard Crossman, the Leader of the House. In the service of the cause, he determinedly downed a 'revolting mixture' of whisky that Crossman had absent-mindedly topped up with brandy and left assured of the extra time that he needed.[98]

The Bill secured a comfortable two-to-one majority at its third reading. It then proceeded to the House of Lords, where it was piloted by Lord Silkin, whose own abortion law reform Bill had successfully completed its passage there two years before. By now, its opponents were better organised, with

[93] Steel also notes the significance of 'very intense arguments' with members of a leading Catholic seminary in his constituency; Steel interviewed by O'Neill. See also *Hansard*, House of Lords (HL), 23 March 2018, vol. 790, col 576. Such a provision had also appeared in an earlier Bill drafted by Williams, a conscientious objector during World War Two: Glazebrook, 'Glanville Llewelyn Williams 1911–1997', 411–35. Steel, *Against Goliath*, 64; Hindell and Simms, *Abortion Law Reformed*, 186.

[94] Steel interviewed by O'Neill. See further Steel, *Against Goliath*, 64. Sir Dugald was the father of David Baird, whose memories of the impact of the Abortion Act were noted earlier in this chapter.

[95] Baird, 'A Fifth Freedom?', 1141; Davis and Davidson, '"The Fifth Freedom" or "Hideous Atheistic Expediency"'.

[96] Steel interviewed by O'Neill. This catch-all provision replaced the grounds permitting abortion on the basis of a woman's physical and mental health, the overstraining of her 'capacity as a mother' and where the woman was a 'defective' or where pregnancy resulted from rape.

[97] Hindell and Simms, *Abortion Law Reformed*, 178–79.

[98] Steel, *Against Goliath*, 65.

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lobbying so intense that it overwhelmed the antiquated House of Lords mail system.[99] Opposition was led by Sir Reginald Manningham-Buller, Lord Dilhorne, a Conservative peer and senior lawyer.[100] Famously nicknamed 'Sir Reginald Bullying-Manner',[101] he was a formidable opponent. An eminent colleague on the bench recalled that his 'disagreeableness was so pervasive, his persistence so interminable, the obstructions he manned so far flung, his objectives apparently so insignificant, that sooner or later you would be tempted to ask yourself whether the game was worth the candle' and 'if you asked yourself that, you were finished'.[102] Lord Dilhorne brought all of these skills to bear against the Steel Bill, reviving many of the concerns that had exercised the Commons.[103] He achieved one concession. With it being unclear what degree of risk might be sufficient to justify an abortion on the basis of a woman's 'well-being', the Lord Chief Justice proposed a clarifying amendment: that abortion should be legal only where the risk to life or health of continuing a pregnancy would be greater than that of ending it. Lord Silkin accepted the change, the amendment was moved by Lord Dilhorne and it passed without a vote.

When the Bill returned to the House of Commons, the astute St John-Stevas immediately grasped the implications of this last-minute amendment intended to tighten its restrictions: if abortion were as safe as the reformers claimed – or became so in the future – then this seemingly modest amendment was anything but. Rather, abortion would be legally justified in all cases, risking turning the Bill into one that permitted abortion on demand.[104] While ALRA had considered withdrawing support from the 'emaciated' Bill that emerged from Committee, they now believed that this amendment had 'saved the day'.[105]

At this final stage, Steel's Medical Termination of Pregnancy Bill was renamed, becoming the Abortion Act. For St John-Stevas, it was 'as well to call a spade a spade'.[106] For Steel, the new title was 'technically correct' in that the legislation made no provision for termination of a viable fetus, with professional practice being to refer to 'abortion' only until viability (whereas 'termination' included any stage of pregnancy).[107] Under this new title, the Bill passed onto the statute books on 27 October 1967. While this was a victory for

[99] Hindell and Simms, *Abortion Law Reformed*, 210, noting that ALRA sent circulars to private addresses.
[100] Former Attorney General and Lord Chancellor, thereafter becoming a Law Lord.
[101] By Bernard Levin, the 'father of the modern sketch'. See 'A homage to Levin, father of the modern sketch', *Guardian*, 22 October 2004.
[102] Lord Devlin cited in Sackar, *Lord Devlin*, 228.
[103] *Hansard*, HL, 23 October 1967, vol. 285, cols 1397–509.
[104] St John-Stevas in *Hansard*, HC, 25 October 1967, vol. 751, cols 1742–43.
[105] Cossey interviewed by O'Neill.
[106] St John-Stevas in *Hansard*, HC, 25 October 1967, vol. 751, col. 1781.
[107] Steel in *Hansard*, HC, 25 October 1967, vol. 751, col. 1781.

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ALRA, campaigners were painfully aware of the enormous compromises that had been made. Munday recalls:

> I was conscious throughout the negotiations . . . that it was absolutely iniquitous to have that two doctor clause in. How could, or should, somebody who's probably never seen the woman before, and is never going to see her afterwards, make such an important decision for that woman's life and future? We had to accept it. It was also appalling to exclude Northern Irish women. But if we hadn't done it, we wouldn't have got anything at all. It was by the skin of its teeth getting that through.[108]

The Abortion Act 1967

While it had changed during its passage through Parliament, the legislative vision of Glanville Williams remains clearly apparent in the text of the Abortion Act. The Act did not repeal or amend existing criminal prohibitions against abortion but sat alongside them, carving out an exemption where three conditions are met. First, the pregnancy must be 'terminated by a registered medical practitioner'. Second, any treatment for the termination of pregnancy must be carried out in an NHS hospital or in another specially approved place. Third, two registered medical practitioners must be of the good faith opinion:

(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.[109]

In deciding whether the first ground was met, doctors might take account of 'the pregnant woman's actual or reasonably foreseeable environment'.[110] For Steel, this foregrounding of the need for 'socio-medical care' was the Act's key achievement.[111] The Act also permitted the close monitoring of legal abortion by way of notification requirements, which underpin the annual publication of volumes of statistics.[112] In line with the compromise agreed with St John-Stevas, health professionals were given a statutorily enshrined right of conscientious objection, permitting them to refuse to participate in any treatment authorised by the Act.[113]

[108] Munday interviewed by O'Neill.
[109] Abortion Act 1967, Section 1(1).
[110] Section 1(2).
[111] Steel, 'Foreword' in Hindell and Simms, *Abortion Law Reformed*, 7.
[112] Section 2(1).
[113] Section 4.

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The Abortion Act also has two other important features that provoked no significant debate during its legislative passage but would become enormously important in subsequent years. First, it was taken as a given that it would not apply to Northern Ireland,[114] with such exclusion deemed normal with regard to legislation on an issue of sexual morality.[115] Moreover, as a Scottish MP, Steel was particularly keenly aware of the significance of the fact that health was a devolved matter;[116] ALRA was primarily London based, and the reformers had understood that any attempt to include Northern Ireland within the Bill would have doomed it to failure. This did not prevent Northern Irish MPs from participating in voting on it, even though this meant remaining in London well into the weekend.[117] They would continue to take a keen interest in the Abortion Act, and in turn the Abortion Act would come to play a hugely significant role in the region, notwithstanding its formal exclusion from the Act's purview.[118]

A second, vitally significant feature of the Abortion Act that just 'wasn't on the radar' in 1967 was the issue of time limits.[119] First, no consideration was given to when a line might be drawn between contraception and 'procurement of miscarriage', determining when the legality of an intervention became contingent on compliance with the Abortion Act. Many years later, this would become a matter of significant dispute.[120] Second, equally little attention was given to the upper time limit for abortion. We have seen that Steel intended the Act to apply only prior to viability, with nothing within it 'affect[ing] the provisions of the Infant Life (Preservation) Act 1929 (protecting the life of the viable fetus)'.[121] However, it is a striking omission to modern eyes that the long and furious parliamentary debates that preceded the Act's introduction contained only the most perfunctory of passing references to this issue.[122] A later House of Lords Select Committee can be forgiven for wrongly concluding that an upper time limit had been read into the Act entirely 'inadvertently' (apparently missing Steel's statement in the Commons regarding the renaming of the Abortion Act)[123] and finding it 'quite extraordinary that [an upper time limit] was not spelt out in unambiguous terms in the 1967 Act'.[124] A concern

[114] Section 7(3).
[115] See generally Sheldon et al., 'Too Much, Too Indigestible, Too Fast?'.
[116] Steel interviewed by O'Neill. See further Chapter 6, and Sheldon et al., 'Too Much, Too Indigestible, Too Fast?', 761–96.
[117] Audrey Simpson interviewed by Jane O'Neill, 27 September 2017.
[118] See Chapter 6.
[119] Munday interviewed by O'Neill.
[120] See Chapter 5, pp. 158–60.
[121] Section 5(1).
[122] Knight in *Hansard*, HC, 22 July 1966, vol. 732, col. 1102.
[123] HL, *Report of the Select Committee on the Infant Life (Preservation) Bill [H.L.]*, 1987–88, HL 50, para. 17. See further Chapter 3.
[124] HL, *Report of the Select Committee on the Infant Life (Preservation) Bill [H.L.]*, 1987–88, HL 50, para. 17.

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with the upper time limit for abortion would soon emerge as a – and for many years *the* – dominant focus of dispute regarding the Abortion Act.[125]

A 'Biography' of the Abortion Act

With the Abortion Act passed, Vera Houghton, the ALRA Chair, concluded that the group might now be disbanded. Munday disagreed:

> At the end of the campaign, I was out three or four nights a week on platforms with [SPUC]. I said . . . 'in my view, they will never give up. They are going to attack this ink before the Queen's signature is dry on the bit of paper'. 'No, no' – and she actually said to me, it still hurts – 'you've attended too many SPUC meetings for your own good, you can't see the wood for the trees'. And that was the only time Vera was ever, ever wrong. I said, 'Well at least let us keep ALRA going, and give it a new brief to oversee, for a year, the way the Act is working out. You go over to your new organisation and I will stay behind and run this one', which I did as General Secretary. And within six months we had another Bill.[126]

History would prove Munday right. Between the Abortion Act coming into effect and this book going to press, *Hansard* would record more than 60 instances where proposals were made to amend abortion law, a large majority of them suggesting restrictive measures.[127] Moreover, campaigners would find themselves fighting on a range of other fronts: equally important to these attempts at further legal reform would be sustained contestation regarding the proper interpretation and implementation of the Abortion Act.

These ongoing struggles would be a defining feature of what we frame as the Abortion Act's 'biography'. While our use of that term in the study of a law is novel,[128] biography offers a useful shorthand to denote a historical, contextual study of a subject that is simultaneously attentive to both continuity and change within it over an extended period. Biography emphasises that a law cannot be fully understood at just one moment in its existence; rather, it must be examined as a continuing and changing subject that is rooted in evolving social and cultural landscapes and always in the process of accumulating meaning.[129] In this sense, we follow others who have been inspired to move beyond human subjects to offer 'biographies' of archaeological artefacts, diseases and cities.[130]

[125] Chapter 2, pp. 50–56; Chapter 3, pp. 93–108; Chapter 5, pp. 153–58; Chapter 7, pp. 234–36.
[126] Munday interviewed by O'Neill.
[127] See Appendix 2.
[128] Legal biography is evolving in interesting ways but has thus far focused on human subjects. Mulcahy and Sugarman, 'Introduction', 1–6; Sugarman, 'From Legal Biography to Legal Life Writing', 7, 32.
[129] Kopytoff, 'The Cultural Biography of Things'.
[130] E.g. Gosden and Marshall, 'The Cultural Biography of Objects', 169; Mukherjee, *The Emperor of All Maladies*; Ackroyd, *London: The Biography*.

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When applied to a statute, this approach has three major implications, which mark a biography of the Abortion Act as different from an explanation of the factors that led to its introduction[131] or from accounts of specific episodes in its life.[132] First, biography foregrounds a basic sociolegal insight: that law is a living and evolving thing that needs to be studied as it is interpreted and takes effect in practice rather than as it exists on the statute books.[133] Even where a statute's text remains unchanged, its acquisition of legal meaning is an ongoing process that involves interpretative work, development and consolidation of received understandings, evolving practices and moments of challenge, rupture and revision. Such evolution inevitably both reflects and influences the shifting broader social and institutional contexts within which a law is read, understood and applied.[134] Second, a statute – and particularly one characterised by considerable controversy – also acquires a broader social and symbolic meaning, which stands in no necessary relationship to the intention of its drafters nor to its doctrinal meaning as developed by lawyers.[135] The stories told about a law – and what that law represents in broader cultural terms – can and will evolve, whilst at times revealing roots that go deep into its history. Finally, the subject of a biography can offer a window through which to glimpse aspects of the world evolving around it.[136] As Virginia Woolf put it, biography must offer the story of the stream as well as that of the fish.[137]

When we began work on our biography of the Abortion Act, we had no intention on relying on military metaphors to tell its story. However, the language of war, battles, struggles and contestation is frequently used by campaigners and eventually also forced itself onto our narrative. The story that emerges overwhelmingly from a close reading of the sources is one of sustained and bitterly contested battles over the social and cultural meaning of abortion, the correct legal interpretation of the Act, and whether and how it should be reformed. In the pages that follow, we trace the contours of this war. As we will see, while struggle has remained at the heart of the Abortion Act's biography, the nature of the battles fought regarding it has changed markedly over time.

[131] Hindell and Simms, *Abortion Law Reformed*, on the Abortion Act. For other important studies of the emergence of legislation, see Carson, 'Symbolic and Instrumental Dimensions of Early Factory Legislation'; Nelken, *The Limits of the Legal Process*.

[132] E.g. Marsh and Chambers, *Abortion Politics*, offering detailed explorations of a specific reform attempt.

[133] For the significance of focusing on 'technical law' as part of this project, see Cowan and Wincott, 'Exploring the Legal'.

[134] Cotterell, *The Sociology of Law*.

[135] Nelken, *The Limits of the Legal Process*.

[136] Gillings and Pollard, 'Non-Portable Stone Artifacts and Contexts of Meaning', 179.

[137] Woolf, 'Sketch of the Past', 90.

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In this first chapter, we have described how the Abortion Act had 'a difficult birth, but good midwifery',[138] with its opponents ultimately defeated in their hope that it would 'be stillborn'.[139] In the next, we trace its very early, formative years. The Act's meaning would be negotiated as women arrived in doctors' surgeries seeking services that they now believed to be lawful. Doctors would work hard to understand the new law and how best to conduct their own clinical practice within it, and professional meetings would witness fierce dispute regarding its proper interpretation. Over time, different understandings coexisted, became established or fell out of use. Dominant practices settled into received understandings and became consolidated in professional codes, internal policy and procedure documents, official guidance and medical curricula. The chapter ends in 1974 with the publication of the highly influential Lane Report, which offered an authoritative and detailed review of the Act's operation in these early years.

The deliberations of the Lane Committee operated as a buffer against any immediate attempts to reform the Abortion Act. After 1974, however, came a series of major parliamentary attacks that were deeply enmeshed with wider disputes regarding changing gender and familial norms. These restrictive Bills, which will be considered in Chapter 3, were led by men, most of them Tories, and were framed in terms of defending family values, personal responsibility and moral standards. While the Abortion Act was not a product of the women's movement, the movement would now claim and defend it, itself being importantly shaped in the process. Within Parliament, its defence would be led by female Labour MPs, who would bond together as such for the first time, speaking a language of social justice and women's rights. Over the course of two decades, the centre ground for debate would gradually shift. At the end of the 1980s, a final Ballot Bill attempting restrictive reform would be proposed by the Catholic Liberal Democrat MP David Alton, who eschewed the language of family values conservativism and the earlier focus on restricting abortion to 'deserving' categories of women. Rather, Alton focused exclusively on restricting the upper time limit for abortion, framing his case in a language of social justice, civil liberties and scientific advance. The chapter ends when, after more than two decades of repeated attacks, in 1990, Parliament would finally be given the opportunity for a meaningful vote on the Abortion Act, using it to endorse its broad framework. Moreover, an important tipping point had now been reached: for the first time, liberalising amendments were discussed alongside restrictive ones.

In the meantime, outside Parliament, the Abortion Act had become embedded in daily life. Abortion for non-medical reasons became gradually more widely accepted, services were embedded and streamlined and abortion technologies became safer and less technically demanding. In Chapter 4, we

[138] Cossey interviewed by O'Neill.
[139] McLaren, 'The Abortion Bill', 565–66.

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consider how dispute would come increasingly to turn on the 'normalisation' of abortion. Those on one side of the debate would fight for services under the Act to be mainstreamed, destigmatised and made available as a necessary, routine part of women's healthcare. Those on the other side saw rather the trivialisation of a procedure that should only ever be an exceptional measure of last resort, driven by a profit-motivated 'abortion industry'. While these disputes would find focus in contestation regarding the meaning of the Abortion Act, they were always also about far more, lying along a fault line between competing visions of gender, family, religion, science and society. Each new technical innovation or service development offered the site for a new battle, ostensibly narrowly focused on the acceptability or safety of abortion, the quality of services or the welfare of women, but always also reflecting divergent empirical beliefs and broader visions of the good.

As we see in Chapter 5, some of these battles would find their way into the courts, as broader struggles over the meaning of the Act became framed as narrow, technical questions of statutory interpretation. Considering these cases together, it is striking how little of the modern meaning of the Abortion Act would have been apparent even to the best informed and most farsighted commentator in 1967. Almost all key provisions of the Abortion Act and the wider statutory framework within which it operated would be litigated. Most challenges would be brought or supported by anti-abortion campaigners seeking to establish a more restrictive reading of its terms and to publicise perceived abuses of them; in later years, a much smaller number would be brought by those seeking a more liberal reading. Over time, the focus and framing of these disputes would change in line with the shifting centre of the moral debate, with legal argumentation reflecting rhetorical strategies likely to be persuasive to concrete audiences within specific historical, cultural and political contexts.[140] The moral beliefs of individual judges would sometimes be glimpsed in their rulings. However, the courts would encounter statutory text that was already saturated with the meanings acquired in clinical practice, and this would exert a powerful influence on their reasoning.

In Chapter 6, we turn to consider that part of the UK that was omitted from the Abortion Act: Northern Ireland. Notwithstanding this formal exclusion, the Abortion Act has played an important role in the region such that a biography of the Abortion Act necessarily offers the story of not just a British law but, rather, of a UK one. Over the past five decades, Northern Irish women have travelled in large numbers to access legal abortions in Britain, with the Act offering a 'release valve' that would limit the numbers of dangerous backstreet abortions and the mortality and morbidity that have driven reform elsewhere. Further, the Abortion Act would form a key focus of campaigns for and against abortion law reform within Northern Ireland, and

[140] Harrington, Series and Ruck-Keene, 'Law and Rhetoric', 302–27.

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when reform eventually came the Act would play a role in shaping it. Moreover, as we will see, this new Northern Irish law would come in turn to be used as a powerful lever to argue for reform of the Abortion Act.

In Chapter 7, we return to Westminster, where, following a brief hiatus after 1990, attacks on the Abortion Act would again intensify. Those bringing them would follow in the footsteps of David Alton, with politicians who placed particular emphasis on their Christian faith in driving their parliamentary work making the case for narrowly focused reform measures in a language of clinical advance, female empowerment and civil liberties. One marked change was nonetheless apparent: these attacks would now be led by Tory women. In the meantime, pro-choice MPs would move off the defensive and argue for further liberalisation of the law. Reflecting a significant shift in the centre ground of the debate, each side would now claim to be defending the interests of women, and each would claim to be supported by clinical science and medical opinion, with the gulf between them more than ever presented not as a moral but an empirical one. Above all, each would claim to be offering necessary modernisation of an outdated Abortion Act, whilst offering radically different visions of what such modernisation required.

A Note on Sources, Methods and Objectivity

This book draws upon hundreds of days' research conducted in 17 archives, including official government and parliamentary archives across the UK, the archives of professional medical bodies, collections held by university libraries, the Women's Libraries in Glasgow and London and the Wellcome Collection, which holds an enormous body of material relating to the history of science and medicine.[141] Through some of these archives, we have been able to consult the papers of individuals, campaign groups, trade unions and community organisations. These offer a vital supplement to the government papers in national archives and the records of professional bodies. We benefitted especially from the extensive resources donated to the Wellcome Collection by the National Abortion Campaign and ALRA, the latter very significantly due to the sustained hoarding instincts of Diane Munday. Having been active in ALRA, Munday went on to work as the Public Relations Officer at the Birmingham (later British) Pregnancy Advisory Service (BPAS), where she was also key to creating the BPAS archive. We were particularly fortunate in being permitted access to this before it was donated to Wellcome, which has

[141] Only where we have made reference to material found within a specific archive within this book is the archive listed in the Bibliography. A full list of all archives consulted can be found on the project's website: Sheldon et al., 'Sources', https://research.kent.ac.uk/abortion-act/sources/.

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imposed its own cataloguing system on it and restricted public access to some of the files we consulted.[142]

One notable omission in the archives is a major collection of resources collated by a Pro-Life organisation. With the exception of the British Library's collection of SPUC newsletters, the significant quantity of anti-abortion material consulted has been found primarily in the collections of Pro-Choice individuals or groups. While there is no reason to doubt its authenticity, this collection method clearly influences what is available: this is generally published material rather than the private letters, memoranda or minutes that might cast light on 'behind-the-scenes' discussions (as are abundantly available for Pro-Choice groups). It is to be hoped that future researchers may benefit from such material being lodged in public archives, thus adding important further context to the resources currently available.

Our major sources for the period prior to the 1990s were found in these physical archives. From that point on, some records are unavailable because of the 30 year rule applied to many government files or because of archives' own restrictions on material deemed sensitive. Further, more recent material is less likely to be found in archives, either because of sensitivities about the documents becoming public or because those who hold them are still active and have not yet wished to donate their collections. It is also likely that there are fewer filing cabinets in attics and spare rooms slowly filling up with carefully preserved pieces of paper as records become digital. Newsletters and campaign materials are likewise increasingly circulated online. For this reason, much of our recent source material has been obtained directly from websites. Other online sources date to a period before the advent of the Internet but are now most conveniently accessed in digitised form: notably, we have made extensive use of *Hansard*, published parliamentary reports, editions of medical journals and digitised newspapers.

Our study of paper and digital resources was supplemented by oral history interviews with 18 people who could claim extensive experience of the Abortion Act, generally counted in decades, relating either to involvement in services related to abortion or in campaigns regarding the Act.[143] As well as offering invaluable personal recollections and insights, these individuals were able to speak to gaps or discrepancies in the published sources. Their accounts were gathered in semi-structured interviews, lasting between one and three hours, conducted at a time and place of the interviewee's choosing and drawing on a general list of topics and questions adapted to take account of the nature of the individual's involvement with the Abortion Act. Interviews

[142] A list of the main archives and major collections consulted is included in the Bibliography.
[143] A list of our interviewees, together with brief biographies, is included in Appendix 3. Ethical approval for this component of the study was obtained from the School of History, Classics and Archaeology, University of Edinburgh (16 March 2015), with an amendment, agreed in June 2017, permitting interviewees to be asked to consent to transcripts being shared with other researchers.

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were generally conducted by O'Neill, with interviewees given the opportunity to review a full transcript and to make any desired redactions.[144] All interviewees consented to the transcripts being made publicly available in the Wellcome Collection.[145] Recordings are likewise available where no substantial redactions of the transcript were requested.

In seeking to offer a detailed account of the five decades of the Abortion Act's operation, the current work differs in scope from a number of earlier accounts that described its introduction, considered specific attempts to amend it or – in the case of parliamentarians' memoires – focused on their own involvement.[146] These accounts have invariably been written by individuals with strongly held views on abortion and a history of advocacy on the issue.[147] The most detailed account of the introduction of the Act, on which we relied extensively above, was co-authored by Madeleine Simms (ALRA) and the journalist Keith Hindell, who was later to become a director of the Pregnancy Advisory Service.[148] Ann Farmer, who offers a sharply contrasting account that foregrounds the influence of eugenic beliefs on the framing and defence of the Abortion Act, was an active member of the Labour Life Group.[149] John Keown, Professor of Christian Ethics at the Kennedy Institute and author of a rigorous and highly regarded account of the development of abortion law from 1803 to 1982, is a member of the Pontifical Academy for Life and has advised Pro-Life campaigners inside and outside Parliament.[150] A study of the White Bill (1975) was written by authors who 'stand uncompromisingly for the fight of women to control their own fertility'.[151] A book on the subsequent Corrie Bill (1979) was co-authored by a leading member of the coalition that had mobilised opposition to it.[152] Much more recently, a wide-ranging book published to coincide with the fiftieth anniversary of the Abortion Act was written by an executive member of Abortion Rights.[153]

The current work is no exception. While three of its authors have no history of advocacy on this issue, one author is a former trustee of BPAS and the

144 With the exception of David Baird and Anna Glasier, who were interviewed by Davis.
145 The transfer of files to Wellcome is underway at the time of going to press.
146 Most notably, see Alton with Holmes, *Whose Choice Anyway?* Many politicians include brief discussions of abortion within their own biographies; in Steel's case, this amounts to just seven pages of a 367 page biography.
147 A recent book by Amery, *Beyond Pro-Life and Pro-Choice*, is an apparent exception. While Amery argues for an approach grounded in reproductive justice, she declares no affiliation with any campaign group and appears not to have been involved in any advocacy work.
148 Hindell and Simms, *Abortion Law Reformed*; Hindell, *A Gilded Vagabond*.
149 See Farmer, *By Their Fruits*, appendix A, for a detailed discussion of the influences on her opposition to abortion.
150 See discussion of *R (Smeaton)* v *Secretary of State for Health* (2002) in Chapter 5.
151 Greenwood and Young, *Abortion in Demand*.
152 Joanna Chambers was the co-ordinator of Co-ord (the Co-ordinating Committee in Defence of the 1967 Act); Marsh and Chambers, *Abortion Politics*, x.
153 Orr, *Abortion Wars*.

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Abortion Support Network and has advocated for further liberalisation of abortion law.[154] Notwithstanding this fact, like previous authors, we found that protagonists on both sides of the debate were generous in agreeing to speak with us.[155] While we have worked hard to avoid bias in our work, our own reading of the above literature found that the extent to which previous authors have achieved this goal varies greatly. The extent to which the current work succeeds is a matter for the reader's own judgement.

It is necessary to pause on one challenge that we faced in this regard: the absence of a morally neutral terminology that will satisfy all readers. Our reading of five decades of debates about abortion suggests that, over that time, usage of key terms has hardened into a series of shibboleths that reveals a speaker's ideological stance before any argument is made: 'fetus' is met with 'baby', 'child' or 'infant'; 'pregnant woman' (or much more recently 'pregnant person') with 'mother'; 'pro-choice' with 'pro-abortion'; 'anti-abortion' with 'pro-life'; 'service providers' or 'health professionals' with 'abortion industry'. Here, we follow the language used within the Abortion Act in referring to 'pregnant women' and reserving the term 'mothers' for those involved in the social activity of caring for a born child. We avoid as inappropriate for a historical study the term 'pregnant persons', which reflects an important but very recent recognition that transgender men and non-binary people may also be affected by abortion laws. The choice of terminology regarding the 'fetus' or 'unborn baby' is still more difficult. The latter term appears to accept the unborn 'as already an infant, already a person'.[156] The former will appear loaded to some precisely in refusing the latter for this reason, with the term 'fetus' appearing too 'cosy': Jack Scarisbrick, co-founder of Life, asks, 'Why Latinism, when there is a perfectly good bit of Anglo Saxon?'[157] We have nonetheless opted to use the medical term 'fetus', using it interchangeably with 'the unborn' to refer to the period from implantation until birth. A further set of problems emerge around the language of handicap, impairment, disability and anomaly. Here, we use 'anomaly' to describe an abnormality in a fetus, 'impairment' to describe a physical or mental abnormality in a living person and 'disability' and 'disabled people' to recognise that the disadvantage suffered as a result reflects the interaction between an impairment and a wider environmental and social context.[158]

[154] Sheldon was a trustee of BPAS from 2009 to 2018 and a trustee of Abortion Support Network from 2018 to 2022, and she offered advice on Diana Johnson MP's two abortion Bills; see Chapter 7, pp. 250–51. See generally Sheldon, 'The Decriminalisation of Abortion', 334–65.

[155] We had only one direct refusal from someone unwilling to speak with us: email from David Alton to Jane O'Neill, 12 April 2018, on file with the authors. See Hindell and Simms, *Abortion Law Reformed*, acknowledgments, and March and Chambers, *Abortion Politics*, ix–x, recording thanks to interviewees who were campaigners and parliamentarians on each side of the debate.

[156] Lupton, *The Social Worlds of the Unborn*, 6. See further Han, 'Pregnant with Ideas', 59–60.

[157] Jack Scarisbrick interviewed by Jane O'Neill, 7 November 2017.

[158] Shakespeare, *Disability Rights and Wrongs Revisited*, 2.

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Finally, the terms 'Pro-Life' and 'Pro-Choice' are widely used today but were not commonly used by early campaigners, and this terminology is likewise fiercely contested. Contemporary Pro-Life campaigners frequently refer to their opponents as 'pro-abortion', eliciting the response that Pro-Choice campaigners are no more pro-abortion than they are pro-birth but, rather, that they support women being permitted to make their own choices.[159] Pro-Choice advocates have likewise contested the right of their opponents to claim a monopoly on being 'pro-life',[160] instead describing them as 'anti-choice'.[161] On occasion, each side describes the other in more colourful terms.[162] In the pages to follow, we use interchangeably the terminology that seems to us most accurately to capture the groups' positions – anti-abortion and pro-choice – along with the terms widely used by the campaigners themselves – Pro-Life and Pro-Choice – with capital letters to remind the reader that these are proper nouns. While it was some time before the groups consistently adopted this terminology themselves and conventions regarding its use hardened,[163] for convenience we use these terms throughout discussion of the entire period considered in this book. Individual actors within these movements inevitably have more complex positions than this binary division might suggest,[164] with important disputes taking place within, as well as between, the two sides of the debate.[165] Nonetheless, as will become clear in the pages to follow, there have been two clearly recognisable 'sides' to the abortion debate that run consistently throughout the biography of the Abortion Act 'on tram lines that never converge'.[166]

Our biography covers the period from April 1968, when the Abortion Act came into force, until September 2021, when we completed this manuscript. Towards the end of this period, the Labour MP Diana Johnson introduced two Ten Minute Rule Bills calling for the decriminalisation of abortion. In each speech, she thanked Sheldon for her legal advice.[167] This provoked an article

[159] Simpson interviewed by O'Neill: 'I'm not pro-abortion . . . abortion is not the right answer for a lot of women. But I think they have to have the right to make that choice.'
[160] Steel in *Hansard*, HL, 21 June 1990, vol. 174, col. 1184.
[161] As Simpson puts it, 'they are not pro-life, because they are certainly not pro the life of the woman. They are anti-choice.' Simpson interviewed by O'Neill.
[162] Anti-abortion advocates frequently characterise their opponents as a profit-hungry 'abortion industry'; for examples see Chapter 4. Early Pro-Choice literature frequently references Pro-Life groups as 'the Compulsory Pregnancy Lobby'; Steel notes that SPUC was 'irreverently' called the 'Society for the Production of Unwanted Children'. Steel, *Against Goliath*, 66.
[163] SPUC's election material in the early 1970s, for example, repeatedly refers to the need to elect 'anti-abortion' candidates; e.g. Wellcome Library, SA/BCC/C34, Letter from Phyllis Bowman (SPUC) to Supporters, c. 1973, and SPUC, 'General Election'; SPUC advertisement in *Catholic Herald*, 25 January 1974. Similarly, it is possible to find many early examples where campaigners self-identify as 'pro-abortion'; e.g. see Marsh and Chambers, *Abortion Politics*, which was co-authored by Jo Chambers, chair of Co-ord.
[164] This is the central claim of Amery, *Beyond Pro-Life and Pro-Choice*.
[165] E.g. see Chapter 3, pp. 85–7, 90, and Chapter 4, pp. 121–22.
[166] Alton, *What Kind of Country?*, 170.
[167] *Hansard*, HC, 13 March 2017, vol. 623, col. 27.

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in the *Daily Mail* that quoted two Pro-Life MPs attacking the awarding of the grant that supported the research for this book and citing concerns with potential bias.[168] The article drew particular attention to the fact that just over £3,000 had been awarded to support another planned output: a teaching resource. Reports of the story rippled out across Pro-Life and Christian websites, with one subsequent headline going as far as to claim that the 'UK is paying an abortion activist $600K+ to write a book about abortion for children'.[169] Beyond offering a minor illustration of how swiftly facts in this area become distorted – a leitmotif within the book to follow – this incident was also an interesting one for four researchers seeking to craft a biography of the Abortion Act. While our own professional biographies have each been shaped to greater or lesser degrees by the Act, we had now also become a very minor footnote in the story to follow.

[168] 'Fury as Pro-Choice Activist is Handed £500,000 of Taxpayers' Cash to Write a Book on Abortion', *Daily Mail*, 9 April 2017.
[169] Hodges, 'UK is Paying an Abortion Activist $600K+ to Write a Book about Abortion for Children'.

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