Graduate Students' Conference Paper

A LIFE OF ITS OWN?

A Life History of Abortion Legislation in South Africa

Ronel Koekemoer
Uganda, July 2018

Abstract

This paper takes the ineffectiveness of South Africa's (SA) current abortion legislation as its departure point. Despite the Choice of Termination of Pregnancy Act (CTOP) being one of the most liberal abortion laws in the world, the illegal abortion industry continues to thrive and unsafe abortion-related complications remains a leading cause of mortality in South African women. This paper historicises this legislation to grapple with its ineffectiveness. While this has been done in various ways, previous literature tends to fall within problematic and reductionist binaries of abortion discourse operating within a strict 'pro-life' versus 'pro-choice' framework. Adding to this is the inert temporalizing of South African history into two distinct spheres of 'Apartheid' versus 'Post-Apartheid'. Thinking in these binarized conceptual and temporal frameworks limits our understanding of the complex realities of abortion in SA. This paper addresses this through oral history methodology. Historicising the legislation interrogates the notion that negative public and professional perceptions about abortion are inherently natural or moral. This further destabilises assumptions that stigmatise abortion and contribute to the ineffectiveness of CTOP. By using a life history approach, I argue that CTOP cannot be understood as a mere opposite of Apartheid-era legislation. Instead, it is more helpful to think of CTOP as being in a particular developmental stage; one that is informed by and reacts to previous legislation in the same way an individual's present is influenced by their life history. Life history approaches seek to build a narrative based on various aspects of an individual's life. Similarly, this project hopes to look at several stages and aspects of this legislation's 'life' to piece together how it came to be as it is in its present failing form.

Section 1

"It's Just a Fact of Life":

Introduction[1]

Research Question

How can the application of a life history approach towards abortion legislation in South Africa enhance our understanding of the current ineffectiveness of the Choice of Termination of Pregnancy Act of 1996?

Rationale

Abortion is one of the most stigmatised and polarising social practices. The dividing line between pro-abortionists and pro-birthers is the consideration of whether it is the woman or the foetus who is entitled to a life of its own.[2] My research question was shaped by the centrality of the question of life in the abortion debate and the popularity of using oral history methodology to construct histories about abortion.

My focus on abortion is driven by personal experience. In my third year, my a close family member disclosed that she had undergone an illegal, self-administered and very dangerous abortion in 1985. If performed legally, "going to the dentist might be more dangerous" than undergoing abortion.[3] The fact that I nearly lost a family member to a procedure that could be performed safely radicalised my pro-choice politics, and I was grateful that I lived in a time where the "very liberal" 1996 Choice of Termination of Pregnancy Act (CTOP) protected women from the dangerous and deadly reality my family member went through under apartheid South Africa.

Contrary to my belief, CTOP does not protect women from exploitative and dangerous back-street abortionists.[4] Despite CTOP's legislative accessibility, the illegal abortion trade in South

[1] This particular quote comes from my interview with Dr Alblas, a 72-year-old abortion provider who is unable to retire because she is one of 3 doctors in the Western Cape who provide second trimester abortions. In this quote, she was referring to the fact that abortion is a human practice as opposed to an anomaly.

[2] In keeping with the tradition of many feminist scholars (Macleod, C. "Developing Principles for Research About Young Women and Abortion: A Feminist Analysis of Difficulties in Current South African Studies". *Feminist Africa, 11 (2),* 2007.) this project is mindful of the language used to write about abortion. Taking an explicitly pro-abortion and pro-choice stance, the popular term 'pro-life' has been replaced with the more accurate 'anti-abortion' or 'pro-birth'. This is because the use of the term 'pro-life' suggests that those in favour of a woman's right to choose abortion is 'pro-death' and this does not represent the complexity and nuance of this choice or the stance of those who advocate for access to legal and safe abortion.

[3] Interview with Dr Alblas, Observatory, 13 June 2017.

[4] Recent scholars have reconsidered the description of illegal abortion providers; calling them lamp-post providers as opposed to 'back-street' abortionists. This is indicative not only of one of their means of advertising (with stickers on lampposts) but also that illegal abortion is no longer a clandestine business but is practiced 'in the light'.

Africa continues to thrive, with one study estimating that nearly 50% of abortions performed in SA are done so through illegal practitioners.[5] The direct result of this is that many women die or suffer long-term health complications because of botched abortions in a context where they could undergo legal, safe and free abortions in a clinical setting.[6]

Whilst much research has highlighted why CTOP is ineffective, little has been done to historicise factors that make CTOP inaccessible. Drawing parallels to my family member's experience under apartheid with that of many women needing an abortion in post-apartheid SA, I hypothesised that there are continuities of the past that inform why CTOP is ineffective in the present. An important approach to illustrating how the understanding of the present self is shaped by the past is the construction of a life history.[7] This coupled with the pre-occupation of life in abortion discourse led me to try and see how—if at all—affording the inanimate abortion legislation 'a life of its own' could nuance the understanding of the ineffectiveness of CTOP.[8]

Content Literature Review

Much research has been done to evaluate the accessibility and effectiveness of CTOP since it came into effect on 1 February 1997.[9] Overwhelming, the studies have shown that while CTOP has decreased the rate of maternal mortality as a result of illegal abortions, it has not significantly—if at all—reduced the number of illegal abortions being provided in SA.[10] Similarly an article that measured female morbidity related to incomplete abortions before and after CTOP found that there was no substantial decrease in morbidity rates.[11] The study accounts for this lack of change by suggesting that expired misoprostol (a drug used to induce

[5] Jewkes, RK., Brown, H., Dickson-Tetteh, K., Levin, J., & Rees, H (2002) Prevalence of Morbidity Associated with Abortion Before and After Legalisation in South Africa. BMJ, *324 (7348),* 2002, pp. 1252-3.
[6] Guttmacher, S., Kapadia, F., Te Water Naude, J & de Pihno, H. "Abortion Reform in South Africa: A Case Study on The Choice of Termination of Pregnancy Act of 1996". *International Family Planning Perspectives (24)4*, 1999.
[7] Abrams, Lynn. "Self" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010.33.
[8] Klausen, Susanna. "8. This Law is a Total Failure: Abortion from 1975 to the end of Apartheid", in Susanna Klausen, *Abortion Under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa,* Oxford: Oxford University Press, 2015. 202-214.
[9] Koekemoer, Ronel. 'The Choice of Termination of Pregnancy Act is Enacted by the Parliament of South Africa', *South African History Online,* 11 April 2017, available at http://www.sahistory.org.za/dated-event/choice-termination-act-enacted-parliament-south-africa
[10] Meel BL, Kaswa RP. "The Impact of the Choice on Termination of Pregnancy Act of 1996 (Act 92 of 1996) on Criminal Abortions in the Mthatha area of South Africa". *Health Care & Family Medicine. 2009;1(1),* 33-36.
[11] Jewkes, RK., Brown, H., Dickson-Tetteh, K., Levin, J., & Rees, H (2002) Prevalence of Morbidity Associated with Abortion Before and After Legalisation in South Africa. BMJ, *324 (7348),* 2002, pp. 1252-3.

abortion) is still being used and that this is indicative of the continued existence of illegal abortion 'clinics'.[12]

None of the above research has used oral history methodology to nuance the understanding of the ineffectiveness of CTOP, instead relying on anonymous questionnaires and hospital statistics. Echoing the words of one of my narrators, my oral history approach seeks to address the inevitable gaps of quantitative analysis as while statistics are promoted as unbiased reflections of reality, "they never have all the numbers".[13]

The above research illustrates the ineffectiveness of CTOP as while the act was passed with the intention of reducing the illegal abortion industry in SA, there has been no significant reduction in the number of women accessing illegal abortions.[14] In light of this, there has been considerable research done into why this continues to be the case. A report published by Amnesty International highlighted three key barriers to accessing CTOP; lack of regulation of conscientious objectors, lack of knowledge of the law and disparities in physical access in different communities.[15] In unpacking the factors that inform these barriers, Varkey highlights the persistent stigma limits access and is created by negative attitudes towards abortion by both health-care workers and the public.[16] Guttmacher et. al., looked at the public knowledge and perception about the CTOP and highlighted that inadequate reproductive rights education means that women do not know that they can obtain a legal abortion up until 12 weeks without reason or parental/spousal consent.[17]

The above illustrates a plethora of research into the lack of impact of CTOP on the illegal abortion industry and the numerous studies into the cause of CTOP's ineffectiveness. However, comparatively little has been done to historicise factors that inform barriers to access. This project seeks to address this gap and further the conclusion in Rebecca Hode's work, *The Culture of Illegal Abortion in South Africa,* where she argues that the post-apartheid abortion

[12] Ibid.
[13] Interview with Dr Alblas, Observatory, 13 June 2017.
[14] Klausen, Susanna. "8. This Law is a Total Failure: Abortion from 1975 to the end of Apartheid", in Susanna Klausen, *Abortion Under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa,* Oxford: Oxford University Press, 2015. 202-214.
[15] Amnesty International, "Barriers to Safe and Legal Abortion in South Africa" 1 February 2017, available at http://www.refworld.org/docid/5891b0f94.html, accessed 24 June 2017.
[16] Varkney, S. "Abortion Services in South Africa: Available but Not Yet Accessible to All". *International Family Planning Perspectives (26)2*, 2000., 88
[17] Guttmacher, S., Kapadia, F., Te Water Naude, J & de Pihno, H. "Abortion Reform in South Africa: A Case Study on The Choice of Termination of Pregnancy Act of 1996". *International Family Planning Perspectives (24)4*, 1999.

culture has "strong continuities" with how abortion was perceived in the apartheid past.[18] She argues that these continuities contribute to why, despite the fact that CTOP has reduced the mortality associated with illegal abortion, the number of backstreet abortions being performed has not decreased.[19]

While the various work on barriers to safe and legal abortion access has highlighted many important obstacles with the aim to change this reality, my research seeks to address a major gap in this understanding. What has not been considered in ending stigma is the historical forces that came to construct, enforce and naturalise it. To this end, this project will gather data and interpret it as a life history to see how it nuances understandings of the ineffectiveness of CTOP.

[18] Hodes, Rebecca. 'The Culture of Illegal Abortion in South Africa', *Journal of Southern African Studies,* 42:1, 79-93, 2016.
[19] Ibid.

Section 2

Methodology

2.1 Methodology Literature Review

The decision of using my oral history assignment to research abortion fits in with the considerable literature on the benefits of using oral history methodology for abortion research, especially given the social justice grounding of oral history that illuminates the lives of "speakers who are not already recognised protagonists in the public space".[20] Oral history then, for the purpose of this project is defined as a method of historical enquiry that makes use of oral testimony in various forms (so not only limited to interviews) to construct histories using content, memory, narrative and performance as source material.[21]

In Sands's article, *Using Oral History to Chart the Course of Illegal Abortions in Montana,* she argues that using oral history was an effective approach to writing abortion history because the interview process facilitated interaction with stigmatised individuals.[22] The personal nature of her encounter with the source informed her understanding of the information gathered and also allowed her to rethink other kinds of sources that she had previously dismissed.[23] This is important to my project as I believe that a life history constructed through oral history will facilitate a rethinking of the barriers making CTOP ineffective so as to dismantle them in a meaningful way.

Barbara Baird's work points to the ability of oral history interviews to nuance understandings of abortion.[24] She states that the ambiguities in oral history interviews about abortion highlighted the complexity of the experience and showcased and destabilised—in much the same way as my project hopes to do—cultural assumptions that abortions inevitability lead to suffering and feelings of guilt.[25]

However, my research diverges from the aforementioned in that it uses a life history approach to analyse and construct the argument that CTOP is ineffective because of the continued

[20] Portelli, Alessandro. "Oral history as genre" in Alessandro Portelli, *The Battle of Valle Gulia: Oral History and the Art of Dialogue,* Madison: University of Wisconsin Press, 1997.
[21] Sands, Diana. "Using oral history to chart the course of illegal abortions in Montana" in *Frontiers: A Journal of Women Studies vol.7 (1*), pp.32-37. University of Nebraska Press: 1983.
[22] Ibid.
[23] Ibid.
[24] Baird, Barbara. 'Abortion, Questions, Ethics, Embodiment', *History Workshop Journal, 52,* 2001, 197-216; Cline, David. "Introduction" in David Cline, *Creating Choice: A Community Responds to the Need for Abortion and Birth Control, 1961-1973.* New York: Palgrave Macmillan, 2006.
[25] Ibid

influence of apartheid-era abortion legislation. As highlighted by Plummer, life histories provide insight into how an individual's present and sense of self is influenced by their past.[26] The 'life history' and 'life story' modes of narration have both been used to construct and understand oral history interviews.[27] This project hopes to consider the legislation's 'life' to piece together how it came to be as it is in its present failing form.[28]

2.2 Fieldwork Practice & Experience

Keeping in mind that I would be trying to understand CTOP's ineffectiveness through a life history approach, I chose to interview women who could comment on life under the apartheid-era Abortion and Sterilisation Act of 1975 (ASA), the conception and 'birth' of CTOP and the current 'life' of the abortion legislation.[29] Finding sufficient narrators to give my findings external validity was my first challenge as the stigma around disclosing abortion experiences meant I found it difficult to talk to people whose stories I did not already know. I was only able to overcome this by adapting my research question to accommodate the narratives of my interviewees.

In keeping with the life history approach, I interviewed each woman 'chronologically' by the period in which they were most in contact with abortion legislation. The first interviewee was Rita Saint; a family member who trained as a nurse under ASA, underwent an illegal self-administered abortion in 1985 and worked as a clinic manager during the enactment of CTOP. Secondly, I spoke to Kathleen Dey, the current director of Rape Crisis who worked as a social worker in Groote Schuur hospital in the 1980s in the "pregnancy advisory service". She was tasked with assessing the mental health of women who wanted legal abortions and would approve or reject these requests. My last interview was with Dr Alblas who is one of three

[26] Plummer, K. "4. Getting and Doing Life Histories", in K Plummer, *Documents of Life 2: A Invitation to Critical Humanism*. London: Sage, 2001.

[27] Important to note is that I am consciously calling mine a 'life history' as opposed to a 'life story'. This is because I am not so much constructing my interviews around a life story so much as I am thinking of the data through a 'life history' lens. This means that I am thinking about abortion legislation as having a life that can be organised and understood as the history of one life rather than a broader story about this life. For a more detailed discussion of the difference between these two approaches see Abrams, Lynn. "Self" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010 page 40.

[28] Abrams, Lynn. "Self" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010 page 40.

[29] The choice to include experiences under ASA was done so as to see if there were continuities between ASA and CTOP, but through the interview process it became clear that these continuities were extremely self-evident and so I went from conceptualising ASA as an ancestor of CTOP to thinking of ASA as the 'childhood' of CTOP. For a discussion of why this is and how this contributes to my argument see section 5.

doctors in the Western Cape who provide second trimester abortions and who came to SA shortly after the enactment of CTOP to help implement the new legislation.

I set out to interview all the women in their home or office space but, in the case of my interview with Dr Alblas, she asked instead to meet at a coffee shop as she does not have a fixed office space and was currently having renovations done at her house. This was a significant challenge as I feared it would negatively influence her 'openness' for fear of talking about her work in a public space. Luckily, this was not the case as she has decided to be honest about her profession and talk about it as publicly as possible so as to destigmatise abortion and to advocate for increasing the accessibility of CTOP. However, the interview space meant that 6 minutes into the interview we were interrupted by the waitress and there was excessive background noise. I sought to overcome this by using two different recording devices so that I could use two recordings to piece together parts that were unclear.[30]

[30] Furthermore, for a discussion on the implications of interviewing Kathleen Dey as a prominent feminist see section 4.2.2.

Section 3:

"People Get Pregnant and They Go to Backstreet Abortionists and they Die": Contextualising Abortion Legislation in SA[31]

Apartheid SA legislation was driven not only by the racist ideals of Afrikaner Nationalism but also by its Calvinist foundation. Its laws, especially in comparison to post-apartheid SA, were deeply conservative.[32] With regards to abortion, prior to the 1970s, there was no country-wide standardised definition of abortion and so cases were prosecuted erratically.[33]

In the 1960s and 1970s, there was a global tendency of legalising abortion, argued primarily on the basis of the threat illegal abortions posed to women's lives.[34] This had implications for SA; a review was commissioned by Groote Schuur hospital in 1973 which showed that 13 681 patients had been admitted for septic abortions between 1965 and 1972.[35] It was with this in mind that the decriminalisation of abortion was lobbied for—chiefly by medical professionals—and the government of the day, in its typical style of cosmetic reforms, enacted the Abortion and Sterilisation Act (ASA) in 1975.[36] This era coincided with the National Party's anxiety about the morality of the country which meant that there was an increase in legislature passed to monitor the private lives of its citizens (arguably the most bizarre and paranoid being an amendment to the Immorality Act criminalising people for 'conspiring to commit intercourse').

ASA, drafted and passed by an exclusively white male committee was a far cry from the desired reforms. Rather than being about a women's health, the legislation reflected the fear that if white women had increased access to abortion, it would damage white population growth central to the maintenance of white supremacy.[37] Under ASA, women were granted access to abortions in the first trimester only if the pregnancy was harmful to the mental or physical health of the mother, the baby was deformed or in cases of rape or incest.[38] Research into the

[31] Interview with Rita Saint, Kalk Bay, 2 May 2017.
[32] Hodes, Rebecca. 'The Culture of Illegal Abortion in South Africa', *Journal of Southern African Studies,* 42:1, 79-93, 2016.
[33] Ibid.
[34] Guttmacher, S., Kapadia, F., Te Water Naude, J & de Pihno, H. "Abortion Reform in South Africa: A Case Study on The Choice of Termination of Pregnancy Act of 1996". *International Family Planning Perspectives (24)4*, 1999.
[35] Hodes, Rebecca. 'The Culture of Illegal Abortion in South Africa', *Journal of Southern African Studies,* 42:1, 79-93, 2016.
[36] Klausen, Susanna. "8. This Law is a Total Failure: Abortion from 1975 to the end of Apartheid", in Susanna Klausen, *Abortion Under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa,* Oxford: Oxford University Press, 2015. 202-214.
[37] Guttmacher, S., Kapadia, F., Te Water Naude, J & de Pihno, H. "Abortion Reform in South Africa: A Case Study on The Choice of Termination of Pregnancy Act of 1996". *International Family Planning Perspectives (24)4*, 1999.
[38] Klausen, Susanna. "8. This Law is a Total Failure: Abortion from 1975 to the end of Apartheid", in Susanna Klausen, *Abortion Under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa,* Oxford: Oxford University Press, 2015. 202-214.

impact of ASA has shown that despite these exceptions, many women who fit the criteria were still making use of backstreet abortionists because in order to have an abortion approved, women would have to undergo a rigorous and time-consuming evaluation that was rumoured to be humiliating and judgemental.[39]

Under ASA, the illegal abortion industry thrived with one estimate saying that there were approximately 120000 to 250000 clandestine abortions being provided per year.[40] This had drastic implications for women's health and more women were being admitted to hospital and dying from complications as a result of unsafe abortions than before ASA.[41]

The end of apartheid saw reproductive rights organisations lobby for the legalisation of abortion without restriction, again premised on the argument that illegal abortions were harmful to a women's health.[42] CTOP was enacted to "provide equitable, accessible, cost-efficient and user-friendly" access to abortion.[43]

Initially, CTOP was considered a roaring success. In the first 3 years, the state-commissioned 'Saving Mothers Report' suggested that there was an "enormous" 90% decrease in abortion-related morbidity and mortality.[44] This success was isolated and quickly encoded in the official memory and then forgotten, seen in how the follow up report 3 years later, no longer included a section on abortion. This 'forgetting' has implications for why CTOP is ineffective. All research done has highlighted that CTOP is inaccessible because of the stigma associated with abortion that is fuelled by public perception and not negated by governmental narrative.

The democratic dispensation went to great lengths to promote itself as the antithesis of the apartheid government by popularising its constitution and specifically the legislation that allows people to love whom they choose, practice their religion without consequence and be free from racial discrimination. However, as emphasised in my findings below, CTOP has not benefitted from such popularisation and festers in the mindset of the past rather than being a proud child of the democratic present.

[39] Ibid.
[40] Guttmacher, S., Kapadia, F., Te Water Naude, J & de Pihno, H. "Abortion Reform in South Africa: A Case Study on The Choice of Termination of Pregnancy Act of 1996". *International Family Planning Perspectives (24)4*, 1999.
[41] Jewkes, RK., Brown, H., Dickson-Tetteh, K., Levin, J., & Rees, H (2002) Prevalence of Morbidity Associated with Abortion Before and After Legalisation in South Africa. BMJ, *324 (7348),* 2002, pp. 1252-3.
[42] Varkney, S. "Abortion Services in South Africa: Available but Not Yet Accessible to All". *International Family Planning Perspectives (26)2*, 2000.
[43] Western Cape Department of Health. "*Termination of Pregnancy (TOP): Policy, Guidelines and Protocols"*, 2000.
[44] Interview with Dr Alblas, Observatory, 13 June 2017

Section 4:

Findings and Analysis

In and across the three interviews various themes and stories emerged that provided insight into what a life history of abortion legislation can illustrate about the current ineffectiveness of CTOP. Below is a thematic analysis of my interviews focussing on three key themes and certain stories that nuance them; namely, abortion pedagogy, health-care workers as barriers to access and the knowledge of the illegality or legality of abortion in SA. These findings represent the thematic 'spine' in constructing my argument that a life history approach is valuable in highlighting how the underlying (and therefore surreptitious) reason for the ineffectiveness of CTOP are made visible through continuities with the past.

4.1 *"They Don't Want me to Talk about Abortion":* A Problem of Pedagogy?[45]

The ineffectiveness of abortion education is highlighted as a major reason for the current failing of CTOP and with this in mind, I asked all three of my collaborators about pedagogical approaches to abortion.[46] Their responses not only confirmed the failings of how CTOP is being taught but also showed an important contrast with pedagogical approaches to ASA.

All three of the women learned about abortion occupationally.[47] Saint leaned about abortion "as a nurse", saying that what she learned was "all about legal abortion […] there was a law that said abortions are illegal and only under certain circumstances the procedure can be performed".[48] While she was unable to recall ASA by name she clearly remembered the stipulations under which legal abortions could be performed made evident in how she recited these conditions twice throughout the interview.

Similarly, Dey learned about abortion whilst being trained as a social worker and described her training as follows:

[45] Interview with Dr Alblas, Observatory, 13 June 2017

[46] Varkney, S. "Abortion Services in South Africa: Available but Not Yet Accessible to All". *International Family Planning Perspectives (26)2*, 2000.

[47] This is a threat the external validity of my data as it means that it relates more to the health-care workers and providers than it does the general public. That being said, the lack of 'upfront' abortion education in post-apartheid SA for health-care professionals does speak to the wider ignorance about abortion; if they are hesitant to teach it effectively to those that will provide abortion, surely this will be reflected in how they teach it to the women who need to access the service. Similarly, this discrepancy does contribute to the larger issue of the fact that the CTOP is inaccessible because of the lack of health-care providers willing to perform abortions.

[48] Interview with Rita Saint, Kalk Bay, 2 May 2017

> "we would have been taught about the law and then we would have been taught about the human rights aspect and probably it being UCT, it would probably would have had a quite pro-choice stance without being prescriptive. You know, respecting that there were quite religious people in our class".[49]

The framing language of Dey's memory is indicative of the social context of her training rather than specific content memories. Dey's is a speculative answer rather than an affirmative one seen in her repetition of the word 'probably' and her phrasing of "we would have been" rather than Saint's affirming "we were".

Both Portelli and Thompson highlight how memory is shaped by the social context in which the event occurred and Thompson speaks to how this is valuable as while the content of the memory may be 'inaccurate' or vague, its revelation of social context is vital to interpreting interviews.[50] Dey's description illustrates an assumption about the content based on the context; she is able to 'fill the gaps' in her memory by knowing that she was taught about abortion in an environment that was pro-choice at a time where the law was mostly anti-abortion. While the picture she paints is a more liberal one to that of Saint, she recalls being taught about abortion in the context of it being "a social ill" further illustrating the context as one undeniably anti-abortion.

While both narrators working under ASA narrated their memories differently, both memories betrayed much about the social context in which they were taught about abortion. The narration of these particular memories constructs the social contexts in which they were taught; one that naturalised the illegality and immorality of abortion through the use of legislation.

Comparing the experiences of Dr Alblas— "an abortion provider and trainer" under CTOP— to the training of the aforementioned narrators, illustrates that the ineffectiveness of CTOP is facilitated by how its restrictive 'youth' (ASA) haunts public imagination. When asked where she provides training, Dr Alblas laughed and replied "well, when someone asks me".[51] She went on to describe how at lectures she has given at both Tygerberg and UCT, she taught the

[49] Interview with Kathleen Dey, Observatory, 16 May 2017.
[50] Thomson, Alistair. "Four paradigm transformations in oral history" in The Oral History Review vol. 34 (1), pp.49-77. Oxford University Press: 2007; this idea also stems from a conversation with Nompilo Ndlovu in which she outlined that memory in oral history is what makes the discipline an effective way of communicating 'unspeakable pasts', as it is not about whether a memory is factual or not, if that is the memory of many people then it is revealing of that past in various ways.
[51] Interview with Dr Alblas, Observatory, 13 June 2017

medical students how to perform a manual vacuum aspiration (MVA—a procedure used to remove the foetus during miscarriages but also the standard method of first trimester abortion). During these lectures, the respective departments stipulated that MVA must be taught not in the context of termination but that she must instead "talk about miscarriages" because "they say there are so many…these pro-life people…they make problems".[52] This anxiety around the reactions of medical students when learning about abortion is further seen in an anecdote where, when lecturing at UCT, she was asked to remove a picture of an aborted six week foetus from her slides.

Dr Alblas's experience of training medical students about abortion under CTOP shows a dissonance in the supposed aim of CTOP—to increase the number of legal and safe abortions that women have access to—and how this goal is to be achieved. Compared to the interviews with Saint and Dey, Dr Alblas's experience of abortion pedagogy suggests that CTOP is taught similarly to, if not more conservatively than, ASA.

This disparity—made evident through a life history approach—influences the effectiveness of CTOP. A study done by Macload et. al, examined 514 Grade 11 pupils about their knowledge of CTOP. Of the 514 pupils, not one could name it and over half thought that abortion was legal only under certain conditions, echoing Saint's ability to recall the circumstances under which it was legal but not the name of the legislation itself.[53] This highlights how teenagers who have all grown up in a social context where abortion is legal think about abortion in a similar way to how it was conceptualised in the past legislation.

This illustrates how a life history approach can explain why CTOP remains ineffective; not only are medical students being taught about abortion conservatively, but abortion under CTOP is being taught in a similar way as the more conservative ASA. This similarity can especially be seen in how both Dey—being taught about abortion at a time when it was illegal in a more liberal institution—and Dr Alblas—teaching at the same liberal institution in a radically different social context—describe that pedagogical approaches to abortion are heavily influenced by the anti-abortion stance of some of the students.

[52] Ibid.
[53] Macleod, C., Seutlwadi, L., & Steele, G. 'Knowledge of the Choice on Termination of Pregnancy Act Amongst Learners in Buffalo City', *Health SA Gesondheid* 19(1), 2014.

This continued emphasis on allowing the 'morality' of the procedure affect the training is at odds with the *raison d'etre* of the CTOP. In Saint and Dey's training context, this would be congruent with the apartheid ideology of a country that was "biblical driven".[54] However, under the democratic dispensation who emphasise human rights (and who enacted CTOP on this premise), the conservativism of abortion training seems misplaced. Instead, the social context which made abortion illegal continues to influence the teaching of the CTOP despite the massive difference in the two laws.

4.2 *"I Never Knew About A Doctor That Was Pro-Abortion":* Health-care Workers as A Barrier to Access[55]

4.2.1 Conscientious Objection Then and Now

Chief among the reasons cited by Amnesty International for the ineffectiveness of CTOP was "the failure by the government to regulate what's known as conscientious objection where health providers refuse to provide abortions".[56] CTOP allows that health-care workers are able to conscientiously object in accordance with their constitutional right to freedom of belief.[57] According to the Policy Guidelines for the Protocol health-care workers have to follow, they have the constitutional right to object to performing the procedure but are required to "respectfully refer" clients on.[58]

The idea of health-care workers being a barrier to access was highlighted by Dr Alblas who spoke about how CTOP allows for conscientious objection but "not like now" where many medical super-intendants will allow nurses to object to abortions on a case by case basis.[59] She illustrated this by saying that many of her patients that come for second trimester abortions do so because, whilst they did try to obtain an abortion in the first 12 weeks, they were "sent from pillar to post" because the medical practitioners did not feel that the pregnancy "[was] really very sad".[60]

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[54] Interview with Rita Saint, Kalk Bay, 2 May 2017.
[55] Ibid.
[56] Amnesty International, "Barriers to Safe and Legal Abortion in South Africa" 1 February 2017, available at http://www.refworld.org/docid/5891b0f94.html, accessed 24 June 2017.
[57] Western Cape Department of Health. "*Termination of Pregnancy (TOP): Policy, Guidelines and Protocols*", 2000.
[58] Ibid.
[59] The law does not allow for this at all; instead, if a health-care provider wishes to consciously object, they have to sign a contract before they are employed in a hospital or clinic and not choose which cases they wish to object to.
[60] Interview with Dr Alblas, Observatory, 13 June 2017

Both Saint and Dey's experience of conscientious objection under ASA was very different. Saint describes how there was no allowance made for nurses to conscientiously object when abortions were approved because "it was a legal thing. So it was morally right. And accepted" and so the expectation was to treat abortion patients the same as any patient undergoing any other medical procedure.[61] This is echoed by Dey who tells a story about being under investigation for approving too many abortions and says the main reason for this enquiry was that "the nurses complained…these were the nurses that had to [provide abortions]…and they hated it…they had this horrible horrible job of doing all these abortions".[62] These two anecdotes about nurses under ASA suggests that nurses were not able to conscientiously object in the way that they are now, instead, it was presumed that if a legal abortion was granted, then the nurses were expected to perform it.

These three depictions of conscientious objection of health-care workers shows that while CTOP allows for conscientious objection where ASA did not, health-care providers are misusing this clause to conscientiously object if a particular case does not meet certain self-defined criteria, criteria with an uncanny resemblance to those that were grounds for a legal abortion under ASA. This is a symptom of how CTOP was not sufficiently distinguished from ASA highlighted by Dr Alblas when she talks about her experience as an abortion provider during the first few months of the CTOP's enactment.[63] In speaking about how that moment failed in making abortion accessible she says that "that was one of the mistakes […] they didn't prepare health-care providers for this".[64] Saint's interview illustrates this. She was working as a primary health care clinic manager in 1997, and said that "when they were saying 'okay abortions are going to be available also under other circumstances' [rather the more restrictive ones under the previous Act…]it was really a process to get used to".

4.2.2 How Legislation Enforcers Construct Themselves

Important to consider as well, is how the pro-abortion health-care workers construct themselves in the context of their interviews. Dr Alblas, for example, is a doctor who is known in the world

[61] Interview with Rita Saint, Kalk Bay, 2 May 2017
[62] Interview with Kathleen Dey, Observatory, 16 May 2017
[63] I have chosen this wording as it is both in line with how we talk about the lives of the animate and it, as this project argues, signals that the CTOP does not have a life of its own at all, but is rather another life phase of abortion legislation more broadly.
[64] Interview with Dr Alblas, Observatory, 13 June 2017

of abortion research because of her willingness to be interviewed and write articles that demystify abortion in SA. It was this willingness that allowed me to contact her and throughout her interview she casts herself as a lone heroine of CTOP. This is illustrated throughout her interview as she talks about specific instances of defiance against conservativism. For example, in the anecdote in 4.1 where she was asked not to speak about MVA in the context of abortion she says "I must honestly say, I totally ignore it. I talk about abortion".[65]

Similarly, Dey constructs herself as an unlikely heroine of women's choice in a context that sought to deny this. However, the accounts differ in the way that Dr Alblas acknowledges how her social context mediates this role where Dey does not. For example, Dr Alblas is frank about what she can and cannot say in order to continue doing her job, especially seen in the following anecdote:

> "[being an abortion provider] is not a respected job…like in Worcester there's a gynae, he's the head really of the gynae department and he's very anti-abortion. He hates me [*A laughs*]…he can't imagine that you do something like that and he's told me that…he accused me, one time…yeeaars [*elongates word for emphasis*] ago…he really accused me [*A deepens voice*] 'how can you do this procedures?! 18 weeks! It's dangerous!'. And look what's happening, I've worked there for so many years and there was just one complication he ever has had to step in…and then the nurses told me: 'you know, you should see how many complications he makes with just sterilisation of people'. [*A laughs*] but I can't say that".[66]

This particular story illustrates not only the extent of the stigma abortion providers face within the medical profession itself but also highlights how, in order to continue to be effective in her work, she has to consciously navigate this stigma.

Dey, by contrast, tells of how she approved or rejected applications for abortion but casts this as a heroic challenge to the system rather than as being a role that enforced the system. Abrams highlights how the narration and memory of a story is shaped by the person's own role and the social approval or disapproval of this role; this is evident in how Dey constructs herself as an enabler of abortion access rather than of the restrictive legislation.

[65] Interview with Dr Alblas, Observatory, 13 June 2017
[66] Ibid.

Throughout the interview, Dey contradicts her stated personal politics and focuses on a story that casts her as a quasi-Oskar Schindler character fighting the system from within. She tells of an instance where she was under investigation for approving too many abortion requests and does so with clarity, detail and coherent genre that suggests a familiarity with retelling this particular story. This is contrasted by her vague and almost nonchalant answer about cases she had to reject, saying only that they made her "sad". This is evidence both of Portelli's suggestion that narration is influenced by familiarity with interview format and Trouillot's theory about how the gaps between what has happened and what is said to have happened are themselves historical.[67]

The detail with which she recounts the story that emphasises her defiance of the legislation indicates that she has told this story in an interview format before, just as the ease with which Dr Alblas talks about her life and work suggests. However, Dey's account is mediated by the contemporary social desirability of her role; despite being investigated she is nonchalant and open about her care-free attitude concerning the investigation whereas Dr Alblas, who is an enforcer of a very different law, narrates who work much more consciously of the stigma she is required to navigate. Using Trouillot's silence production as an interpretive framework, Kath's story illustrates how memory and narrative should be analysed keeping in mind that there is a gap in what is seen and what is said to have happened and while that gap may not always be easy to note, the 'gap' is also shaped historically.[68] This is evident in how Kath portrays herself in this particular story is a 'hero' but the fluency of this narration betrays a familiarity with speaking about it in this format and so her recollection and narration is shaped not only by what she remembers about the event itself, but also her memory of the reactions to previous tellings of this story.[69]

Dey's description makes it appear that while she was in an anti-abortion context (and in the service of an anti-abortion law), she was a pro-choice heroine. This is seen in how she casts those around her as being against her, constructing the nurses who performed the abortions she approved as unwilling and angry participants in her liberalism, not considering their individual agency or stance saying that they thought of her as a "bitch who is making [their] lives such a fucking misery".[70] This is indicative of how Dey has constructed her role as a health-care

[67]Portelli, Alessandro. "Memory and fact" in Alessandro Portelli, *The Death of Luigi Trastulli and Other Stories: Form and Meaning in Oral History*, New York: State University of New York Press, 1991.
[68] Abrams, Lynn. "Narrative" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010.
[69] Abrams, Lynn. "Self" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010.
[70] Interview with Kathleen Dey, Observatory, 16 May 2017

worker that enforced the legislation whilst emphasising not that she hindered access but provided it.

The above thematic analysis shows that conscientious objection allowed by CTOP is very much informed by ASA in that nurses who choose to perform abortions under CTOP are prepared to do it based on self-defined criteria that justify the procedure. These criteria are based on those nurses working under ASA performed abortion. Similarly, an analysis of how Dey and Dr Alblas construct themselves as enforcers of legislation illustrates how Dey perceives CTOP to have shifted the social desirability of her work but this is contrasted by Dr Alblas who shows how the social desirability of ASA continues to influence health-care providers working under CTOP.

4.3 *"Nobody Thought as a Woman You Had a Right to Abortion":*

Knowledge of the Legality or Illegality of Abortion[71]

Another continuity that this life history approach makes apparent is the recurring theme of the knowledge about the legality or illegality of abortion in SA. This knowledge has important implications for answering the question posed, as it highlights how, despite the way post-apartheid laws have been publicly promoted as the antithesis to apartheid laws in the nation-building project, this has not been done in the case of CTOP.

Dey's memory of the illegality of abortion under apartheid is explicit, When When asked whether or not she knew abortion was illegal when growing up and becoming sexually active, she replied with conviction: "oh absolutely".[72]

Saint did not share such explicit conviction and could not pinpoint a moment where she was made aware of the illegality of abortion. However, through a mnemonic and narrative analysis of her interview it is evident that this lack of knowledge is not indicative of the ambiguity of the law but rather the naturalisation of this knowledge in the apartheid era context. By analysing the process of recollection as communicated through narrative—rather than just the memory

[71] Interview with Rita Saint, Kalk Bay, 2 May 2017
[72] Interview with Kathleen Dey, Observatory, 16 May 2017

itself—it becomes clear how the illegality of abortion was taken for granted in the apartheid era context.[73]

This is further made evident in how the collective memory of the illegality and immorality of abortion shapes her recollection of her own proximity to abortion under apartheid. This is evident as while Saint initially asserts that she had little experience and knowledge of abortion, at various instances throughout the interview she contradicts herself. She describes helping two different people obtaining abortions and demonstrates intimate knowledge of how illegal abortions were performed. This contradiction highlights how her social context which condemned abortion and influenced how she constructed herself as "it wasn't the good girls or the good nurses that knew about these things or would say anything". Initially distancing herself from abortion in the interview is symptomatic of the persistence of this context in her memory and ideas of abortion.

Importantly, however, the theoretical frameworks put forward by Portelli, Thompson and Abrams do not account for how legislation naturalises societal norms that in turn shape memory. Legislation is packaged as encoding 'natural' social ideology rather than constructing and enforcing social ideology. This was particularly the case in apartheid (and, I would argue, democratic SA) demonstrated by Saint's repetition of the normalcy of apartheid saying things like "apartheid was normal. I didn't know any different".[74] Similarly, despite the fact that she was affected by ASA's inaccessibility to the point where she performed an abortion on herself, she her narration was one of shame at defying this law (albeit implicitly) rather than anger at the law's restrictions.

This collective memory—seen in Kath's conviction and Rita's more subtle memory of her knowledge of the illegality of abortion—persists into the present and effects the accessibility of the CTOP. Dr Alblas explained that "when they come so late [for second trimester abortions which are more restricted] I often ask, 'why did you come so late' and they say they don't know where to go so I say: 'don't you know it's legal?' 'Oh, I didn't know it was legal". She also criticises this lack of knowledge saying that when the Act was enacted in 1997 the government "didn't make it publicly very known".

[73] Portelli, Alessandro. "Memory and fact" in Alessandro Portelli, *The Death of Luigi Trastulli and Other Stories: Form and Meaning in Oral History*, New York: State University of New York Press, 1991.; Abrams, Lynn. "Narrative" in Lynn Abrams, *Oral History Theory.* New York: Routledge, 2010.
[74] Interview with Rita Saint, Kalk Bay, 2 May 2017

Comparing the knowledge of the legality of abortion in the three interviews highlights two very different contexts in which the legislation 'lived'; in the apartheid era, the legislation was invisibilised by the naturalisation of religious conservativism through legislature. Post-apartheid SA, by contrast, is a very different context which presumably would allow the more liberal abortion legislation to 'live' in the spotlight as a celebratory indication of progression from the past. However, Dr Alblas's description of why women come for second trimester abortions illustrates how this is not the case at all. Instead, the CTOP continues to 'live' in the dark and has not been 'naturalised'.

Section 5

"It's Just How it is and Nobody Questions It":

Central Argument & Conclusion[75]

After conducting the interviews, compiling and analysing the data and thinking about the legislation as having a life of its own my project posits that a life history approach of abortion legislation in SA enhances understandings of the ineffectiveness of CTOP by making explicit the historical forces that inform—if not dictate—the barriers that make CTOP inaccessible.[76]

Personifying the legislation has proven helpful because it has meant think of the legislation as having a life trajectory rather than viewing it as a discreet moment in the legislative history of SA. The 'life' constructed did shift throughout the project and this shift was vital in conceptualising my argument. Initially, I thought of CTOP as being 'conceived' during the interregnum and being 'born' at the moment of its enactment in 1996. This conceptualisation meant that I thought I could account for CTOP's ineffectiveness because of its 'youth'. However, as illustrated in the three sub-sections outlined in chapter 4, the strong continuities with the past made me rethink ASA as a conservative 'ancestor' to current legislation but rather as CTOP's youth, with its current life stage instead reflecting maturation. This destabilises the

[75] Interview with Rita Saint, Kalk Bay, 2 May 2017

[76] Important to note here is that my findings have little external validity at this stage as my argument is based on three interviews and so is not generalisable to the whole population. However, due to the nature of the topic of study and the fact that this is a preliminary pilot project, the paucity of the interviews can still be used to make an framework that can be challenged or proven by further research.

idea that CTOP represents a more liberal attitude towards abortion; instead CTOP acts more like an adult failing to convince the world that they have outgrown their wayward youth.

The implications of not separating the two laws, but instead seeing them as different stages in the same life, changes the framing of CTOP as a new law heralding new attitudes towards abortion. More accurately, it is a new law whose intentions are obscured because it is an extension of ASA.

Life histories illuminate the construction of self in relation to societal context and their role within this context.[77] Thinking of my findings through a life history lens has illustrated that while the content of the law has changed drastically, the societal acceptance of this content has not changed. This approach then has made "the implicit explicit, the hidden seen" by showing that the negative social attitudes towards CTOP that inform its ineffectiveness can be historicised. These show that these attitudes are not 'natural' which has important implications because with the recognition of construction comes the potential for deconstruction.[78]

In sections 4.1 and 4.3 I showed that there is a lack of knowledge of the legality of abortion in contemporary SA and that this is fuelled by the fact that CTOP was not naturalised in the way ASA was. Instead, social attitudes towards abortion enforced and maintained by apartheid legislation have persisted largely because the new law was not used to naturalise a particular attitude to abortion, but rather an attitude towards democracy. Saint highlights this when she says: "for me apartheid and abortion…I never thought the two went hand-in-hand…that no abortion because of apartheid and now abortion because apartheid is gone". Her failure to see the link is crucial. This lack of focus on abortion legislation as being influenced by the past means that the naturalisation of thinking of abortion as immoral and taboo has gone unchallenged and so the way it was thought of in the past has permeated into the present.

This is made evident in how the teaching methods and attitudes of health-care providers in the present are congruent with the apartheid past. The lack of acknowledgment of these continuities indicates that these negative attitudes are justified by a perceived natural, moral imperative rather than the social context of the past. Constructing a life history of abortion legislation has made me rethink these continuities as a developmental influence rather than a resistance to change driven by morality. The democratic dispensation has done much to promote an image

[77] Atkinson, Robert. *The Life Story Interview,* USA: Sage Publishing, 1998, 125.
[78] Ibid.

of itself as the antithesis to the apartheid regime by passing and publicising laws radically different and also using these laws to naturalise itself as a dispensation with an unabashed human rights agenda.

Abortion remains at odds with this in various ways. Despite the politics of the people who lobbied for CTOP, its 'conception' (which I now conceptualise as its 'mid-youth crisis') was similar to that of ASA in that it was premised on the fact that illegal abortions threaten women's health rather than framing it as a human rights violation. Dr Alblas illustrates this by saying that people think about abortion in the context of being "a woman's right" or "a woman's health". She goes on to speak about the unpopularity of the former camp saying that "I think it is a woman's right, but I don't say that". This is attitude is emphasised by Saint where she, despite having personal experience with illegal abortion, only considers herself pro-choice when pregnancy threatens a woman's health saying "I am not very supportive of women who use it as a family planning method".

ASA is a clear example of how legislation naturalises certain societal values and practices but perceives its role as one that protects a natural ideological stance. CTOP does not 'protect' a specific ideology towards abortion. Instead, CTOP is one of many mechanisms that naturalise liberalism more broadly, which is central to the democratic state's identity. The implications of this is that CTOP does not espouse and naturalise a positive attitude towards abortion and so apartheid and pre-apartheid era legislation continues to stigmatise abortion in such a way that it remains inaccessible thus rendering CTOP ineffective.

In conclusion, oral history methodology has been used extensively in writing abortion histories for its ability to historicise the 'ahistorical' and give voice to silences created by assumptions of morality. However, my project adapted this approach by thinking of the abortion legislation through a life history lens. Constructing a life history of abortion legislation highlights that CTOP is ineffective because it does not naturalise a more liberal or progressive stance towards abortion. Instead, attitudes towards abortion in SA show strong consistencies with how abortion was perceived in the past. This is made evident by giving the abortion legislation a life of its own, in that it makes the current legislation more self-reflective. This reflexivity nuances our understanding of the factors that make CTOP ineffective by historicising them and locating the problem not in the CTOP's struggle to reinvent itself but rather in the broader failure to destabilise attitudes and norms constructed in the past.

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