Persuading Parliament: Abortion law reform in the UK[#]

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Australian doctors have called for standardised abortion law.[1] One obvious model for reform is the UK Abortion Act 1967. Britain undertook a comprehensive review of its abortion laws when it passed the Act: the first law to address abortion since it was identified as a felony in the *Offences Against the Person Act 1861*,[2] and the first law to address abortion in Scotland, England and Wales collectively.[3] South Australia and the Northern Territory currently have legislation modelled on the UK Act, and it has been upheld by the Model Criminal Code Committee as a model for Australia.[4] *The Abortion Act 1967* seems a sensible place to start, if we are to review our laws.

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[1] Lachlan J de Crespigny & Julian Savulescu, 'Abortion: Time to Clarify Australia's Confusing Laws' (2004) 181 *Medical Journal of Australia* 201–203.

[2] The *Infant life Preservation Act 1929* provided for abortion after 28 weeks gestation, if performed 'in good faith for the purpose only of preserving the life of the mother'. This left the anomalous situation whereby an earlier-term abortion was not permissible, while one performed after 28 weeks (usually thought to be in childbirth) was allowed in dire medical circumstances.

[3] Gayle Davis & Roger Davidson 'A Fifth Freedom? Or 'Hideous Atheistic Expediency?' The Medical Community and Abortion Law Reform in Scotland 1960–1975' (2006) *Medical History* 50, 29.

[4] Helen Pringle 'Abortion and Disability: Reforming the Law in South Australia' (2006) 12 *UNSW Law Journal Forum* No 1 August 7.

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The Act provides for abortion if two registered medical practitioners are of the opinion formed in good faith, that to continue the pregnancy would 'endanger the physical or mental health of the pregnant woman or any existing children of her family', or 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'. In practice it provides for freely available abortion, at least in urban metropolitan areas.

Although sometimes characterised as part of a broader program of 'permissive' reforms by the Wilson Labour government, the Act is generally understood today to have entrenched medical control of this aspect of reproduction.[5] But what is not typically emphasised or appreciated is the *focus* of the medical argument that was persuasive to Parliament in 1967. There had been seven previous attempts to reform the law.[6] The Bill, once amended was carried at the third reading by 167 to 83 votes — a remarkable success after one of the 'hardest fought parliamentary encounters' of the 1950s and 1960s.[7] The result was the outcome of a long fought broad campaign for reform, but crucially, it was the argument for eugenic terminations that secured supposedly 'liberal' law reform in 1967.

The Abortion Act differs from the other hallmark reforms of the era in that it was not the outcome of a government committee, inquiry or Royal Commission.[8] The result of a private member's Bill sponsored by Liberal Democrat and member for Roxburgh, Selkirk & Peebles, David Steel, the Act was informed by two prominent lobbies of the time — the Abortion Law Reform Association (ALRA) and the British Medical Association (BMA). In this regard the Act is 'exceptional',[9] and provides important insight into how Parliament has been persuaded to implement controversial reforms. The ALRA in particular has been identified as 'most successful' in achieving its legislative goals relative to other lobby groups of the

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[5] Barbara Brookes *Abortion in England 1900–1967* (London: Croom Helm, 1988) & Sheldon Sally *Beyond Control — Medical Power and Abortion Law* (London: Pluto Press, 1997).

[6] HLA Hart 'Abortion Law Reform: The English Experience' in Robert L Perkins (ed.) *Abortion: Pro and Con* (Cambridge: Schenkman, 1971) 189. Previous bills were presented by Joseph Reeves 1952, Lord Amulree 1954, Kenneth Robson 1961, Renee Short 1965, Lord Silkin 1965 & 1966, Simon Wingfield Digby 1965.

[7] RJ Buxton, 'Criminal Law Reform: England' (1973) *American Journal of Comparative Law* 21(2) Spring, 242. The Bill was passed at the second reading by 223 votes to 29.

[8] HLA Hart 'Abortion Law Reform: The English Experience' 190. The Birkett Committee of 1939 recommended codification of case law direction that provided for abortion for medical and psychiatric reasons. The Committee was preoccupied with the falling birth rate and was not interested in further liberalising the law. Once war broke out, its recommendations were shelved: HLA Hart 'Abortion Law Reform: The English Experience' 190.

[9] *Ibid* 234.

time, such as the Divorce Law Reform Union (DLRU), the Voluntary Euthanasia Society (VES) and the Homosexual Law Reform Society (HLRS).[10]

Despite its success, however, and despite its trenchant sustained offensive, the ALRA lost control of the Abortion Act as the BMA assumed moral and scientific authority throughout the course of the campaign for reform. The ALRA was inspired to legitimise its own position by way of medical authority, but its promotion of medical hegemony came to secure the full medicalisation of the Bill, *contra* much of the ALRA agenda. After campaigning sporadically from the 1930s for abortion on socio-economic indications, the ALRA in the final hours saw the BMA increasingly authorise the substance and ideology of the Act to oppose social considerations in the interests of the medical profession. The secret of the ALRA success therefore, might well have secured its downfall.

In this article I outline the arguments that were persuasive to Parliament in securing modern abortion law reform, particularly the argument for eugenic terminations that formed the focus of campaigns especially from the 1950s onwards. The BMA and the ALRA had a common interest in eugenics that provided for mutual debate and superficially, a shared agenda. Here I note the ways in which the ALRA exploited this common interest to progress its broader campaign for law reform, but was unable to maintain control of the parliamentary process in the face of medical establishment hegemony, partly the result of its framing of the abortion debate as concerning a marginal (though critical) issue.

The Abortion Act 1967

It has been argued that the Abortion Act would not have been enacted by a Conservative government; that the 'young, radical' Labour Party under Harold Wilson was instrumental in securing reform by providing drafting assistance and allowing for protracted debates and readings of the Bill.[11] But the government did not assume leadership, despite its 'fig leaf of neutrality' provided in Parliament and the Bill's perceived popularity among working class women.[12] In the absence of an electoral mandate and the authority of a government inquiry, the lobbies steered debate and influenced the legislation to a degree that is unusual. Bridget Pyn argues that where other contemporary pressure groups tended to follow the lead of

[10] Bridget Pyn 'The Making of a Successful Pressure Group' (1973) *British Journal of Sociology* 24(4) December, 451.

[11] HLA Hart 'Abortion Law Reform: the English Experience' 189. RJ Buxton 'Criminal Law Reform: England' 232. It took a year to get the Bill through. The 3rd reading on 27 October 1967 started at 10.30 pm and lasted 13 and a half hours.

[12] Richard Crossman *Diaries of a Cabinet Minister Volume Two* (London: Hamish Hamilton & Jonathan Cape, 1976) 407.

politicians, the ALRA 'seized the initiative' to become 'an active combatant in the political arena'.[13]

Given that the Association itself acknowledges that 'for years' it was regarded as a 'morally subversive, crank organization',[14] its success appears remarkable and has generally been attributed to the medical authority and hegemony with which it framed its arguments, and the lack of any authoritative statement like the *Wolfenden Report* which stymied attempts by the HLRS for more liberal homosexual law reform.[15] In the absence of government authority, the BMA and the ALRA assumed authority. While not a 'medical' organization, by the 1960s the ALRA had realised the power of medical authority and increasingly come to frame its arguments along medical lines, to the point of conceding to medical pressure which saw the provisions of the Act fall short of its hopes and become fully 'medically circumscribed'.[16]

Bourne — Abortion before 1967

Reform had commenced in the late 1930s when the test case of *Bourne* liberalised the law to allow for abortion in order to save the woman's life, broadly interpreted to cover psychological trauma to a 14 year-old girl who had become pregnant when raped by a group of Guardsmen.[17] After *Bourne*, the courts understood that abortion was permissible in law when performed by a medical professional (not a lay abortionist) for therapeutic or psychiatric reasons. The incidence of 'therapeutic' abortions increased and the psychiatric ground was stretched by doctors to meet a variety of indications.[18] In 1961 about 2300 abortions a year were performed in the NHS. By 1967 the number had risen to 9700,[19] and it is estimated that 15000 abortions were performed in the private sector in 1966.[20] In the midst of reform debates in 1966, the BMA noted that there 'remains a body of medical opinion

[13] Bridget Pyn 'The Making of a Successful Pressure Group' 453.

[14] Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' (1968) *Political Quarterly* 39(3), 281.

[15] Bridget Pyn 'The Making of a Successful Pressure Group' 453.

[16] Joan Isaac 'The Politics of Morality in the UK' (1994) *Parliamentary Affairs* 47(2), 175.

[17] *King v Bourne* [1939] 1 KB 687. Dr Aleck Bourne was a member of the ALRA Medico-Legal Committee until he quit in 1943. He then went on to form the first anti abortion organisation in the world — the Society for the Protection of Unborn Children (SPUC): Society for the Protection of Unborn Children, *History and Present Status of the Society* http://www.spuc.org.uk/organisation/history.htm

[18] Barbara Brookes *Abortion in England 1900–1967* 13.

[19] *Ibid.*

[20] Sally Sheldon *Beyond Control — Medical Power and Abortion Law* 19.

which takes the view that the law does not need amendment in that all the accepted medical indications for therapeutic abortion are covered by the law'.[21]

Nonetheless, there were concerns among the profession about doctors' liability should a judge or jury come to narrowly interpret the *Bourne* tests. Certainly some doctors were confused about the legal situation. As late as 1955 the 10th edition of the medical text *Forensic Medicine* warned that the *Bourne* judgment 'cannot be regarded as binding for the future' because the 'attitudes of juries is not a safe field for prophecy'.[22] And certainly prior to 1968, some (though minimal) convictions were made for unlawfully procured abortions.[23] However of those arrested, the overwhelming majority were not doctors, but lay women abortionists,[24] the demonised 'predatory harpies'.[25] The physician whose services were legally dubious prior to 1968 was, in fact, often romanticised in the public eye and typically escaped prosecution.[26]

The ALRA and Eugenics

The ALRA was formed in 1936 out of concern for maternal mortality due to dangerous abortions, and in the spirit of fashionable eugenics fears of the time about dilution of racial quality: fears that since Britain had been robbed of its finest 'in the trenches', and the 'professional classes had mastered the art of birth control', only the 'feckless and the unfit remained to breed the next generation of Britons'.[27] Founding members included Eugenics Society members Stella Brown, Alice

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[21] BMA Special Committee 'Therapeutic Abortion' (1966) *British Medical Journal* 11, July–December 41.

[22] In Glanville Williams *The Sanctity of Life and the Criminal Law* (New York: Alfred A Knopf, 1972) 188.

[23] There were regular prosecutions for procedures found not to satisfy *Bourne*, but these were minimal (around 50 convictions a year in the 1960s, of the estimated 100,000 to 250,000 abortions performed each year in Britain): HLA Hart 'Abortion Law Reform: The English Experience' 185.

[24] JG Weir 'Lay Abortionists', in Family Planning Association *Abortion in Britain* (London: Pitman Medical Publishing Co. Ltd, 1966) 39.

[25] John Peel 'Attitudes in Britain' in Family Planning Association *Abortion in Britain* 67.

[26] For example, in 1938 the death of 'much loved' Dr Daniel Powell was marked by the *Sunday Referee* article about his two acquittals for manslaughter, the £1,700 raised by his patients for his defence and the detective who 'ruefully' lamented 'he was a great hearted and fearless man whose work was directed by the nighest motives'. Dr Powell's medical credentials situated him close enough to the establishment, despite his criminal behaviour: Madeleine Simms 'Forty Years Back — Abortion in the Press' in Birth Control Trust *Abortion Ten Years On* (London: Birth Control Trust, 1978) 10–11. The only men who seem to have been convicted were those whose wives had died from abortion, and who were implicated in procuring. See JG Weir 'Lay Abortionists' 39.

[27] Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 271.

Jenkins and Janet Chance, whose stockbroker husband and president of the Eugenics Society, Clinton Chance, bankrolled the ALRA in its infancy.[28] Per capita, the group was only ever small: originally 35 members, and peaking at around 1000 at the height of the 1960s campaigns.[29]

The ALRA, with the occasional exception of Stella Browne, did not advocate abortion on demand[30] and considered access to abortion a crucial, though marginal issue, likely to affect a minority of (married) women who found themselves in dire circumstances. Its primary concern was the maintenance of the family. In 1936 Janet Chance distanced the Association from permissive ideals, outlining the ALRA view that it 'deplores irresponsible behaviour with its consequences in shallow experience, illegitimacy and venereal disease, and it holds that one of the first ways of promoting responsible sexual behaviour of fine and enduring quality is to make marriage more tolerable'. Abortion would make marriage more 'tolerable', because 'the large majority' of women who need abortions are 'working-class women who for good reason consider the birth of a child at a given time a threat to the welfare of their home, a burden too heavy for their strengths or their husband's earnings, and a disaster for the children already born'.[31]

Despite the prevalence of eugenics ideals, the era was also dominated by concerns about the low population rate, especially in time of war, and abortion was not a political priority. In 1943 advocate doctor and BMA member Aleck Bourne resigned from the ALRA in the belief that 'the population problem is so serious that public opinion will move away from easier abortion to tightening the law still further'.[32] In this climate, the ALRA focused its efforts on providing public education.

The appointment as President of Law Professor Glanville Williams[33] saw the ALRA take a direct approach to law reform from the 1950s onwards. Williams assumed the role of 'legal mentor',[34] and the Association came to lobby Parliament directly for legislation to provide for therapeutic abortion along the lines of the *Bourne* direction, and also in situations such as rape, for women with already too many children and in the case of eugenic terminations or, as the Association

[28] *bid.*

[29] *Ibid*.

[30] Stephen Brooke 'The Abortion Law Act 1967' *Institute of Contemporary British History* July 2001 www.icbh.ac.uk/icbh/witness/abortion/abortion.pdfp.6

[31] In Stephen Brooke 'A New World for Women? Abortion Law reform in Britain during the 1930s' (2001) *American Historical Review* Vol 106 448.

[32] In Barbara Brookes *Abortion in England 1900–1967* 145.

[33] Rouse Ball Professor of English Law at the University of Cambridge and noted 'master of the common law'. Williams was also president of the VES, and a member of the Eugenics Society.

[34] Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 273.

preferred, in regard to 'abnormal' foetuses.[35] The BMA had advocated eugenic terminations since the 1930s, arguing for law reform to provide for abortion *inter alia*, 'where the baby might be born abnormal'.[36]

Especially from the early 1940s when Australian scientists identified rubella embryopathy as causing congenital birth defects, sympathy for eugenic terminations grew, but was not so widespread as to secure law reform.[37] In 1954 the ALRA persuaded Lord Amulree[38] to introduce a Bill drafted by Glanville Williams (with input from Alice Jenkins) to provide for abortion as outlined in *Bourne* and also for eugenic indications: where there was a 'belief that there was grave risk of the child being born grossly deformed or with a physical or mental abnormality which would be of a degree to require constant hospital treatment or hospital care throughout life'.[39] The Bill was not debated, however, because Lord Amulree was so 'alarmed' by the clause that at the last hour he declined to introduce the entire Bill.[40]

Williams was not perturbed and in 1957 published a lengthy, scathing critique of abortion law in *The Sanctity of Life and the Criminal Law*, promoting the Bill that Lord Amulree had rejected.[41] Williams gauged the ascendancy of medical science and argued that eugenics 'undoubtedly' provided the strongest case for law reform because 'to allow the breeding of defectives is a horrible evil, far worse than any that may be found in abortion',[42] and appears unreasonably preoccupied with eugenics, arguing that diabetes in both parents would be sensible grounds for

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[35] Although *Bourne* concerned rape, the lawfulness of the abortion was not argued for because of the rape *per se*. It was argued on the basis of damaged psychological health. In its first year the ALRA had 35 members; by 1939, 400 (most recruited from women's Labour groups): Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 271.

[36] Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 272.

[37] Particularly before a vaccine was developed in 1966 rubella in pregnant women caused foetuses to develop with spasticity, hearing and/or vision impairment, although the incidence of causation was contested.

[38] Labour Peer and physician of University College Hospital London.

[39] Glanville Williams *The Sanctity of Life and the Criminal Law* 221.

[40] Barbara Brookes *Abortion in England 1900–1967* 147–148.

[41] In the textbook, Williams does not identify that the Bill was drafted by himself, or that it was drafted on behalf of the ALRA. While Barbara Brookes notes that Lord Amulree declined to introduce the Bill because he objected to its eugenics clause, Williams instead blames Parliament for the failed introduction, obliquely writing only that 'owing to the limitations of parliamentary time' it did not proceed beyond the initial stages: *The Sanctity of Life and the Criminal Law* 220.

[42] *Ibid* 234. Contraception is useless to ward off the threat of defectives because they are 'unable or unwilling to practice it'. Abortion and sterilization are the preferred remedy to defectives, even those who do not require 'institutional treatment'.

terminating a pregnancy.[43] Despite his efforts, and despite rubella embryopathy and other congenital birth effects persisting, widespread parliamentary support was not secured. After its failed attempt of 1954, and another in 1960, the ALRA dwindled in members and activities as its original guard aged, died or moved on.[44] Law reform might have stagnated entirely had it not been for Thalidomide.

Thalidomide and Law Reform

Thalidomide provided a new and dramatic rallying point for the lobbies, both the ALRA and the BMA. While the ALRA's success in the 1960s was due in part to new expectations of the regulation of families encouraged by the 1961 launch of the pill,[45] the catalyst of reform was undoubtedly the Thalidomide catastrophe. By the time it was withdrawn in 1961, around 349 babies had been born in the UK with congenital defects a result of the drug.[46] Barbara Brookes contends that there was public outrage at Thalidomide and at the 'lengths women had to go to get an abortion' in order to prevent the birth of 'grossly deformed' babies.[47] The 1962 trial and acquittal of 24 year old Belgian woman Suzanne Vendeput, who killed her newborn baby affected by Thalidomide, promoted international debate about access to abortion.[48] This combined with the international rubella epidemic of 1964-65, secured heightened sympathy and the ALRA was reinvigorated after all but sleeping since 1960. By 1964 a new generation of reformers had commandeered the ALRA, most motivated by Thalidomide.[49]

Abortions for eugenic indications had long been performed routinely in Britain (and elsewhere) prior to the new law of 1967, despite their apparent legal ambiguity.[50] There is no record of prosecution of a doctor for performing an

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[43] *Ibid* 173–174. Attitudes have changed, and it might seem easy today to target 1950s eugenics ideals as misguided. Incredibly however, as recently as 1998 Professor of Medical Law Andrew Grubb in his hagiography of Williams noted that *The Sanctity of Life and the Criminal Law* was very well received internationally, despite its 'controversial' arguments about legalising euthanasia and assisted suicide. He makes no mention of the eugenics thrust of the book, controversial or otherwise: 'Glanville Williams: A Personal Appreciation' (1998) *Medical Law Review* 6 Summer 133–137.

[44] Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 273.

[45] Barbara Brookes *Abortion in England 1900–1967* 34.

[46] *Ibid* 152

[47] *Ibid*. I do not advocate this 1960s/1980s language of 'gross deformities'.

[48] HLA Hart 'Abortion Law Reform: The English Experience' 190.

[49] In the early 1960s the ALRA had less than 200 members. By 1966 individual membership had surpassed 1000. One fifth of these were doctors: Keith Hindell & Madeleine Simms 'How the Abortion Lobby Worked' 274– 275.

[50] Glanville Williams *The Sanctity of Life and the Criminal Law* 175**.** At the 1966 Family Planning Conference on Abortion in Britain, gynaecologist Peter Diggory freely referred

abortion on a woman who had taken Thalidomide,[51] and in 1956, before Thalidomide, Lord Denning advised Kings College Medical School that abortion performed on a woman who had contracted rubella would be permissible in law.[52] Despite this routine medical practice, the ALRA and the BMA were in agreement about the need for legislation to provide for eugenic abortions, with the ALRA having identified eugenics as the 'strongest' case by which to pursue law reform more broadly, and despite Lord Denning's assurances, the BMA still concerned about legal ambiguity and doctors' criminal liability.

Concern was also voiced in Parliament that in cases so legally 'ambiguous' as rubella, it was only the wealthy who could be guaranteed access to abortion. Labour MP and solicitor Edward Lyons, member for Bradford East, assumed the role of parliamentary advocate on behalf of those who could not afford, as he and his wife had, to travel to London and persist in the face of 'diverse, contradictory and evasive reasons for refusal offered by medical men', until they secured a termination due to rubella on the 'recommendation' of their family doctor. Lyons characterised the contemporary law as forcing the 'production of blind and twisted babies' and driving 'members of a high and proud profession in fear to shifts and evasions'.[53] Law reform that provided expressly for abortion due to 'handicap' would thereby free noble doctors from this legal trap and rectify the inequality of abortion available on demand to those only who could afford it, thus satisfying the aims of both the ALRA and the BMA.

Establishing the Mandate

Exploiting medical support for reform, the ALRA increasingly courted the high and proud doctors. It was important for the ALRA to establish as 'ammunition' medical support for its aims, which it claimed to have done on publication of the results of a survey of 750 London doctors.[54] The ALRA thought its survey 'looked authentic enough', and thus 'simple statements' that doctors 'thought abortion was safe and desired a change in the law' were established by the ALRA as 'facts' in national

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to the ten abortions he had performed on women who had had rubella in early pregnancy: Peter Diggory, 'A Gynaecologist's Experience', in Family Planning Association *Abortion In Britain* 89 (Diggory was a prominent abortion lobbyist and member of the Eugenics Society). Ironically, the rubella vaccine that halted the demand for such abortions was developed from an aborted foetus.

[51] Peter Richards speculates that Thalidomide was such an emotive factor in the abortion debate that 'no-one in authority wished to test the law': *Parliament and Conscience* (London: George Allen & Unwin, 1970) 89.

[52] Barbara Brookes *Abortion in England 1900–1967* 151.

[53] House of Commons, *Hansard*, 22 July 1967 1089–1090.

[54] *Ibid* 277.

and local newspapers — a move understood as imperative to its agenda[55] that was further mobilised by a constant stream of publicity aimed at 'convincing MPs of the rightness of their cause', and an 'extensive propaganda effort' targeted outside Parliament.[56]

The new ALRA also courted the general public through the novel use of opinion polls aimed to disseminate its agenda and indicate broad support for its cause. Heartened by the results of a National Opinion Poll in 1962, the ALRA produced its own poll indicating 'a crushing 91 per cent' support among women for legal terminations should the baby likely be born 'deformed'.[57] In the absence of an electoral mandate the ALRA tried to provide one. But there was public resistance to eugenics, even in the dramatic case of Thalidomide. Both the *Times* and the *Daily Telegraph* condemned the practice, and in response to Suzanne Vendeput's trial, the letters page of the *Times* indicates variously, fears of Nazi eugenics and concern for the disabled, along with praise for the 'common sense' decision of acquittal.[58]

Meanwhile the BMA increasingly asserted its authority over the entire issue of abortion. The medical profession, like the ALRA, did not advocate abortion on demand. Law reform was argued for in order to clarify in legislation the already existing legal position of doctors, considered by the Royal College of Obstetrics and Gynaecologists (RCOG) to satisfactorily protect the 'honest medical man' from persuasion or pressure to perform abortions he did not agree with.[59] The BMA pushed for 'quick law reform' at its authority.[60] It formed its own BMA Special Committee to direct law reform in 1966, rather than wait for the establishment and delivery of a Royal Commission or government inquiry.[61]

While the BMA was interested to see the full medicalisation of abortion confirmed in statute, the ALRA still hoped for the provision of social indications for legal abortion, aimed to protect the family. In 1960 Alice Jenkins as a parting gesture had outlined the Association's position on the hypocrisy of abortion freely available for a price in the private sector, phrased in terms of the family and 'deserving women'. In Law *for the Rich,* Jenkins wrote, 'if a woman tired with cares of her existing family could thus have an unwelcome pregnancy safely terminated, could this help

[55] *Ibid*.

[56] Bridget Pyn 'The Making of a Successful Pressure Group' 451 & 453.

[57] Keith Hindell & Madeleine Simms, 'How the Abortion Lobby Worked' 277.

[58] *Times* 14 November 1962, 13.

[59] Barbara Brookes *Abortion in England 1900–1967* 124.

[60] Jill Knight, Member for Birmingham, Edgbaston, House of Commons, *Hansard*, 23 July 1967 1099.

[61] *Ibid*.

not be extended to poverty-stricken women in the lower income groups? Or must safe surgical termination remain the prerogative of the rich?'.[62]

Persuasive Medical Eugenics — the BMA and the Handicapped Clause

By 1966 the ALRA had obtained the support of 26 year old David Steel who on 15 June introduced the Bill that after many amendments would become the Abortion Act 1967, including the clause to provide for abortion in the case of predicted 'serious handicap'. Steel was persuaded by Jenkins's manifesto[63] and the BMA, which recommended that the risk of serious foetal abnormality be 'taken into account in deciding whether or not to recommend termination of pregnancy'.[64] The lobbying was in full swing, and as Edward Lyons concurred in regard to his wife's rubella pregnancy, the BMA advised that the role of the doctor was not to carry out the wishes of a woman pregnant with a foetus with 'abnormality'; his role was to *recommend* its termination and this should be articulated and protected in legislation.

Arguing for the eugenic clause, the BMA cited the opinion of the Church Assembly Board, published in 1965 in response to the ALRA campaign for law reform, with which it was in agreement that

> The assessment is essentially a medical one; no one other than the medical practitioners involved — not even the mother herself — can make the assessment which has to be made as to the ground of a decision, whether the pregnancy should be terminated or not.[65]

The BMA neglected however, to cite the remainder of the Church advice, that this assessment should be conducted in regard to the experiences and wishes of the woman.

The risk that there might be deformity or handicap on the child would not in itself be sufficient ground for the termination of a pregnancy. This risk, taken by itself, is not specific enough or assessable enough to form the basis of a legal provision which attempts to do justice to all the interests involved.

Assessments become more possible when the risk becomes part of a cluster of other considerations, of which the most obvious are the health of the mother, her family

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[62] Alice Jenkins, *Law for the Rich* (London: Victor Gollancz Ltd, 1960), 29.

[63] David Steel, *Against Goliath — David Steel's Story* (London: Weidenfeld & Nicholson, 1989) 50.

[64] BMA Special Committee, 'Therapeutic Abortion' 41. My emphasis.

[65] *Ibid*.

situation, *and her capacity* and that of the family to accept the extra strain which might be thrown up on it.[66]

On 24 May 1967, during the passage of the Act, the Archbishop of Canterbury published a letter in the *Times* again clarifying the Church's position, arguing for the 'handicapped' clause to be configured in terms of the woman: her capacity and conscience.[67] The Archbishop reiterated his support for abortion in the case that continuing the pregnancy would infringe on the right of the woman to her physical and mental health, but criticised the 'very unsatisfactory' eugenics clause for its focus instead on the innate value of 'handicapped' life. For the Church, eugenics was 'too large an intrusion on the principle of the value of life to be justified', unless understood explicitly in regard to the capacity of the woman.[68] Contrary to the Church advice, the BMA understood the decision to abort a foetus with 'abnormality' as *essentially* a medical decision; the power to choose abortion should lie with doctors interested in eugenic considerations of desirable foetuses. For the BMA this desirable nature was not to be determined by the pregnant woman who would bear the child, informed by her capacity and conscience. It was a medical direction.

The role of Thalidomide in abortion law reform cannot be overstated. Nor can the interests of doctors that were secured by the reform that provided them legal immunity to perform a hitherto criminal act.[69] In 1971 Keith Hindell and Madeleine Simms published *Abortion Law Reformed.* The book provides particular insight into the agenda of the reformers; Simms was the press secretary for the ALRA at the time of law reform (one of the self-avowed new guard who took control in the 1960s out of frustration with the incumbent leadership, and went on to become Research Fellow for the Eugenics Society[70]), and David Steel provides the book's preface. *Abortion Law Reformed* is dedicated to 'the Thalidomide mothers for whom reform came too late'. In the book, Steel is careful to note that he does not 'foresee any stage at which the law would be made more liberal than it is or 'abortion on demand' enshrined in statute'.[71] He writes with apparent pride of his success in securing the support of the Archbishop of Canterbury in the House of Lords, by reasoning that the Church could 'hardly oppose the Bill on account of its

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[66] The Church Assembly Board for Social Responsibility, *Abortion — an Ethical Discussion* (Westminster: Church Information Office, 1965) 43 (my emphasis).

[67] *Times* 24 May 1967 11.

[68] *Ibid*.

[69] The Bill which became the Abortion Act was entitled the Medical Termination of Pregnancy Bill, emphasising that the intention was to legitimise doctors' (not back-street abortionists') procedures.

[70] Madeleine Simms, 'The Abortion Act After Three Years' (1971) *Political Quarterly* 42(3), July, 269.

[71] In Keith Hindell and Madeleine Simms, *Abortion Law Reformed* (London: Peter Owen, 1971) preface.

'handicapped clause' when the Royal College of Obstetricians and Gynaecologists expressly approved of it, and the British Medical Association had specifically added this to their pre-war consideration of necessary legal changes'.[72] Steel's reflections would suggest that the Church was informed by the BMA in its insistence that eugenic termination be a medical decision. And Steel does not acknowledge the Church's deep dissatisfaction with the clause.

Parliament Persuaded

In Parliament David Steel acknowledged that the 'handicapped clause' was 'ethically the most difficult of all parts of the Bill' for him, and that it represented a new departure in law.[73] But Steel was enamoured of medical science, especially medical technology, and was satisfied to bequeath to medicine the responsibility of this ethical challenge. During the third reading Steel aimed to reassure those who might be troubled by the clause that the BMA had made 'precisely' this recommendation in its Special Committee report of 1966, and that the clause was included in the Bill for the 'good reason that, with the development and advance of medical science, a body of professional men and women came to the conclusion that it is right that such a provision should be there included'.[74] Earlier in Parliament Steel had marvelled at machines newly developed in the United States that could determine if the chromosomes of a foetus are so 'severely disordered that no human being recognisable as such could be born as a result of the conclusion of the pregnancy'.[75] Less oblique was Viscount Waverly in the House of Lords, who identified the chromosomal condition of mongolism (Down's Syndrome), as the true target of the clause in a post Thalidomide and post rubella-vaccine society. [76]

Medical hegemony ensured that the 'handicapped' clause was subject to little debate in the Commons, relative to other facets of the Bill. Some general resistance to eugenics was voiced, but most who held these views appear to have been wholly opposed to abortion on principle.[77] Most associated debate centred on the risk that medical diagnosis based on *probable risk* of abnormality might get it wrong and cause the unwarranted abortion of 'normal' foetuses. Father of the House Robin Turton moved an amendment to tighten the wording of the clause to ensure it allowed only for abortion where doctors determined there was *certainty* the foetus would develop as 'handicapped', rather than the existing provision that required

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[72] *Ibid*.

[73] House of Commons, *Hansard*, 13 July 1967 1346.

[74] *Ibid.*

[75] House of Commons, *Hansard*, 22 July 1966 1073.

[76] House of Lords, *Hansard*, 23 October 1967 1475.

[77] For example, Catholic Conservative member for Chelmsford Essex, Norman St John-Stevas, House of Commons, *Hansard*, 22 July 1966, 1156, and Catholic Labour member for Walsall North, William Wells, House of Commons, *Hansard*, 22 July 1966, 1088.

(only) an undefined 'substantial risk' of handicap.[78] David Steel was absent for much of this debate, and the clause was defended from a doctor's point of view by co-sponsor, Liberal Member for Cheadle, Dr Winstaley. The amendment was defeated by 162 votes to 73.

It was left to the House of Lords to dissect the unsavoury and specific details of the clause. Viscount Dilhourne was among those in Parliament who was concerned the clause might lead to the unfounded abortion of 'normal foetuses'. He tabled an amendment similar to Robin Turton's, to allow for abortion only where doctors determined there was *more chance than not* of the foetus developing as 'handicapped'. Viscount Waverly had done his research and noted that statistically this probability could refer only to mongolism, and stated that he could not accept that 'there should be a clause in a Bill devoted for practical purposes to one particular genetic mishap', opposed as he was to eugenics in general.[79] In light of this revelation Lord Consesford voiced his doubts about the entire clause[80] and Viscount Dilhourne moved to withdraw his amendment, instead arguing for the judgement of the doctors in such cases to rest on 'reasonable enjoyment of life', rather than handicap *per se*.[81] At this point it was generally agreed in the Lords that the existential appraisal of 'enjoyment' and 'life' should not be a legal burden on doctors; thus the clause remained unamended and appears in the 1967 Act as originally drafted. The Bishop of Durham tabled an amendment to have the clause configured in terms of the woman, rather than eugenics, as per the direction of the Archbishop of Canterbury. But Lord Silkin warned the Lords to 'be very careful' not to differ from the Commons and 'kill the Bill', and cited a National Opinion Poll that indicated 80.5 percent public support for the clause as drafted.[82] The Bishop's amendment was defeated by 75 votes to 32.[83]

The 'handicapped clause' promoted by the BMA and supported by ALRA secured law reform in an era dominated by panic over Thalidomide. Despite the startling assertion of Glanville Williams that to allow the breeding of 'defectives' is a horrible evil in and of itself, along with fears for 'feckless' Britons the ALRA's interest in eugenics was motivated by concerns of family stability (and stock standard fears of evil, apparently). In *Abortion Law Reformed*, Madeleine Simms and Keith Hindell justify the Thalidomide campaign of the ALRA with the observation that 'one of the strongest myths current in our society is that all

[78] Moved in his absence by St John-Stevas, House of Commons, *Hansard*, 29 June 1967, 1047.

[79] House of Lords, *Hansard*, 23 October 1967 1475.

[80] *Ibid*, 1476.

[81] *Ibid*, 1479.

[82] House of Lords, *Hansard*, 26 July 1967, 1055.

[83] *Ibid*, 1023–1067.

children are lovable and that all children are wanted'.[84] Simms and Hindell's blunt and melodramatic appraisal of the effects of Thalidomide (the unlovable child) is revealing in its focus on women, not the drug, in producing 'deformed' babies. They despaired, 'those poor women who produced monsters or defectives at best used up their love and energy nurturing a child that society has no place for; at the worst they had to look after an unwanted, helpless child whose continued life brought them agony and shame'.[85]

The emphasis on women 'using up their love and energy' on children with disabilities is important. In Parliament Dr Winstanley warned that in his experience, a woman who is persuaded to continue a pregnancy and then bears an 'abnormal deformed child' seldom becomes pregnant again, but one who aborts due to abnormality will immediately try to become pregnant again and have a family.[86] Abortion was necessary to secure 'traditional gender roles and the stability of the family',[87] by allowing women to be good mothers to their already existing children, and to be compelled only to be good mothers to desirable foetuses. Along with hopes of permission to lawfully recommend the termination of 'abnormal' foetuses, there were expectations among the medical profession that abortion would act as a social filter. At the 1966 Family Planning Association Conference, CO Carter of the Medical Research Council advocated in coy language, abortion for social eugenics indications, surmising optimistically that in 'groups in which all children are planned the more gifted and competent parents plan the large families ... any persistent trend for those who are less gifted as parents to have large families is due to the birth of unplanned children'.[88] Thus abortion would allow the ungifted to correct their errors. The ALRA set the agenda for the Abortion Act that satisfied the BMA in its legislating for abortion not only as a 'means of securing womanhood, but also as a reward for maintaining the family',[89] preferably the gifted family.

Ascendant Medical Authority — the Reasonable Man

In promoting medical authority, however, the ALRA secured the defeat of many of its aims. In 1966, during the passage of the Act the medical profession was concerned to stress that it was 'for them to decide what they should do after *they*

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[84] Keith Hindell and Madeleine Simms, *Abortion Law Reformed* 25

[85] *Ibid*.

[86] House of Commons, *Hansard*, 29 June 1967 1059.

[87] Michael Thompson, *Reproducing Narrative — Gender, Reproduction and Law* (Dartmouth: Ashgate, 1998) 79.

[88] CO Carter, 'Eugenic Aspects of Abortion' in Family Planning Association, *Abortion in Britain* 27

[89] Michael Thompson, *Reproducing Narrative*, 79.

had determined what they thought were the patient's best interests'.[90] David Steel claimed in Parliament that the Bill reflected what a 'reasonable man would regard as a reasonable statement of the law'.[91] The reasonable man was the doctor.

Doctors were referred to in Parliament as 'medical men', 'professional medical gentlemen' and 'professional men', depicted as the epitome of 'maturity, common sense, responsibility and professionalism'.[92] The professional gentleman held court in Parliament. At the instigation of the ALRA, Steel's Bill included a 'social clause' to permit abortion if the woman's capacity as a mother will be 'severely overstrained' by the care of the child, and another to permit abortion in the case of the woman being 'defective' or having become pregnant before the age of 16, or by rape. Steel identified the social clause as 'the most controversial matter',[93] after the BMA and the RCOG advised that both clauses were 'objectionable in specifying indications which are not medical'.[94] The BMA and RCOG were concerned that women might seek abortions of their own volition with the 'social clause' used as justification, a situation that 'would be *unacceptable to the medical profession*'.[95] In Parliament many feared that in these cases the Bill signified abortion on demand, despite the restrictive nature of the clauses that applied only to mothers, underage girls, 'defectives' and those who could persuade two doctors they had been raped.

The social clause was dropped when the RCOG persuaded Steel it would be unworkable because gynaecologists would not apply the new legislation in practice.[96] After the Act came into force, the BMA advised its members against 'social abortion', [97] but the broad wording of the Act is interpreted in practice to cover such indications anyhow, particularly in the private health system.[98] Steel later defended his compromise by espousing BMA propaganda that 'social conditions cannot and ought not be separated from medical considerations'.[99] The clause that covered victims of rape was also dropped on the advice of the BMA and after debate in Parliament that predictably suggested women cannot be trusted not to lie and make false accusations of rape.[100] Thus in the Abortion Act 1967 the

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[90] Victoria Greenwood and Jock Young, *Abortion in Demand* 30. Original emphasis.

[91] In Sally Sheldon 'Who is the Mother to make the Judgement?: The Constructions of Woman in English Abortion Law' (1993) *Feminist Legal Studies* 1(1), 14.

[92] *Ibid*, 13.

[93] House of Commons, *Hansard*, 22 July 1966 1073.

[94] In Keith Hindell and Madeleine Simms, *Abortion Law Reformed*, 170.

[95] *Ibid* (my emphasis).

[96] Victoria Greenwood and Jock Young, *Abortion in Demand*, 2.

[97] Peter G Richards, *Parliament and Conscience, 107.*

[98] Committee on the Working of the Abortion Act, *The Abortion Act Inquiry*, (London: Abortion Law Reform Association) 1971, 9.

[99] In Keith Hindell and Madeleine Simms, *Abortion Law Reformed* preface.

[100] House of Commons, *Hansard*, 22 July 1966 1086.

situation set out in *Bourne* in 1938 prevails: rape may be understood as indicating a legitimate cause for abortion in its psychological effects.

Securing Medical Control of Abortion

The other major justification for the Abortion Act was to 'stamp out the scourge' of back-street abortions and to address the unfairness of abortion freely available to those with money.[101] David Steel was adamant that these were his aims in promoting the Bill.[102] But the legitimisation of the medical abortionist in 1967 had no effect on the dual economy of abortion on demand, which simply came to be purchased from the private health system.[103]

This agenda in particular reveals the tensions between the ALRA and BMA that followed from the ALRA promotion of medical authority to progress its campaign. Throughout debate over the Bill, the BMA frequently touted the 'complexity' and 'danger' of abortion even under the best of conditions, 'carried out with the best skill available',[104] thus stressing the indispensability to the procedure of doctors' professional skills.[105] In response to the Bill, the RCOG advised that all abortions should be performed by, or under the supervision of, a consultant gynaecologist.[106] In 1961 there were only 460 posts in consultant gynaecology and obstetrics in England and Wales. Allowing for conscientious objection, Professor of Obstetrics and Gynaecology, Phillip Rhodes concluded in 1966 that there *might* be 400 gynaecologists who would agree to perform abortions.[107] The BMA persuaded the RCOG that the condition was too restrictive,[108] but it maintained that two doctors must be consulted.

This characterisation of abortion as technically specialist, difficult and dangerous contradicted the 'valuable' ALRA survey indicating that doctors generally agreed abortion is a safe and simple procedure.[109] But the ALRA had surveyed only individual doctors – not the politically organised BMA. David Steel was persuaded

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[101] Victoria Greenwood and Jock Young, *Abortion in Demand*, 28.

[102] Stephen Brooke, 'The Abortion Law Act 1967'.

[103] Committee on the Working of the Abortion Act, *The Abortion Act Inquiry* 3.

[104] Victoria Greenwood and Jock Young, *Abortion in Demand*, 32. Original emphasis.

[105] Early abortion is more safe than bearing a child, as noted by the American College of Obstetricians and Gynaecologists: The American College of Obstetricians and Gynaecologists, 'Induced Abortion', *Medical Library*, http://www.medem.com/medlb/article_detaillb.cfm?article_ID=ZZZ2K98T77C&sub_cat=2006

[106] Barbara Brookes, *Abortion in England 1900–1967*, 106.

[107] Phillip Rhodes, 'Illegal Abortion — A Gynaecologist's View' in Family Planning Association, *Abortion in Britain*, 32.

[108] Barbara Brookes, *Abortion in England 1900–1967*, 106.

[109] Keith Hindell & Madeleine Simms, 'How the Abortion Lobby Worked' 275.

by the arguments of the latter and argued that the Abortion Act was necessary to prevent the deaths of women at the hands of criminal abortionists; he estimated that every year between 25 and 30 women died in this way, of the thousands who sought abortions.[110]

Prior to 1968 abortion was common, either at home, paid for at Harley Street or obtained from the back streets. It is impossible to establish the number procured each year. In 1949, obviously before the pill, Dr Eustace Chesser estimated 250,000.[111] In 1966 Professor Rhodes suggested 100,000.[112] Rhodes put the mortality from criminal abortions at 30 per 100,000, concluding 'the aftermath of illegal abortion may not be so appalling as some have suggested'.[113] Professor of Forensic Medicine, Keith Simpson also found that the mortality rate of 'illegal' abortions 'is surprisingly low', suggesting a rate of 0.35 percent.[114] However, in Parliament and for the ALRA, non-establishment abortion was equated with death. MP Edward Lyons Lyons implored compassion for the unfortunate (passive, prone, victimised) woman of the back-street abortion,[115] and Alice Jenkins wrote a shocking tale of a woman who killed herself by trying to force an abortion, only for it to be subsequently discovered that she had not been pregnant at all.[116] No doubt there were deaths and infections, and no doubt there were abortionists who exploited women's vulnerable position. However for the period 1964-1966, the *Report on Confidential Enquiries into Maternal Deaths* found that over a quarter of all recorded associated deaths were the result of *legal* abortions.[117]

As I have noted, it was women who were prosecuted for illegal abortions prior to 1968 — lay abortionists, not suspect doctors. Thus the Abortion Act effectively disarmed the threat to the medical profession from the alternative woman

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[110] House of Commons, *Hansard*, 22 July 1966 1079.

[111] Eustace Chesser, *Society and Abortion* (London: Abortion Law Reform Association, 1949) 3.

[112] Phillip Rhodes, 'Illegal Abortion — A Gynaecologist's View' 29.

[113] *Ibid* 29 & 34.

[114] Keith Simpson 'Abortion Risks', in Family Planning Association, *Abortion in Britain* 53.

[115] Edward Lyons, House of Commons, *Hansard*, 22 July 1966 1089.

[116] Alice Jenkins, *Law for the Rich*, 37.

[117] Department of Health and Social Security, *Report on Confidential Enquiries into Maternal Deaths in England and Wales 1964–1966* (London: Her Majesty's Stationery Office, 1969) 40. For the period 1970–1972, commencing two years after the Act had taken effect, there were 81 recorded deaths associated with abortion. 37 of these (46%) were associated with legal abortion. As the proportion of legal abortions increased so did the proportion of 'legal' associated deaths (Department of Health and Social Security, *Report on Confidential Enquiries into Maternal Deaths in England and Wales 1970–1972* (London: Her Majesty's Stationery Office, 1975) 39.

abortionist.[118] It seems impossible now to conceive of non-medical abortion as anything other than dire or exploitative, such has been the success of medical establishment hegemony. For Hindell and Simms, the very idea is barbaric: 'none of these women would normally have gone to an *amateur* to have a tooth pulled, let alone for something as serious and intimate as a gynaecological operation'.[119] Hindell and Simms volunteer medical establishment propaganda that abortion is a *serious* operation, and that non-medical professionals are all amateurs. And yet, it was this very propaganda that informed decisions to fully authorise medical authority of abortions, and which saw the defeat of the broad objectives of the ALRA to provide for abortion on socio-economic indications.

Sally Sheldon has analysed the ways in which women in general were marginalised in the 1960s parliamentary debates over abortion.[120] From the 1930s the ALRA had framed the debate in terms of marginal (married) women who occasionally require abortions. As the campaign for reform progressed, such a woman was increasingly portrayed as an 'emotionally weak, unstable (even suicidal) victim of her desperate social circumstances' or by the conservative opponents of reform as 'a selfish, irrational child'.[121] Such caricatures were persuasive, and in the Abortion Act a woman needing an abortion is treated as someone who cannot make decisions for herself; rather 'responsibility is handed over to reassuringly mature and responsible (male) figure'.[122] Yet, as David Steel himself acknowledged, 'far and away the largest section of illegal abortions' were performed by women on themselves,[123] a practice that women have long performed

[118] Barbara Baird notes that in Australia the term 'backyard abortion' was coined during abortion law reform in the late 1960s. For Baird, the Australian medical profession's campaign against non-establishment abortionists was aimed in part at the 'staking of professional terrain, particularly for the developing medical specialisation of obstetrics and gynaecology where midwife and nurse abortionists were the doctors' most serious professional competitors'. The mythology of the dangerous 'backyarder' was created in direct response to the medical establishment and the state's push for full control of women's reproductive choices: 'The Incompetent, Barbarous Old Lady Round the Corner': The Image of the Backyard Abortionist in Pro-abortion Politics' (1996) *Hecate*, 22(1), 9–11.

[119] Keith Hindell and Madeleine Simms, *Abortion Law Reformed*, 13. My emphasis.

[120] Sally Sheldon 'Who is the Mother to make the Judgment?'.

[121] *Ibid* 6.

[122] *Ibid*. The BMA was fond of responsible male figures. In 1966 it recommended that in law, a married woman should have to obtain her husband's agreement (permission) to obtain an abortion, unless 'as a result of severe mental illness or subnormality, the [single] woman is incapable of forming a rational judgement'. In that case, the permission of her closest relative or guardian would suffice: BMA Special Committee, *Therapeutic Abortion*, 44.

[123] David Steel, House of Commons, *Hansard*, 22 July 1966 1070.

routinely.[124] The self-aborting woman was characterised in Parliament as a victim who deserved help, but the survival, canny and knowledge of the self-aborting woman do not indicate desperation; they indicate a threat to the medical establishment that was neutralised in the Abortion Act 1967, with the support and by way of the tireless campaigning of the ALRA.[125]

Conclusions — Learning from the UK Experience

Perhaps the most startling aspect of the 1960s reform process was the complete lack of acknowledgement of the demand for abortion. The ALRA had effectively characterised the demand as marginal, concerning only victims and occasionally the impoverished wife. Acceding to medical authority in order to secure reform, especially the ascendant authority of medical eugenics, the ALRA provided support for the BMA characterisation of abortion as concerning 'medical necessity', thus affecting only a few, typically in an emergency. This was despite contemporary estimates of the annual abortion rate ranging from 100,000 to 250,000. The ALRA, the BMA and Parliament were so convinced of the 'peripheral' nature of the abortion demand that provisions were not made in the National Health Service for the extra influx of abortion patients after 1967.[126] The NHS was caught unprepared for the subsequent demand,[127] with no extra beds, nurses or doctors provided.[128] For HLA Hart, the big lesson from the British experience therefore is that abortion reform should form part of a 'coherent and comprehensive scheme for dealing with the whole problem of unwanted pregnancies, and should be accompanied, and if possible preceded by a really effective provision of free contraceptive services and education in their use'.[129]

The ALRA conceded early on that the Abortion Act 1967 fell short of its aim to provide for abortion as required by good women in dire circumstances, but accepted that it 'fulfils the core demands' to provide safe surgical procedures, and that it has been interpreted broadly in practice to provide for freely available abortion

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[124] Barbara Baird, 'The Self-aborting Woman' (1998) *Australian Feminist Studies* 13(28), 324.

[125] This threat was so much felt in the 1800s that the abortion clause of the Offences Against the Person Act 1861 was aimed squarely at the woman herself, for self abortion.

[126] Victoria Greenwood and Jock Young, 'Ghettos of Freedom, an Examination of Permissiveness', in National Deviancy Conference (ed) *Permissiveness and Control: The Fate of the Sixties Legislation* (London: MacMillan Pres Ltd, 1980) 170.

[127] Victoria Greenwood and Jock Young, *Abortion in Demand* 29. During the first year of the Act 37,736 abortions were notified in the NHS, increasing at a rate of 170 each month: Chief Medical Officer of the Department of Health and Social Security, *On the State of Public Health 1969* (London: Her Majesty's Stationery Office, 1969) 83.

[128] HLA Hart 'Abortion Law Reform: The English Experience', 203.

[129] *Ibid*, 204.

anyhow.[130] The 1960s campaign which exploited general sympathy and outrage generated by Thalidomide, and which was driven by a belief that eugenics 'undoubtedly' provided the strongest case for law reform, perhaps was destined to marginalise the issue. In the years following reform, abortions for foetal abnormality only ever accounted for between 3 and 5 percent of all terminations.[131] Certainly this tactic allowed for, in fact provided for, medical authority to assume control of law reform, thus undermining the broader agenda. ▲

[130] Keith Hindell & Madeleine Simms, 'How the Abortion Lobby Worked' 277.

[131] Madeleine Simms, 'The Abortion Act After Three Years' 269.