1. Introduction

The right of women to access abortion, defined as "the medical process of ending a pregnancy so it does not result in the birth of a baby" (NHS, 2014), is widely considered to be an essential element in the steady progress towards female emancipation over the past century. Indeed, for some analysts, the link between abortion rights and feminism is explicit, since in their view "restricting abortion is all about keeping women under the male thumb: controlling women's sexual and reproductive capacities is what patriarchy is all about" (Pollitt, 2015a: para.5). More broadly, the right to access abortion is described as "a cornerstone of women's ability to control their lives" (Lewis, 2015: para.13), while Amnesty International (2014: 1) states simply that "sexual and reproductive rights are human rights". Increasingly however, the right to access abortion faces a "very real backlash", as opposition to sexual and reproductive rights grows around the world, forcing abortion to the "forefront of the global struggle for gender equality" (Amnesty International, 2014: 1-4). Worryingly, some analysts believe that while gay rights campaigners are consolidating their victories of the 1960s, abortion rights campaigners are fighting a losing battle. Pollitt (2015b: para.1), for instance, claims that in the U.S. "reproductive rights [are] losing while gay rights are winning". Nor is the threat to women merely abstract or ideological; Purcell *et al* (2014: 101) suggest that "timely access to safe abortion remains a global health concern", while the Guttmacher Institute (2012: 1-2) reports that "nearly half of all abortions worldwide are unsafe" and estimates that a staggering 47,000 women die as a consequence of such practices each year. Given that "where abortion is permitted on broad legal grounds, it is generally safe, and where it is highly restricted, it is typically unsafe" (Guttmacher Institute,

2012: 2), the denial of abortion rights thus represents not only an ideological threat to female freedom, but also a mortal threat to the lives of women around the world.

Amnesty International has responded to this growing backlash against abortion rights by launching the My Body My Rights campaign in 2014. The campaign's seven-point manifesto is intended to unite women in their "quest to claim control over our bodies, health and the personal decisions that affect our futures" (Amnesty International, 2015; Appendix B). The My Body My Rights campaign points to egregious cases such as rape survivors in Tunisia and Algeria forced to marry their rapists, and women in El Salvador imprisoned for both miscarrying and seeking abortions, and asserts that "seeking an abortion – or helping someone get one – does *not* make us criminals" (Amnesty International, 2015). Critically, Amnesty also wants to draw attention to the fact that abortion rights are imperilled not only in the developing world, but also in the developed world. The case of Savita Halappanavar, who died from septicaemia in Ireland in 2012 after her request for an abortion was refused, clearly illustrates that the battle for full-scale abortion provision remains to be won in Europe as well as elsewhere (Lewis, 2015). Similarly, the fact that abortion remains legally restricted in Northern Ireland, and practically restricted in Scotland (the main focus of this dissertation), illustrates that even in a relatively liberal country like the United Kingdom, problems of abortion provision remain. The My Body My Rights campaign is evidently timely, and it is hoped that this dissertation will meaningfully contribute to the campaign through providing a Scottish perspective.

1.1 Background: Abortion in Great Britain

Abortion was not illegal in Britain until the 1861 Offences Against the Person Act criminalised the practice (Bacchi, 1999: 149), thereby ushering in a century of stigma and unsafe terminations, as women were forced to turn to illegal backstreet clinics. The 1967 Abortion Act, which succeeded at the seventh time of asking (Davis and Davidson, 2005: 283), effectively legalised abortion by allowing for psychological and social factors to be taken into account in assessing the health of the pregnant woman. Specifically, Ground C of the Act, under which approximately 99% of abortions are approved, allows for termination when "the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman" (National Statistics, 2015: 20). While some feminists object that the Act "constructs women as irrational and incapable of judging the circumstances in which they should become mothers" (Beynon-Jones, 2012: 510), most appear to accept that the Act represented a quantum leap forward for abortion rights in Great Britain. Indeed, it is revealing that Ian Donald, Regius Professor of Midwifery at the University of Glasgow, and a fierce opponent of abortion rights, believed there was "no doubt that the British public…largely accepted the legislation as indicating the right to abortion on demand" (Davis and Davidson, 2005: 286). The swift rise in the number of abortions in Scotland, from 1,500 in 1968, to over 7,500 in 1972, seems to bear out the accuracy of this analysis (National Statistics, 2015: 2).

Public support for abortion rights remains high in the UK at present, with approximately two thirds of the public favouring a woman's right to choose an abortion should she so wish (Lewis, 2015), although recent years have seen a steady pushback as anti-abortion groups such as Abort67 have protested outside abortion clinics, and a small group of MPs, notably

Conservative Party MPs Nadine Dorries and Fiona Bruce, have sought to smuggle references to the "unborn child" into parliamentary legislation (Lewis, 2015). So while for the most part women retain satisfactory access to abortion in Britain, pro-choice campaigners remain vigilant about legislative attempts to bestow personhood on foetuses; for as Lewis (2015) notes, this would have the invidious effect of potentially criminalising a woman's behaviour during pregnancy.

1.2 Background: Abortion in Scotland

The "distinctive medical tradition and culture" of Scotland (Davis and Davidson, 2005: 284), is clearly evident in the somewhat idiosyncratic application of the 1967 Abortion Act north of the border. Whilst before 1967 "Scottish abortion law was substantially more flexible and liberal than its English counterpart" (Davidson and Davis, 2012: 99), the years since 1967 have seen a clear divergence in the opposite direction, as access to abortion at late gestations has been more restricted in Scotland than in England and Wales. As Purcell *et al* (2014: 101-5) note, abortion for non-medical reasons is generally not provided in Scotland after 18-20 weeks despite the legal limit in Great Britain being 24 weeks, meaning that women seeking a late termination are forced to travel to England, at considerable financial expense, and leading to a sense of "stigmatisation and discrimination" for the women concerned. Purcell *et al* (2014: 102) describe the unusual situation in which "abortion is legally permitted, but women face substantial barriers to access when seeking a later abortion". Indeed, Scotland's anomalous situation leads Cochrane and Cameron (2013: 216) to conclude: "it is clear that the current pathways in Scotland are inequitable when compared to the rest of Great Britain". Campaigners are increasingly seeking to draw

attention to this inequality, which comes at a time when the Smith Commission has suggested that "further serious consideration should be given" to devolving abortion law away from Westminster and towards the Scottish Government as part of the post-referendum 'devo-max' process embarked upon by the UK government (Henderson, 2015: 3). Should such devolution take place, it would arguably present an opening for abortion rights campaigners to draw attention to the inequitable levels of abortion provision currently offered to pregnant women in Scotland compared to women in the rest of Britain.

1.3 Research Aims

A central difficulty for abortion rights campaigners is the lack of clarity surrounding precisely *why* abortion provision at late gestations for non-medical reasons is not generally provided in Scotland, despite abortion being legal in the whole of Great Britain up until 24 weeks. As Cochrane and Cameron (2013: 216) state, the reasons for the failure to provide such a service "are not clear, nor is it clear why the regional provision is so varied or how decisions for local gestation limits are decided". Cochrane and Cameron (2013: 219) suggest that "further research is required to determine the wider acceptability of late term abortion among women, the general public, politicians, law-makers, and lobby groups". This dissertation aims to achieve some understanding of the anomaly by conducting qualitative interviews with politicians from the various political parties in Scotland, as well as party spokespeople and other policymakers; hence providing a political and law-making sample of respondents and partially illuminating this Scottish anomaly. These interviews will be conducted with a view to ascertaining:

(a) The factors that have contributed to limited access to abortion in Scotland;

(b) The political will amongst parties to implement provision of abortion up to the legal limit;

(c) The likely effects of devolving abortion policy to Scotland.

It is hoped that this research will meaningfully contribute to Amnesty's My Body My Rights campaign, and that it will raise awareness amongst political parties in Scotland of the inequality women in the country face when seeking late term abortion.

The dissertation will proceed as follows: a literature review focussing on abortion in Scotland in an attempt, firstly, to elucidate the inequalities faced by Scottish women and, secondly, to discuss some of the likely causes of this inequality in abortion provision. Section three will set out in detail the methodology pursued, while in the fourth section the findings of the study will be presented, and an attempt will be made to discuss, analyse and interpret the data. Finally, the dissertation will conclude with a summary and recommendations.

2. Literature Review

Whilst there is a wealth of literature on abortion generally, the abortion situation in Scotland is considerably under-researched. By necessity, much of this review will encompass England and Wales as well as Scotland, since the power to legislate over abortion presently remains at Westminster. Literature relating to abortion internationally will also be drawn upon where it helps to illuminate the situation in Scotland. The review will seek to reflect the fact that Scottish women experience specific obstacles relating to their ability to access abortion. The review is split into two parts: the first describes the historical development of abortion rights in Britain, while the second considers the current nature of the abortion debate, paying particular attention to the possible consequences of devolving abortion policy from Westminster to Holyrood.

2.1 The History of Abortion in Britain and Scotland

2.1.1 Pre-1967

Abortion was not a crime in Britain until the 1861 Offences Against the Person Act classified it as a "felony" (Bacchi, 1999: 149; Eric-Udorie, 2015). This transformation in the state's attitude to abortion was motivated by what Bacchi (1999: 149) describes as the "startling decline" in the birth rate from 1860, which caused Western governments to fear that the upper classes - wealthier and therefore able to afford abortions - were being outbred by the so-called lower orders as well as by other nations, thereby "weakening the race" (Bacchi, 1999: 149). It is therefore clear from the outset that the state's attitude to abortion was associated with deeper attitudes towards class and race, as well as sex. Although the 1945 Criminal Justice Act allowed for abortion where the mother's life was at risk (Eric-Udorie,

2015), for over a century British women were essentially denied access to legal abortion, and campaigners were forced to work within highly circumscribed limits. Henderson (2014: para.14) describes how a "clamour grew" for access to birth control in the 1920s, especially among working-class women, and in 1924 the Labour Government Party Conference approved a birth control policy by 1,000 votes to 8. Scotland's first birth control clinic, the Glasgow Women's Welfare and Advisory Clinic, soon opened in 1926 in response to pleas from miners' wives in Lanarkshire, but was limited to only offering women advice about contraception (Elliott, 2014: 202). Although this certainly was progress, it was not nearly enough for some women. Anxious to make an explicit case for abortion, "three committed feminists", Janet Chance, Stella Browne and Alice Jenkins, founded the Abortion Law Reform Association (ALRA) in 1936 (Hoggart, 2003: 67). Prudently working alongside the more conservative Townswomen's Guilds, the ALRA "was able to present itself as a credible representative of a wide range of opinion" (Browne, 2014: 116-7), and became an effective proponent of legalised abortion.

There followed six parliamentary attempts to legalise abortion from 1952 onwards (Davidson and Davis, 2012: 105), but all of these failed and women continued to die in botched backstreet abortions. Browne (2014: 114) describes a secret culture in which women relied upon nutmeg and gin to encourage miscarriage, or even resorted to using knitting needles on themselves in a rudimentary effort to practise abortion. These "unsupervised, extremely primitive and unhygienic" methods often caused severe haemorrhaging, and in 1960 alone no fewer than 62 women died in illegal abortions (Browne, 2014: 114). Clearly, the prohibition on abortion did not reduce demand for the procedure: the total number of illegal annual abortions carried out in the UK in the years

before 1967 was estimated to be 100,000 (Browne, 2014: 114). Increasing awareness of this vast human tragedy, combined with sympathy engendered by the thalidomide scandal, led to a gradual mellowing of attitudes towards abortion – a 1962 Daily Mail poll found 73% of the public in favour of abortion where a child might be deformed (Davidson and Davis, 2012: 102). This change of sentiment, actively encouraged by the ALRA, eventually culminated in the successful passage of the 1967 Abortion Act.

2.1.2 The Scottish Paradox before 1967

In the years before 1967 Scottish abortion provision was marked by an apparent paradox: Scottish social sentiment seemed even more anti-abortion than the feeling in England, but Scots common law tradition permitted a considerably more liberal approach to abortion in practice. McIvor (1996: 188) describes 20th century Scotland as a society "polarised" by a gender division so pronounced that it even warranted the term "gender apartheid". A "cult of domesticity" consigned Scottish women to gruelling hours spent performing housework and concentrating on their husbands and children (McIvor, 1996: 189). This patriarchal society was slow to change - McIvor (1996: 190) describes how "on the whole the Scottish labour movement between the wars had a regressive attitude towards birth control", and such leading lights in the Independent Labour Party as John Wheatley, Stephen Campbell and James Maxton firmly opposed it. These attitudes were reinforced by the close relationship between the labour movement and Scottish religious organisations, which "served to limit Socialist support" for reproductive rights (Elliott, 2014: 201).

Paradoxically however, conservative Scotland was also liberal Scotland when it came to abortion practice. This liberalism was largely a function of Scotland's common law tradition, which in respect of abortion law was "substantially more flexible and liberal than its English

counterpart" (Davidson and Davis, 2012: 99). According to Thompson (1977: 143), "a doctor who performed an abortion in good faith was protected from prosecution under Common Law, in contrast to his colleagues south of the border". Specifically, for a prosecution against a doctor to proceed, it was first necessary that a definite complaint be made that an offence had been committed, which was clearly unlikely to arise from the women concerned (Browne, 2014: 114). This meant that in Scotland "many obstetricians were performing abortions before 1967 without any real fear of prosecution" (Browne, 2014: 114). Most notably, Dugald Baird, the Chief Gynaecologist in Aberdeen, took advantage of the law to implement a "therapeutic abortion" policy in which social as well as medical markers of a woman's health were employed (Davidson and Davis, 2012: 100-1). Thompson (1977: 143) claims Baird performed no fewer than 233 abortions in Aberdeen in the ten years before the NHS was formed in 1948. In practical terms, therefore, it can be said that Scotland's abortion policy pre 1967 was relatively liberal, even if Scottish social attitudes were more conservative than those in England.

2.1.3 The 1967 Abortion Act

As described in the introduction, the 1967 Abortion Act broadened the grounds on which abortion in Britain could be approved, and allowed social and psychological factors to be taken into account in assessing a woman's health (Davis and Davidson, 2005: 286). No upper time limit was explicitly set out in the Act, but a limit of 28 weeks was assumed in reference to the 1929 Infant Life (Preservation) Act (Ingham *et al*, 2008: 19). As mentioned above, the growing public and government awareness of dangerous backstreet abortions led to an acceptance that some demand for abortion was inevitable, and this "encouraged the government to liberalise the abortion law in order to control and supervise the situation

and avert the unnecessary deaths of countless women" (Browne, 2014: 115-6). Significantly however, the bill's sponsor, Scotsman and Liberal MP David Steel, justified legalisation on the grounds of ending the "scourge of criminal abortion" rather than as a principled invocation of a woman's right to autonomy over her body. Browne (2014: 116) describes this as an "important distinction", and suggests it makes British abortion law more conservative than its American equivalent.

This is not the only criticism of the Act. Beynon-Jones (2011: 56-7) argues that the law "depicts the decision to terminate a pregnancy as one that depends on the judgement of two doctors, rather than that of the pregnant women in question". Ingham *et al* (2008: 20) describe the British framework as "unusual" in comparison to the "vast majority of European countries" where abortion is allowed on request at least in the first trimester. Indeed, Ingham *et al* (2008: 20) note that in theory "no 'right to decide' is recognised in British law". According to Leach (2014: para.2) this means that British women "still can't rationally choose to get an abortion".

In practice, however, the 1967 Act seems to have been largely effective. Deaths from illegal abortions almost immediately halved in the years following the Act's implementation (Browne, 2014: 116), while the relatively high upper limit of 24 weeks is fairly liberal in comparison to the many European countries who refuse to allow abortion after the first trimester (Ingham *et al*, 2008: 20). In France, Germany, and Denmark for example, the time limit is twelve weeks after conception, and in Sweden eighteen (Pollitt, 2014: 183). Citing the many lives saved, Henderson (2014: para.16) is justified in describing the Act as "one of the most significant pieces of public health legislation in England, Scotland and Wales in the last hundred years".

2.1.4 Implementation of the 1967 Act in Scotland

A notable aspect of abortion provision in Scotland is that the relatively liberal position of the country compared with the rest of Britain before 1967, swiftly became a considerably more reactionary position *after* 1967. As Davis and Davidson (2005: 285) note, it quickly became apparent that "the Scottish medical profession exhibit[ed] notable reluctance to become involved in the field of fertility limitation". Nurses and midwives were perceived to be particularly anti-abortion, and are described by Davis and Davidson (2005: 292) as "almost unthinkingly pro-natalist regardless of circumstances". The conscience clause of the 1967 Act, which stipulates that no practitioner should be required to participate in abortion against their will, was widely used in Scotland, "particularly by nursing staff and within Catholic communities" (Davis and Davidson, 2005: 296). This consequently led to stark geographical variations in provision in Scotland. In the year following the Act the abortion rate in the Northern Hospital Board region was 4.9 per thousand women, in contrast to only 1.6 per thousand women in the Western Hospital Board region (Davis and Davidson, 2005: 288). So abortion provision in Scotland in the years following 1967 can, in many ways, be described as the obverse of the situation before 1967: from the liberal exception to a largely conservative rule, Scotland became the conservative exception to a largely liberal rule.

2.1.5 The Post-1967 Pushback Against Abortion Rights

The 1967 Abortion Act did not end the febrile debate surrounding abortion in Britain. As Browne notes (2014: 126) the Act "proved to be extremely controversial, leading to debates over the decline of the family and the emergence of a 'permissive society'". Rather than admit defeat, anti-abortion campaigners moved the battleground into new areas as they sought to roll back the effects of the legislation. LIFE and the Society for the Protection of

Unborn Children (SPUC) were particularly important opponents of abortion provision, respectively boasting 20,000 and 26,000 members by 1980 (Browne, 2014: 118). Drawing their political strength from the Catholic Church, anti-abortion campaigners "used emotive language, frequently linking abortion with murder" (Browne, 2014: 119). However, they were also astute enough to realise that a full-frontal moral assault on abortion would not work, and instead invoked medical advances in the care for premature babies to argue that the upper time limit on abortion should be reduced. Browne (2014: 125) lists three serious legislative attempts to reduce the upper time limit in the 1970s, against which abortion rights campaigners fought back strongly in tandem with the Trades Union Congress (TUC) and the Scottish Trades Union Congress (STUC). Approximately 100,000 demonstrators attended the TUC's Right to Choose demonstration in London in October 1979, a clear illustration that abortion rights campaigners were capable of mobilising widespread support (Browne, 2014: 126). And the support of doctors, notably Doctors for a Woman's Choice on Abortion (DWCA), also "afforded the abortion campaign a new legitimacy" (Browne, 2014: 121).

Nevertheless the 1980s saw a renewed focus on foetal viability, as anti-abortion campaigners spurned religious arguments, using medical discourse instead to argue that the upper limit should be reduced (Beynon-Jones, 2011: 57). Liberal MP David Alton's 1987 Abortion (Amendment) Bill maintained that foetal viability was now much less than 28 weeks and might even be as low as 18 weeks (Beynon-Jones, 2011: 57). Alton's Bill was unsuccessful, but Beynon-Jones (2011: 57) notes that even MPs opposed to his arguments still accepted his "foetal-centred framing of the debate". Indeed, Beynon-Jones (2011: 57-8) claims that "although the Alton Bill was unsuccessful, its legacy was an abortion debate in

which both sides treated the meaning of abortion as an object of medical knowledge". This then paved the way for the 1990 Human Fertilisation and Embryology Act to reflect medical consensus about foetal viability, and which reduced the upper time limit from 28 weeks to 24 weeks where it continues to stand today. Arguably as important as the reduction in the time limit itself was the change in the terms of debate that it reflected, namely "a shift in attention away from the pregnant subject and towards the embryo/foetus" (Beynon-Jones, 2011: 57).

A noteworthy feature of the abortion battles of the 1970s and 1980s is the strong involvement and influence of Scottish politicians on the anti-abortion side. Browne (2014: 131) suggests that "abortion polarised Scottish society", but it seems clear that the anti-abortion 'pole' was much the stronger in Scotland. Notably, two of the three amendment Bill sponsors in the 1970s – James White and John Corrie – were Scottish, and indeed, Scottish MPs voted 30-5 in favour of the Corrie bill (Hoggart, 2003). As Henderson (2014: para. 19) observes, "every time restrictions were proposed, they were supported by a majority of those MPs who represented Scottish constituencies". The pressure exerted by the Catholic Church did not help matters. Browne (2014: 124) describes how even a figure as progressive as Labour MP (and later First Minister of Scotland) Donald Dewar opposed abortion law reform in the 1978 Garscadden by-election for fear of alienating Catholic voters. All of this added to the "commonly held belief that Scottish MPs, on the whole, were more reactionary and anti-feminist than their English and Welsh counterparts" (Browne, 2014: 130). This led the Scottish Abortion Campaign (counterpart to the National Abortion Campaign in England) to confront what it believed to be "a keen sense of Scottish backwardness in terms of issues to do with sex and reproduction" (Browne, 2014: 130).

Indeed, Browne (2014: 134) suggests that Scottish abortion rights campaigners "believed that in some ways feminists in Scotland had more to fight for than their English sisters". The next section will outline how this arguably remains the case today.

2.2 Current Provision of Abortion in Britain

2.2.1 Britain-wide Issues

The past decade has seen renewed attempts to reduce the upper time limit on abortion, but has also been marked by a new tactic employed by anti-abortion rights campaigners, namely, an attempt to bestow personhood on the foetus. Earlier this year Conservative MP Fiona Bruce proposed an amendment intended to criminalise sex selective abortion, but which would have smuggled the term "unborn child" into law. As Lowe (Abortion Rights, 2015: 4) notes, the foetus is not currently recognised as a person; rather, the primary patient is the woman, which "means that women's rights to bodily integrity during pregnancy cannot be challenged". Bestowing personhood on the foetus could mean the pregnant woman being denied certain treatments, and would also open the door to further legal changes in the future (Abortion Rights, 2015: 4). Indeed, Lewis (2015: para.7) describes Bruce's amendment as "an attempt to undermine the 1967 act under the guise of protecting the vulnerable". The Bruce amendment was rejected by 292 votes to 201, but constituted the "worst attack on abortion since 2008", according to Abortion Rights (Abortion Rights, 2015: 3).

Other attempts to bestow personhood on the foetus have followed. Notably, in 2014, a case was brought for compensation to be awarded to a child who had suffered Foetal Alcohol Syndrome as a consequence of her mother's drinking during pregnancy. Lord

Justice Treacy rejected this claim on the grounds that an "essential ingredient" for a crime to be committed "is the infliction of grievous bodily harm on a person - grievous bodily harm on a foetus will not suffice" (BBC, 2014). More broadly, the continuing debate over the medical viability of the foetus means that "the pregnant subject involved in sustaining foetal life, as well as the broader socio-material context in which pregnancy takes place, have effectively vanished from regulatory debate" (Beynon-Jones, 2011: 54). Furthermore, the generally negative media portrayal of abortion further "contribute[s] to the stigmatisation of the procedure and the women who have it, and reflect[s] a discrediting of women's reproductive decision-making" (Purcell, Hilton and McDaid, 2014: 1141). In this generally anti-abortion context, the persistent legislative initiatives of anti-abortion MPs, and the tendentious cases brought by private individuals – most recently, two Glasgow midwives were denied their demand to be excluded on conscientious grounds, from supervising abortions (Sawer, 2014) – only adds to the sense that abortion rights campaigners are increasingly under siege in Britain. Lewis (2015: para.8) therefore suggests "the time has come to shift from rebuttals and rearguard action to arguing for liberalising the law further". In the case of Scotland, however, it is increasingly evident that even the *current* law is not yet being implemented properly.

2.2.2 Abortion Statistics in Scotland

Abortion in Scotland is subject to precisely the same legislation as in England and Wales, that is, the 1967 Abortion Act. There were 11,475 terminations in Scotland in 2014, the lowest figure since 1995 and equivalent to a rate of 11.0 per 1,000 women, compared to 16.5 in England and Wales (National Statistics, 2015a: 1; National Statistics, 2015b: 5). There is a clear link between deprivation and abortions in Scotland, with over 50% of

abortions provided to women in the two most deprived quintiles, and a termination rate of 14.2 in areas of high deprivation versus 8.2 in the least deprived areas (National Statistics, 2015b: 16). Significantly though, the higher abortion rate in more deprived areas appears to be largely driven by a much higher rate of conception. Smith (1993: 1233) describes how the conception rate for girls under 16 during the 1980s was three times higher in the most deprived areas of Tayside than in the most affluent, but only one in four girls in deprived areas opted for an abortion, whereas two in three chose to do so in the more affluent areas. This would indicate that the right to choose is driven by education, affluence and other socio-economic factors. Meanwhile, Sedgh *et al* (2012: 144) find that the adolescent abortion rate has increased considerably in Scotland since the 1990s (from 16.6 in 1995 to 19.6 in 2010) and is one of the highest in Europe. Indeed, approximately 25% of Scottish women seeking an abortion are under 20 years of age.

2.2.3 The Abortion Process in Scotland

Scotland differs from England and Wales in having no independent abortion providers, with over 99% of the abortions performed annually in Scotland taking place on the NHS (Beynon-Jones, 2011: 58). This makes Scottish women almost entirely reliant on NHS pathways, usually through either their GP or a community sexual health clinic. Abortion in Scotland can be performed either medically (with the use of drugs) or surgically. Medical methods are used at between six and nine weeks' gestation and beyond 13 weeks' gestation, whereas surgical methods are used between these periods (Beynon-Jones, 2011: 58). Second trimester abortions require "multiple doses of misoprostol and typically involve lengthier hospitalization than first trimester abortions – often involving an overnight stay",

while all medical abortions are conducted by nurses under the supervision of doctors (Beynon-Jones, 2011: 58-9).

2.2.4 Causes of Late Abortion

Numerous studies have explored why women require late gestation abortions. Purcell *et al* (2014: 103) found that many women requiring late abortions did not realise they were pregnant for some time – for many, the typical signs of pregnancy were absent and many had been using contraception when they conceived. Clare Murphy of the British Pregnancy Advisory Service agrees that "the majority of women we see in our clinics were using contraception at the time they became pregnant" (Buchanan, 2014: para.27). A study conducted by Robotham, Lee-Jones and Kerridge (2005: 163) also found that "for the vast majority of women…the signs and symptoms of pregnancy were not recognised until an advanced stage, making late abortion an inevitability rather than a conscious choice on their part". Ingham *et al* (2008: 24) find no "single, dominant reason why women have abortions in the second trimester", but report an average of 52.5 days to suspecting pregnancy in the cases of late abortion women, and a quarter of women were at over 79 days' gestation. For other women, however, a change in life circumstances necessitated a late abortion. Purcell *et al* (2014: 104) found several women no longer in a relationship with the prospective father, while one 17-year old woman discovered only late on that her partner had impregnated two other women without her knowledge. So far from being guilty of laziness or fecklessness, in most cases women seeking late abortions were victims of their circumstances or simple bad luck. Given these findings, it is understandable that most women questioned by Robotham, Lee-Jones and Kerridge (2005: 164) believe a denial of

late abortion would have caused "emotional trauma", and indeed, in the cases of two women it might even have motivated them to commit suicide.

2.2.5 Denial of Late Abortion Provision in Scotland

Purcell *et al* (2014: 101) describe how "abortion for non-medical reasons is not usually provided in Scotland after 18-20 weeks, meaning women have to travel to England for the procedure". Cochrane and Cameron (2013: 215) further note how "abortion at gestations over 16 weeks varies considerably in Scotland". Beynon-Jones (2011: 59) finds that health professionals in Scotland are less willing to agree to their patients' requests in the case of late gestation abortions – indeed, in some cases "they stated explicitly that length of gestation directly affects a woman's access to abortion services". Furthermore, Beynon-Jones (2011: 59) finds unofficial time limits ranging from 15 to 20 weeks' gestation at different Scottish hospitals, all of which are significantly lower than the British legal threshold. In 2011 it is estimated 157 Scottish women travelled to England for an abortion at over 16 weeks' gestation (Cochrane and Cameron, 2013: 216). All had to undertake a round trip of up to 1,400 miles, pay the up-front costs and request reimbursement later after "completion of a significant amount of paperwork" (Purcell *et al*, 2014: 102). Purcell *et al* (2014: 105) argue that the need to travel "exacerbated an already unpleasant and stressful experience, and contributed to a sense of stigmatization and discrimination, because they were aware of being treated differently than others". Cochrane and Cameron (2013: 216) concur: "the current pathways in Scotland are inequitable when compared to the rest of Great Britain".

2.2.6 Reasons for Denial of Late Abortion Provision in Scotland

As Cochrane and Cameron (2013: 216) note, it is unlikely that Scottish women are denied late gestation abortion because of any lack of resources in the Scottish NHS, since the numbers requiring the procedure are low. Instead they propose the possibility that "negative attitudes towards late abortion" could account for the anomaly, given that staff can refuse to take part by invoking the 1967 Act's conscience clause (Cochrane and Cameron, 2013: 216). Mackenzie *et al* (2013: 810) suggest that professional gatekeeping can restrict access to public services and that such decisions "may be guided not only by internal institutional attitudes, but by external cultural beliefs". The Glasgow Midwives case illustrates that such external beliefs are certainly present in Scotland, while Beynon-Jones (2011: 63) reports that doctors believe their ability to offer late abortions is circumscribed by the reluctance of nurses to perform the procedure. This suggests that the anti-abortion sentiment reported among Scottish nurses in the 1970s is still prevalent today. One obvious explanation for this sentiment is the high proportion of Catholics resident in Scotland, especially in the west of Scotland. A recent article in the *Daily Record* (Brown, 2015a) reported that pro-choice activists believe that "with its strong Catholic tradition, [Scotland] has a more hard-line approach to terminations" than England. On the other hand, a study by Cochrane and Cameron (2013: 218) finds most health practitioner respondents cite a lack of resources (especially time and training) as the biggest barrier to late abortion provision in Scotland, and "few participants objected to involvement on moral, religious or aesthetic grounds". But the study's findings should be treated with caution, considering this was a self-selecting sample, taken at an abortion conference. Ultimately, it does appear, that religion is a significant driver of Scottish attitudes towards abortion, as it is in Northern

Ireland and the Republic of Ireland. A combination of Catholicism, Presbyterianism, and the inertia exerted by a (convenient) status quo, drives the denial of late abortion services in Scotland. The next section will attempt to investigate whether the mooted devolution of abortion law will cement or challenge this status quo.

2.2.7 The Devolution Question

The "quite remarkable" silence on reproductive rights in the run-up to 2014's referendum on Scottish independence (Henderson, 2014: para.1), has since given way to an increasingly confusing debate about devolving abortion powers from Westminster to Holyrood. The issue is now highly topical, as a group of anti-choice MPs at Westminster have recently tabled an amendment to devolve abortion policy to Scotland in the belief that this will favour their cause (Maddox, 2015a). Abortion was excluded from the original devolution settlement in 1999 for fear that Scotland's more conservative culture would lead to greater restrictions on abortion or even an outright ban (Maddox, 2015a). Opinions on the devolution of abortion policy are polarised, for example the Scottish Council on Human Bioethics favours devolution, while the Association of Clinical Embryologists is strongly opposed (Sanderson, 2014). Plausibly, devolution would help to draw attention to the current inequities in the implementation of the 1967 Act and thereby advance the position of pregnant women in Scotland. The Scottish Green Party, the Leader of the Scottish Labour Party, and the First Minister of Scotland are all believed to strongly favour reproductive rights (MacGregor, 2015; Dugdale, 2014; Maddox, 2015b), and the Catholic Church has stated, "we don't have any sense that changing the legislature would alter the legal regime" (Crichton, 2015: para.15). Equally, a recent poll found that 75% of Scots supported a woman's right to choose abortion, including 74.2% in Glasgow (Brown, 2015b). This

evidence suggests Henderson (2014: 2) might be correct to assert that "it may now be appropriate to recognise that the progressive, human rights based agenda make it unlikely that Scotland would take actions which restrict women's reproductive rights".

Nevertheless this perspective could be too optimistic. Douglas Home (2015: para.9) declares that "the anti-abortion lobby sees the proposed power shift as an opportunity". Notably, the Pro-Life Alliance believes "there would be much more conservative legislation on these issues in Scotland" (Sanderson, 2014: para.13); while a Scottish Government report in 2000 found that "a third of men and women thought abortion was wrong…a much higher response compared to England and Wales" (Riley-Smith, 2014: para.6). Furthermore, there is already a worrying precedent of the Scottish Government backing down under pressure from the Catholic Church - in 2008 it surrendered to the Church's opposition to the HPV vaccine for teenage girls (Stockham, 2014). Indeed, it seems telling that even the First Minister herself is reportedly reluctant to see abortion policy devolved: Maddox (2015a) reports "a senior figure said that [Nicola Sturgeon] 'really doesn't want' pressure for a vote on a more conservative abortion law in Holyrood". Douglas Home (2015: para.20), meanwhile, points out that "Scotland is a small country with the dangers that implies. Vested interest has access to power". The anti-abortion stance of leading SNP donor Brian Souter, who has previously donated to groups that try to "heal" women who have had abortions (Hutcheon, 2015), is considered particularly worrying in this regard. Ultimately, therefore, there is considerable evidence that devolving abortion policy to Holyrood could set back abortion rights in Scotland. The fact that anti-abortion MPs are actively seeking to devolve the issue to Edinburgh, in the belief that this would favour more conservative legislation, is surely a strong indication that abortion rights campaigners should be wary.

For now, however, this sceptical conclusion must remain tentative; the data collected in interviews with politicians in section 4 will cast considerably more light on this crucial topic.

2.2.8 The Human Rights Implications of Failures in Scottish Abortion Provision

Scotland's failure to implement late term abortion provision arguably constitutes a violation of the human rights of Scottish women. Specifically, Article 12(1) of the Convention on the Elimination of All Forms of Discrimination Against Women - an international treaty adopted by the United Nations General Assembly in 1979, and signed by the UK - obliges states to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning" (United Nations, 1979: 5). Critically, the provision relating to 'family planning' has since been interpreted by the United Nations to mean the right to access abortion (United Nations, 1998), and the UN has encouraged states to "address the reality and consequences of unsafe abortion by revising and modifying laws and policies which perpetuate damage to women's health, loss of life and violation of gender equality in health care" (United Nations, 1998: Article 57).

In 1999 the Committee on the Elimination of Discrimination Against Women (CEDAW), a body of independent experts that monitors implementation of the Convention, affirmed in General Recommendation 24 that "that access to health care, including reproductive health, is a basic right" (CEDAW, 1999: 1). Furthermore, it stated that "barriers to women's access to appropriate healthcare include laws that criminalise medical procedures only needed by women and that punish women who undergo these procedures", strongly implying that anti-abortion laws are discriminatory against women (CEDAW, 1999: 4). Perhaps most relevant to Scotland, CEDAW also stated that "the obligation to respect rights requires

States parties to refrain from obstructing action taken by women in pursuit of their health goals… States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of…health authorities" (CEDAW, 1999: 4). It is questionable whether the Scottish and British governments are meeting these obligations in relation to abortion provision in Scotland. As the Center for Reproductive Rights (2013: 4) observes, "States have an affirmative duty to ensure access to lawful reproductive health services and to prevent legal, social and regulatory barriers from infringing on women's ability to access reproductive health care". Laws alone are insufficient; states also have a duty to ensure "the effective implementation of abortion laws" (Center for Reproductive Rights, 2013: 4). Indeed, the Center for Reproductive Rights (2013: 5) declares that "ample jurisprudence from human rights bodies demonstrates…[that] compelling women to undertake excessively cumbersome measures in their pursuit for legal abortion services constitutes human rights violations". The requirement for Scottish women to travel to England for late term abortion surely constitutes precisely such a 'cumbersome measure', infringing on their rights to fully 'access reproductive health care' and therefore is a clear human rights violation.

Scotland's failure to provide late term abortion poses specific questions relating to human rights that the data will need to address. As such, the human rights aspects of reproductive healthcare, especially as set out by the CEDAW committee, offer a useful structure for the dissertation's planned analytical framework. The next chapter will flesh out this structure in more detail.

3. Research Methodology

The dissertation has thus far described the lack of provision for women seeking late-term abortions in Scotland, and analysed the literature with a view to ascertaining why the Scottish NHS fails to implement the 1967 Abortion Act in its entirety. As argued above, this failure plausibly constitutes a human rights violation and contravenes the Convention on the Elimination of All Forms of Discrimination Against Women. The general consensus in the literature is that it is not clear why Scotland has adopted more restrictive policies towards late-term abortion than the rest of Britain. Religion, a lack of resources, and institutional inertia are all mooted as possible causes, but no definitive narrative exists. The next stage of the dissertation hopes to cast more light on this question by presenting data gathered in interviews with Scottish politicians.

To reiterate, the central aims of this research are to understand the following:

(a) The factors that have contributed to limited access to abortion in Scotland;

(b) The political will amongst parties to implement provision of abortion up to the legal limit;

(c) The likely effects of devolving abortion policy to Scotland.

Before presenting the data, the next section will first elucidate the methods by which the research was conducted.

3.1 Research Strategy

The research strategy is qualitative in nature and is intended to draw upon the particular experiences and insight of Scottish politicians. According to Saldana (2011: i), qualitative

research is an umbrella term for "data that is primarily (but not exclusively) non-quantitative in nature, consisting of textual materials such as interview transcripts, field notes, and documents…". The alternative, quantitative approach is not optimal in this study since it would restrict the research to discrete and confined categories when, by their very nature, the research questions require wide-ranging discussion. The issue of why Scotland restricts late-term abortion in practice is a complex question that cannot be reduced to quantitative methods.

The dissertation will use a human rights-based framework to analyse and interpret the data. Specifically, the CEDAW framework will be employed. This is composed of:

1. The Convention's legal basis for access to justice under Articles 2 and 15 (CEDAW, 2012: 3).

2. The various General Recommendations made by CEDAW pertaining to the rights of women, especially in the realm of reproductive healthcare. One such, General Recommendation 24, was cited above (CEDAW, 2012: 4).

3. Concluding observations made by the CEDAW Committee in its sessions, providing further "essential guidance" (CEDAW, 2012: 6).

4. Decisions made by the CEDAW Committee under the Optional Protocol, which has "produced noteworthy jurisprudence in relation to women's access to justice" (CEDAW, 2012: 7).

CEDAW (2012: 10-12) outlines several criteria of particular importance in obstructing women's access to justice. These will be used to help categorise the data:

i. Legal, institutional and structural challenges

ii. Social barriers

iii. Practical and economic challenges.

Gaining further insight into these areas will require interviews with participants "whose main credential is experiential relevance" (Rudestam and Newton, 2014: 107). There are several categories of individuals with 'experiential relevance' in the case of abortion, notably clinicians, patients and policymakers. The last of these categories – policymakers – was chosen for this dissertation for two reasons. Firstly, the experiences of clinicians and patients have been studied in considerable depth elsewhere (Cochrane and Cameron, 2013; Purcell *et al*, 2014), which meant that interviewing policymakers was the option most likely to add to the existing knowledge of this topic. Secondly, ethical constraints on the participation of NHS employees in studies of this nature (Robinson, Murdoch-Eaton and Carter, 2007: 6), meant that policymakers were considerably more accessible.

3.2 Data Collection

3.2.1 Data Collection Method

Qualitative data were collected by conducting interviews with 'experiential experts', that is, Scottish politicians with insight into legislative attitudes towards abortion in Scotland. Interviews were selected as the preferred method because, as Gill *et al* (2008: 292) observe, they offer the best way of gleaning "detailed insights" into a research topic. Alternative methods, such as written questionnaires, might have prevented the wide-ranging engagement required to fully investigate Scottish attitudes towards abortion. Equally, focus groups would have been sub-optimal, since participants might have been unwilling to talk

candidly in a group environment (Straus, 2010). That said, it should be noted that for pragmatic reasons, a minority of participants responded via email, which in effect transformed their responses into written answers to a questionnaire. Participants were selected by employing the sampling method outlined below, and were approached in the first instance via email (see Appendix C for the participant information sheet).

3.2.2 Sample Method

Participants were selected on the basis of 'experiential relevance', which in this case meant experience as a Scottish policymaker. This is a form of homogeneous sampling (Cohen and Crabtree, 2006). The key criteria used to form the sample were:

- **Status as an MSP** – the intention was to interview Members of the Scottish Parliament (MSPs), since it seems axiomatic that MSPs will possess the greatest insight into Scottish legislative attitudes towards abortion. It should be noted, however, that the Scottish Green Party only has two MSPs, and so in one case a Green Party councillor was interviewed.

- **Party affiliation** - the intention was to interview a representative cross-section of the Scottish political spectrum, and hence representatives from all the main Scottish political parties were approached. These parties were: the Scottish National Party, the Scottish Labour Party, the Scottish Conservatives, the Scottish Liberal Democrats, and the Scottish Green Party.

- **Sex** - the intention was to interview a broadly gender-balanced sample, thereby facilitating insight into whether attitudes towards abortion are in any way influenced by gender.

Accordingly, the sample focused on Scottish MSPs of both sexes and from various parties, especially those broadly on the Left of the political spectrum, since this is where the main weight of legislative power in the Scottish Parliament lies. Furthermore, the study sought to avoid the problem of "anecdotalism" (Silverman, 2005: 213) by extending the sample to new participants on an *ad hoc* basis as key themes emerged once initial interviews had been undertaken. This process of "discriminate sampling" was intended to achieve data saturation (Josselson and Lieblich, 2003: 267) by achieving both full breadth of sample (by interviewing participants of various parties and both sexes) and full depth of sample (by engaging more deeply with those participants who had provided particular insight – one participant, for instance, was open to further collaboration and was able to provide specialised information made available only to Scottish legislators) (Todres and Galvin, 2005).

3.2.3 The Conduct of Interviews

In most cases interviews were conducted in person, either at the Scottish Parliament in Edinburgh or at the MSPs' constituency offices. In a minority of cases, however, participants were unable to be interviewed in person and instead provided written responses to questions submitted via email. The interviews were semi-structured and based on a provisional list of approximately seven questions (see Appendix D) but with the opportunity for *ad hoc* follow-up questions to focus on areas where the interviewee possessed particular insight or interest. Questions of relevance only to specific parties – for example, the question of whether Scottish Labour's policies in any way differ from those of English Labour – were obviously omitted when politicians from other parties were interviewed. A dictaphone was used to record the interviews in order to ensure an accurate record of what

was said, and transcripts were later typed up. In order to protect the anonymity of the participants, transcripts are not provided.

3.2.4 Confidentiality and Sensitivity Issues

Every participant in the study gave informed written consent to their involvement (see Appendix E). The confidentiality of the information relayed was respected by anonymizing the interviewees, and by observing the regulations of the Data Protection Act. Thus, no interviewees are named in this dissertation and participants are identified only by their job title, party affiliation and sex. Furthermore, no attempts were made to interview participants under the age of 16 or over 65. When participants provided information or offered quotes that they did not wish to be published, this was respected.

3.2.5 Limitations and Delimitations

There were a number of limitations encountered during the research stage. Firstly, there was an inevitable limit on how many in-depth interviews could realistically be conducted, both for reasons of time, and because gathering too much data ran the risk of overwhelming the analysis process – a danger alluded to by Josselson and Lieblich (2003). Secondly, not every individual selected for possible interview agreed to participate – this was perhaps inevitable given the high workload and extreme time pressures facing many politicians. This limitation necessitates caution about generalising from the views expressed by those individuals who did participate. Thirdly, and partly as a consequence, a delimitation on interviewing too many politicians from the same party was self-imposed during the research stage – this was intended to avoid a scenario where, for example, ten SNP politicians were interviewed but only one Labour politician, thereby skewing the sample.

3.3 Data Analysis

As stated above, the data were analysed with reference to the framework criteria laid out by CEDAW in relation to women's access to justice: legal, institutional and structural challenges; social barriers; and practical and economic challenges. These criteria and principles were used to support the organisation of the data, thereby enabling the development of themes for further analysis. The analysis process proceeded in three stages. The first stage sought to draw out codes from the data by analysing it for repeated themes or concepts. To some extent, these initial codes were implicit in the interview questions, but an open mind was taken where the data suggested new codes. 'Health boards', for example, was a code that emerged as significant during the analysis process. The second stage then attempted to develop themes or categories for further analysis by combing the codes for linkages between them. So, codes relating to the practicalities of late term abortion provision, for example, were grouped together under this theme. Codes relating to social barriers to implementation of the 1967 Act were grouped together as another theme. Finally, the analysis process used constant comparison and negative case analysis to analyse the themes and begin to form substantive answers to the research questions. Where the data pointed towards a consensus, this was pursued, but care was also taken to look for contradictions, and to assess contradictions for relevance when they arose. No data analysis programmes were used because, as Rudestam and Newton (2014: 211) caution, "software cannot read meaning into the organization of the text or other qualitative materials that constitute the foundation of your project. That responsibility falls to you, the researcher". Furthermore, given the relatively small number of transcripts, the retrieval ability of a software package was not necessary.

4. Data Presentation, Analysis and Discussion

4.1 Overview of the Participants

Ten participants were interviewed either in person or via email. In another case, a selected participant did not respond but, contemporaneously, spoke in a debate in the House of Commons; the views he outlined there, many of which touch directly on the matters at hand, will also form part of the data in this section. In total, therefore, the views of eleven politicians will be presented. Of these individuals, five are from the SNP (Scottish National Party), four are from the Scottish Labour Party, and two are from the Scottish Green Party. Unfortunately, no Conservatives or Liberal Democrats responded. Four of the SNP politicians are MSPs and one is an MP; two are female and three are male. All four of the Labour politicians are MSPs; three are male and one is female. Of the two Green participants, one is a male MSP and the other is a female councillor. So the gender balance is almost equal – five females to six males. The participants will be identified by their party affiliation and a number – for example, SNP 1, Labour 2, and so on.

4.2 Data Analysis

The interview findings are presented in relation to the CEDAW framework criteria outlined in section 3. So, firstly, the participants' views are presented in relation to the legal, institutional and structural challenges of providing late term abortion in Scotland. Clearly there are no legal barriers, so the data here focuses more on the political and technical aspects of implementing the 1967 Act, especially the level of political will to do so. Secondly, the data relating to social barriers is presented. This sub-section reports the participants' views on abortion as a social issue in Scotland, with particular attention paid to the role of religious organisations and other pressure groups. Thirdly, the data in relation to

practical and economic challenges is presented. This sub-section includes participants' views on the financial viability of providing late term abortion in Scotland.

4.2.1 Legal, Institutional and Structural Challenges

Party Policies on Abortion

Scottish National Party participants generally agreed that the SNP did not have an expressed policy on abortion; indeed, the issue did not appear to carry much salience for the party. For the most part, abortion seemed to be an issue that rarely featured on the party's political radar, and no one seemed to be in any particular hurry to change that. As SNP 1 stated, '*I've been here for 41 years and I can't remember having a big debate about it [abortion] in the party*'. Another SNP participant, SNP 2, expressed similar sentiments: '*Prior to you contacting me and talking about this, it's [abortion] never been a subject, and I've been in the SNP for 40 odd years*'.

While SNP participants generally agreed that their party was agnostic on abortion, they themselves reported a variety of personal views. Some were clearly pro-choice, and expressed support for feminism. According to SNP 1, abortion is '*a founding principle of being a feminist',* while SNP 5 declared that he was '*resolutely pro-choice and [would] argue – indeed vote – against anything that would restrict a woman's right to choose*'. On the other hand, SNP 2 claimed that his views had shifted over time: *'I was pro-abortion, now I'm anti-abortion'*. The remaining two SNP participants refused to express a view either way. In general, the participants conveyed a strong sense that abortion was not a high priority for the party.

The four Labour participants were in broad agreement that their party supported abortion rights. Participants were happy to speak for their party using "we" rather than "I". Labour 2, for instance, stated: '*We support the existing time limit of abortion of 24 weeks'.* Similarly, Labour 3 said: '*We believe in a woman's right to choose. We stand by the existing time limits for abortion'.* There was some confusion though, about whether this was official party policy or not:

> 'It's always been a free vote issue I think, so I'm not entirely sure in that sense whether I was correct to say that Labour's policy is…but I don't think there's a contradiction'. (Labour 2).

Both Labour and SNP participants affirmed time and again that abortion was considered a free vote or conscience issue for their parties. Green participants, as we shall see, took a quite different view.

Turning to the personal views expressed by Labour participants, three were clearly in favour of abortion rights and viewed the issue through the prism of women's rights. Interestingly, Labour 2 saw abortion as a human right: *'Basically I see it as a human right, a woman's rights issue'.* The other Labour participant, Labour 1, supported the 1967 Act, but stated: '*We have to keep a very close watch on the survival of foetuses at the margin*'.

The two Green participants were clear in their support for abortion rights – this was both their personal view and party policy. Indeed, Green 1 stressed that abortion was not considered an issue of private conscience for members of his party: '*Unlike most political parties we don't have a separate set of issues that are regarded as conscience votes, so we have party policy on this'.*

Political Willingness to Engage in Abortion Debate

Nearly all the participants, from every party, agreed that abortion was a controversial issue that their parties generally avoided discussing for fear of alienating voters. This appeared to be the case regardless of whether participants were pro or anti-abortion. As SNP 1 stated, raising the issue of abortion at election time '*just polarises everybody, and it becomes ghastly and hideous'*. Similarly, SNP 2 stated that abortion would struggle to earn even a paragraph in the SNP manifesto, because *'when you stir up people's minds on it, it becomes a very emotional subject'*.

Labour participants expressed a similar attitude. Labour 3 said that politicians were nervous of abortion: '*It's such a sensitive issue and people are nervous of it, and therefore would rather not do anything that perhaps attracts attention to it'.* Other Labour participants shared these concerns:

'Whatever you say about abortion you're going to annoy a lot of people, and that worries politicians from an electoral point of view.' (Labour 2).

'Politicians hate issues where you can immediately ignite a whole crowd of people that don't like you'. (Labour 4).

For one of the participants, Green 1, this reluctance to engage with the abortion issue was '*worse than sad I think, it's a dereliction really*'.

Political Awareness of Late Term Abortion Issues, and Willingness to Act

Participants frequently expressed surprise when told that late term abortions were not provided in Scotland. This lack of knowledge became a recurring theme throughout the interview process. Labour 2 stated, '*Well, this is news to me'*, while even one of the most pro-choice participants, Green 1, confessed: '*I wasn't aware of this until your email raised it,*

I have to admit'. Only a minority of participants were fully abreast of the problem, usually through reading recent press coverage.

While many participants were originally unaware of the issue, most expressed rhetorical support for the idea of providing late-term abortions in Scotland. Again, one participant saw the issue in human rights terms:

'There needs to be at least one place in Scotland that women can go to, that will do late terminations, on human rights grounds. It's a human rights issue'. (Green 2).

Others saw the issue less in terms of rights and more in terms of applying the law. There appeared to be a general consensus that if the law allowed for late term abortion, it should be provided:

'The clear thing for me is a matter of principle. The law is quite clear'. (Labour 3).

'I would hope and think that people want the official policy, the official law, applied'. (Labour 2).

'The law of the land is 24 weeks and I want to know why that is not the case in Scotland'. (SNP 1).

No participant rejected the idea of implementing the 1967 Act, and even those SNP participants who were perhaps somewhat less committed in their responses, still seemed open to the idea of providing late term abortion. As SNP 2 stated, *'I would agree it has to be discussed. I'm not saying I'm going to support it, but basically I think we have to re-evaluate the situation'.*

Health Boards

In terms of institutions, the role of health boards was a source of considerable variance for participants. SNP respondents in particular tended to point to health boards as a key institutional challenge. SNP 1, for instance, stated: '*I want to know why health boards have*

made this choice, because health boards are not autonomous bodies'. She continued: '*If [denial of late term provision] is not for any clinical reasons then you work out how you change that attitude within a health board*'. The response from SNP 3 also pointed to the role of health boards: *'We have been working with NHS Boards to improve services… The Minister for Public Health made clear that Boards have a responsibility to meet the needs of women in their Board areas'.*

On the other hand, Labour participants were less willing to accept that health boards should be able to block full implementation of the 1967 Act. Labour 3, for example, stated that, '*If you say from the centre that you want something to happen, and you issue a circular, health boards need to do that*'. Claiming that in 2013 the Scottish Government had deliberately opted to leave the matter of abortion provision to health boards, rejecting the recommendation of a national abortion service (following the research of Cochrane and Cameron), Labour 3 stated: '*It's not that they haven't considered it, they have, and they're not implementing that recommendation… Now that tells me nothing is going to happen… If there's no central direction, things don't happen*'.

Labour 3 continued:

> 'To simply say 'it's a matter for health boards' suggests to me that the [Scottish] government don't want to touch it… If you say it's up to them, health boards currently are strapped for cash, never mind any other issues surrounding this, aren't going to volunteer to do it'.

Willingness to Devolve Abortion Policy

Participants were divided about the merits of devolving abortion powers to Scotland. Perhaps unsurprisingly, SNP and Green politicians' strongly favoured devolution – as Green

1 admitted: '*On one level it's hard for a pro-independence party to oppose devolving anything'.* Indeed, abortion often seemed to be viewed through the wider prism of Scottish self-rule. In other words, the right of the Scottish people to decide came first; precisely *what* the Scottish politicians/people decided regarding abortion was a secondary matter. SNP 4, for instance, stated: '*First and foremost it should be devolved to Scotland so we can collectively, as a Parliament, decide our position on this important issue*'. Similarly, Green 2 stated: *'I'm all about empowering Scotland'.* On the other hand, Green 1 employed somewhat different reasoning in supporting devolution – for him, the key point was that abortion should be seen as a standard part of the health service and thus devolved like any other health matter: '*I do think it should be seen in principle as a normal part of the health service. It seems anomalous that it's left reserved'.* The Green participants also made instrumental arguments in favour of devolution, with Green 1 suggesting that abortion's reserved policy status '*prevents much debate from ever surfacing at Holyrood about the whole subject*' – indeed, devolution might force Scottish ministers '*to take more responsibility for ensuring that services are available and accessible*'.

Labour participants, however, preferred to see abortion competencies remain at Westminster. Labour 2 raised fears of abortion tourism emerging if Scotland and England had different laws: *'We don't want to have a difference between Scotland and England, which would result in abortion tourism and less rights for women in Scotland'.* Labour 1 wondered why abortion policy should be devolved to Scotland when the country was already failing to implement the existing legislation: '*I see absolutely no need to devolve it… If we're actually already not doing what the UK law says, that's more concerning to me than*

getting the power to make alterations'. Nevertheless, Labour 4 acknowledged the difficulty of being seen to oppose devolution:

'It's a difficult argument to make, you know, to stand up and say, "I don't think it should be devolved because I think Scotland is very backwards and I think we're going to do horrible things with it!", which is not a very comfortable place to put yourself'.

4.2.2 Social Barriers

Several participants mentioned the social barriers to providing late term abortions in Scotland, often unprompted. Indeed, some participants had personal experience of abortion as a totemic issue in Scottish society. Constituents had contacted Labour 4 regarding the Glasgow Midwives case, mostly in support of the midwives. For SNP 2, abortion was explicitly raised during his re-selection hustings, while Green 2 had noticed anti-abortion groups regularly standing outside the Royal Infirmary in Glasgow. Furthermore, even those participants without direct experience of abortion lobbying nevertheless expected it would swiftly emerge as a significant issue for constituents if abortion policy were devolved to Scotland. As SNP 2 stated, '*What happens in political circles is, something is raised, something is put forward, and before you know it, suddenly there's a campaign…you're getting loads of emails asking 'what's your position on x?' That's politics*.

Participants touched on the visceral nature of the abortion debate in Scotland. As Labour 3 asserted, '*It's such a sensitive issue and people are nervous of it'*. This raised the question of precisely why abortion was considered to be such a sensitive issue in Scotland. SNP 1 implied that Scottish society was still patriarchal: '*You can get that Act passed, but how do*

you change attitudes? Because we've still not changed attitudes about women being equal, and being treated equally'. Some Labour participants pointed to the role of religion in Scotland, such as Labour 2 for instance: '*I think the general feeling, without being based on any evidence, is that it's more difficult in the west than the east to get an abortion…because of the bigger Catholic population in the west'.* Labour 4 expressed similar concerns: *'I think particularly in Scotland there would be an issue of somebody who was Catholically educated… I think it probably has a greater reach in Scotland than it does in other parts of the UK'.* He admitted, however, that these were *'probably prejudices rather than insights'.*

Participants were particularly likely to mention social barriers to abortion provision in the context of Scottish devolution. Asked about the likely consequences of devolving abortion policy to Scotland, participants often framed their answers by referring to social attitudes. There was again a clear divide between pro-independence and anti-independence participants. The former often expressed the belief that Scottish society was mature enough to protect abortion rights, as it has done with gay rights. The words of SNP 5 in the House of Commons are worth quoting in full:

'The idea that we will slide down the same road as Northern Ireland ignores our parliament's history and our country's political journey. The forces of social conservatism in Scotland…do not have the same grip on Scottish politics that they had before, and have been defeated on every occasion our parliament has had the opportunity to extend equality'.

SNP 1 expressed similar sentiments: *'Look at what the Scottish Parliament has voted for in the last few years. You know we had civil partnerships, then we had equal marriage, we lowered the voting age to 16 – twice'*. So the general argument by pro-devolution participants was that Scotland is now a socially progressive country that can be trusted to

guard the abortion rights of Scottish women. In this view, the social barriers to abortion rights in Scotland are no longer significant.

The two Green participants were equally supportive of devolving abortion policy, but, interestingly, suggested that the lack of focus on abortion was another important social barrier. Devolving abortion, they suggested, would help to raise the profile of abortion as an issue in Scotland, and so overcome this barrier. Green 2, for example, thought that '*because the issue is so hidden away at the moment, and not talked about… You could have a lot more campaigning going on around the issue'*. Green 1 also suggested that devolution would bring *'greater attention to the issue'*, but went further by framing his argument in relation to abortion law in England and the desire (post-devolution) to avoid cross-border differences in provision:

> 'If anti-choice politicians were only able to make that choice for England and Wales at Westminster, and if those same voices in Scotland were only able to make that argument for Scotland, then those seeking to defend against that attempt to undermine rights and service provision, have I think an additional card to play; which is, if you make this change in one jurisdiction, it would open up a cross-border difference and that would be harmful. So I think it would lend itself to those seeking to level up the right to access abortion services. I think it would play against the interests of those trying to undermine them'.

The suggestion here is that the social desire not to open up differences with England might favour those who wish to preserve abortion rights in Scotland. It is not entirely clear, however, why Scotland would be reluctant to open up differences with England given that many Scots appear actively to welcome such differences at present.

Yet Labour participants perceived the social barriers quite differently. The perceived influence of the Catholic Church in Scotland was again often mentioned. Labour 1 for

example, argued *'If it was devolved, I think there is the potential for pretty strong debate, because I think the Catholic Church's influence up here is quite strong, so there might well be a stronger campaign to alter it'*. Labour 4 hinted at similar concerns when he suggested '*I think there is well mobilised opposition in Scotland that has a greater reach than the UK as a whole*'. And Labour 2 pointed to the concerns of women's organisations: *'I think that it is interesting that the majority of women's organisations are concerned about this particular issue'*.

One participant, Labour 4, drew an interesting comparison between gay rights and abortion rights; suggesting that although both gay rights and abortion rights enjoy mainstream support in Scotland, pro-choice campaigners are much less visible and vocal than their gay rights counterparts:

> 'I think when you compare it to what's happened to gay and lesbian rights, there's a greater level of willingness to talk about it [gay rights]… Whereas abortion…the people willing to talk about it and actively campaign on it, it's a defensive campaign, because I think a lot of the space is dominated by the people who oppose'.

Interestingly, another Labour participant suggested that Scotland's small size was effectively a social barrier to full provision of abortion rights, since it made the Scottish polity easier to manipulate:

> An MP colleague of mine once said to me during the Section 28 debate, "why did you do it in Scotland?" And I said "what do you mean?" And they basically said "you live in a gold fish bowl up there, Scotland's small, politicians are very easily accessible…". There is a genuine fear, given the very deliberate relationship building between the SNP and the Catholic Church (Labour 3).

Again, we see reference to the Catholic Church's influence on policy. The same participant went on to cite other worries:

'You know, the SNP won't do bursary regulation because of Brian Souter. So he's a key funder and a key influencer, and therefore I am deeply disturbed at the prospect of abortion being devolved. Because the Scottish Parliament and MSPs are small in number, we are influenced and persuaded by the views of our constituents, and to be honest, some of them aren't very brave… My real concern is the influence that can be brought to bear on the SNP in particular, by people they have gone out of their way to court'.

The strong implication of this argument is that the weight of social influence from pressure groups, key donors, and even constituents is very much on the *anti*-abortion side in Scotland; much more so than in Britain as a whole. This is a far more pessimistic interpretation of Scottish social attitudes than the arguments put forward by the SNP and Green participants. Interestingly though, one Labour participant rejected his colleague's views:

'I think there are a lot of people in my party and my side of the debate that would say you can't trust the SNP on issues like this because they have stronger representation from those groups than anyone else does. I don't quite buy that… I don't understand why they would get themselves involved on that side of it'. (Labour 4)

Conversely however, even one SNP participant accepted the possibility of tougher abortion regulation in Scotland if the power was devolved:

'You have quite a number of faiths who are against it, particularly the Catholic Church… It was a question that was asked of me at the hustings - was I for or against abortion… I may be sticking my neck out, but there would be pressure to change, to get a situation of change, and I think the party would have to listen to what people wanted'. (SNP 2)

On the whole therefore, participants' views on the social barriers to abortion provision in Scotland appeared to be largely driven by their views on Scottish independence, although this was not true across the board.

4.2.3 Practical and Economic Challenges

There was general agreement among the participants that the economic challenge of providing late term abortions in Scotland was low and not significant. Participants of every party agreed that the financial costs were not a barrier. Green 1, for example, suggested that, '*If there was a financial consequence, I can't imagine it would be a very significant one'*. Labour 2 agreed: '*I don't imagine the financial implications would be massive on that. I don't think finance is the issue. I'd be surprised if it was'*. And SNP 1 thought the *current* system probably cost more: '*I think it will probably cost more to send people out of their own area. It must do'.* The possibility that a stretched health service budget would prevent implementation of late term abortion provision in Scotland was largely dismissed by participants - a finding that will surely encourage abortion rights campaigners.

There was more debate about the practical challenges of providing late term abortion facilities in Scotland. SNP participants, in particular, raised the possibility that practical and technical difficulties might explain Scotland's failure to provide late term abortion facilities. SNP 1, for instance, wondered: '*Have we lost the ability to do surgical abortions in Scotland? If so, why?*'. This participant wondered whether the number of women requiring late term abortion in Scotland was so small that surgeons were unable to maintain their skills: '*There is a level, as a clinician, if you are not performing a procedure often enough, then you are not competent to do the procedure*'. Labour 3 also floated this possibility: '*If you were being*

generous…you might suggest there are fewer numbers, and therefore they would treat this as a specialist tertiary service [that] could be accessed elsewhere'.

It is questionable, however, whether the concerns over surgical skills are relevant, given that late term abortions are performed medically rather than surgically (Beynon-Jones, 2011: 58). And Labour 3 pointed to similar debate around chronic pain, where provision of the service had been successfully brought back from England despite the low numbers requiring it:

'We had a parallel debate about chronic pain, and people from Scotland accessing chronic pain services from Bath, travelling hundreds of miles in chronic pain to access a service provided by the English NHS. The Scottish NHS made a recent decision, after we campaigned, that they would save a million pounds by actually providing this in Scotland. Now if it works for chronic pain, it works for late term abortions too'.

This participant argued that abortion could be provided in a similar way to other tertiary services:

'The example I would give is cardiothoracic surgery, specialist surgery, shouldn't be available in every health board. So Greater Glasgow and Clyde, they take the lead for the whole of the west of Scotland with the services at the Golden Jubilee hospital. So it's not beyond us to organise services for small numbers of patients in hospitals'.

So the clear finding from the interviews is that the practical and economic challenges of implementing late term abortion provision in Scotland are not significant. Such provision could easily be implemented using similar medical models to that of chronic pain or cardiothoracic surgery. However, the social and political barriers appear much more profound.

4.3 Discussion

The study aimed to identify the factors contributing to limited access to abortion in Scotland; the political will to implement late term abortion provision; and the likely effects of devolving abortion policy. This section will discuss the findings with a view to addressing these questions.

4.3.1 Factors Contributing to Limited Access to Abortion in Scotland

Participants conveyed a general reluctance to engage with abortion publicly. Critically, however, there was no sense that this somewhat reticent attitude was in any way caused by personal distaste for abortion; only one participant expressed explicitly anti-abortion views, and most were supportive of abortion rights. On an admittedly small sample, this provides some evidence to suggest that the historical reputation of Scottish politicians being "reactionary and anti-feminist" (Browne, 2014: 130) no longer holds true. Indeed, participants often stressed their belief that Scottish politics was as progressive as, if not more so, than Westminster politics – quite a transformation from the perceived 20th century backwardness described by Browne in the literature review. Equally, the close relationship between the churches and the Labour movement that proved so damaging to the cause of reproductive rights in the last century (Elliott, 2014: 201), now largely appears to be a thing of the past, given the particularly strong support expressed by Labour participants for abortion rights. There is a possibility, however, that this affiliation to religious organisations has now switched to the SNP, a point mentioned by several Labour participants.

As predicted in the literature review, resources do not seem to be a cause of Scotland's failure to provide late term abortions. Participants of all parties agreed with Cochrane and Cameron (2013: 216) that the numbers of women requiring late term abortions are so low

that finance is largely an irrelevance. Practical and technical challenges were also largely dismissed, although there was some debate about the role of health boards. Perhaps more concerning for abortion rights campaigners is that many participants bought into the "foetal-centred framing of the debate" warned of by Beynon-Jones (2011: 57), with concerns around the time limit generally expressed in terms of the potential for foetal survival. This is not surprising, but it does suggest that "the meaning of abortion" continues to be treated "as an object of medical knowledge" (Beynon-Jones, 2011: 57-8). On the other hand, several participants perceived abortion through the prism of human rights, and supported the CEDAW (1999: 1) affirmation that "reproductive health is a basic right".

In general, the political reluctance to engage with abortion seemed to be more a matter of convenience than of principle – just as Scottish clinicians can pass on an unpleasant task to their English counterparts, so Scottish politicians can remain below the parapet on a socially divisive issue. Participants from all parties repeatedly mentioned this social divisiveness, revealing that politicians perceive public attitudes on abortion to be visceral. The suggestion in the literature review that 20th century Scottish society was patriarchal and "fractured" by gender division (McIvor, 1996: 188), was echoed to some extent by participants who argued that social attitudes are harder to change than legislation. The implication here is that lingering patriarchal sentiments in Scottish society continue to hold back the cause of reproductive rights, and perhaps play an indirect role in preventing full implementation of the 1967 Act.

On the whole however, SNP and Green participants were optimistic that Scotland was now a socially progressive country that could be trusted to safeguard abortion rights. Essentially, these SNP and Green participants echoed Henderson's (2014: 2) suggestion that "the

progressive human rights based agenda make it unlikely that Scotland would take actions which restrict women's reproductive rights". On the other hand, Labour participants were much more likely to cite social barriers similar to those described in the literature review by Davis and Davidson (2005: 296) and Browne (2014: 119), especially in relation to the role of the Catholic Church. These Labour participants often mentioned religion as a concern, but this seemed to be informed more by second-hand conventional wisdom and historical prejudice than by any genuine contemporary insight into how religion in Scotland continues to shape attitudes – as one Labour participant was honest enough to admit. In truth, there was little sense from the interviews that the churches carry any great influence with Scottish politicians. Religious groups may have some minor lobbying power at the margins, but politicians seem to be ultimately driven by their perceptions of public opinion. The problem therefore seems to lie more in the fact that particularly vocal lobby groups (some of them undoubtedly linked to religious groups) are able to affect politicians' perceptions of public opinion – even when, as with abortion, the Scottish public is largely supportive of abortion rights (Brown, 2015b). In this sense, the role of the churches in the abortion debate is perhaps indirect rather than direct; and although able to influence some sectors of public opinion, the churches can also be trumped by wider opinion, as the debate over gay marriage proved.

Revealingly, even those SNP participants who were optimistic about Scottish social attitudes still seemed reluctant to invest much political capital on what they consider to be a divisive subject. In this sense, there was perhaps an element of cognitive dissonance in some replies – progressive social attitudes were often spoken of approvingly just minutes after the same participant had suggested abortion was so socially divisive that it made engagement on the

issue difficult. This apparent contradiction can perhaps be explained by the fact that although the public on the whole is supportive of abortion rights, as recent polls make clear (Brown, 2015b), a vocal minority of anti-abortion campaigners are sufficiently vigorous in their opposition to make politicians reluctant to take on the issue. Again, therefore, we see how lobbying can affect political perceptions of wider social attitudes, giving politicians a false sense of public opinion – and raising the threshold for political action.

In summary then, a combination of three factors seem to point towards why Scotland restricts late term abortion. Firstly, Scottish health boards are not autonomous and are supposed to be responsive to political direction. Both Labour and SNP participants expressed this view. Secondly, the Scottish Government has already considered the issue of abortion provision, and in 2013 ignored a recommendation to provide a national abortion service. Consequently, it cannot be said that the failure to provide late term abortion is the result of ignorance – even if some participants did confess to a lack of awareness of the issue. Thirdly, politicians of all parties express reluctance to engage in the abortion debate, for fear of drawing the ire of constituents and campaigners. The clear implication of these insights is that the *current* failure – the *historical* reasons remain murkier - to provide late term abortion facilities in Scotland is primarily caused by political reluctance to overturn a convenient status quo. Scottish politicians have the power to force health boards to implement the 1967 Act in its entirety, but they choose not to do so. Applying the CEDAW criteria specified in section 3, therefore, it is the institutional and structural challenges to late term abortion provision that appear most profound, although the social barriers also play a contributory role.

4.3.2 The Political Will Amongst Parties to Implement Provision of Abortion Up to the Legal Limit

A superficial reading of the findings would surely imply that full implementation of the 1967 Act in Scotland is an inevitability. Many of the participants were unhappy that the existing law is not being properly implemented, and no one contradicted the suggestion that efforts should be made to remove the current practical constraints on late term abortion in Scotland. Yet, this apparent support for implementing provision of abortion up to the legal limit leaves us with something of a puzzle. If legislators favour implementing late term abortion provision in Scotland, why does the situation remain unchanged despite the recommendation in 2013 that a national abortion service should be set up? What explains the chasm between rhetoric and practice? One answer might be a lack of awareness of the issue. Even though the Scottish Government has considered the issue, many participants – including some of those who were most pro-choice – confessed to being unaware of the problem of late term abortion provision. This general lack of awareness might have made it easier for the Scottish Government to kick the issue into the political long grass. The deeper answer, however, seems to lie in the unwillingness of politicians to spend political capital on a controversial subject. Asked in the abstract whether the failure to provide late term abortion is inequitable and should be changed, politicians answer in the affirmative. Asked *in practice* to challenge a status quo convenient to many parties, there is considerably more reluctance to place heads above the parapet.

The comparison with the gay rights debate is illuminating. One participant argued explicitly that although both gay rights and abortion rights enjoy mainstream support in Scotland, pro-choice campaigners are less visible and more defensive than their gay rights

counterparts. This defensiveness is surely partly caused by the media stigmatisation of abortion described by Purcell, Hilton and McDaid (2014), but there is nonetheless an onus on abortion rights campaigners to do more to make their voices heard. If pro-choice campaigners can balance out the noise from the other side of the argument, as they successfully did in the 1970s (Browne, 2014), politicians might become more willing to risk their political capital and implement the existing law. As several SNP participants noted, Scotland's liberal approach to gay marriage offers significant evidence that the Scottish Parliament is prepared to expend political capital on progressive causes, if MSPs believe they have broad underlying public support.

In summary, the findings contain both encouragement and discouragement for those who wish to see Scotland implement late term abortion provision. The encouraging finding is that many politicians appear open to implementing the 1967 Act in its entirety, and acknowledge the inequity of the current provision. The discouraging finding is that, despite this, many of the participants perceive abortion as a controversial topic and are in no hurry to engage publicly with the issue. The challenge for abortion rights campaigners, therefore, is to translate abstract support into concrete action.

4.3.3 The Likely Effects of Devolving Abortion Policy to Scotland

Perhaps the least enlightening part of the interview process was the debate around the likely effects of devolving abortion policy to Scotland. In general, participants' attitudes seemed largely driven by their positions on Scottish independence. Both the SNP and the Scottish Green Party support Scottish independence (SNP, 2015; Scottish Green Party, 2012: 1), and the data illustrates how nearly all SNP and Green participants – certainly all of those who support abortion rights – believed Scotland would safeguard abortion rights if abortion

policy were devolved to Holyrood. Several pointed to Scotland's success in introducing same sex marriage as an example of how Scottish social sentiment has become more liberal in recent decades. Conversely, Labour participants, obviously hailing from a party opposed to independence (Dugdale, 2015), mostly expressed the view that devolution could seriously damage abortion rights in Scotland. This belief was driven by two main fears: a perception of social conservatism, often believed to stem from the greater presence of Catholicism in Scotland, and a worry that the smaller Scottish polity was more vulnerable than its UK counterpart to pressure from campaigners and donors. This latter fear strongly echoed Douglas Home's (2015: para.20) warning that Scotland's small size means "vested interest has access to power".

These concerns about devolution notwithstanding, one astute Labour participant was surely correct to argue that there is little political mileage in opposing devolution on the grounds that Scots can't be trusted. Indeed, given that the zeitgeist in Scotland appears so overwhelmingly pro-devolution at present (What Scotland Thinks, 2015; Aitken, 2015), it would surely be wise for abortion rights campaigners to expect abortion policy to be devolved sooner rather than later, whether they like it or not. The SNP's decision to support the Bruce amendment calling for devolution of abortion policy to Scotland (Learmonth, 2015), and the Scottish Secretary of State's willingness to consider this option (Settle, 2015), are surely a clear indication of which way the wind is blowing. Given that those opposed to devolution appear to be on the wrong side of Scottish public opinion, therefore, it might be prudent for pro-choice groups to refrain from opposing devolution, and instead to focus on winning the inevitable public debate that ensues once the policy has been devolved. It surely makes more sense for pro-choice campaigners to tap into the recent upsurge in

liberal Scottish sentiment, clearly visible on the 'Yes' side during the recent independence referendum (Foley and Ramand, 2014), than to ally themselves with anti-devolution parties who are often too easily painted as reactionary, and whose electoral support, in the case of the Scottish Labour Party at least, is at an all-time low (TNS, 2015).

Furthermore, the devolution of abortion policy would present a significant opportunity to raise awareness of abortion issues and to encourage the Scottish Government to take its responsibility to implement the 1967 Act more seriously. A sceptic might retort that the Scottish Government already has this responsibility, since the health boards are directed from Holyrood, but it is surely true that abortion's status as a reserved matter makes it easier for Scottish politicians to ignore the issue. Indeed, it seems unlikely that Scottish politicians will take action on abortion until the issue becomes much more politically salient, and nothing is more likely to achieve such salience than the devolution of abortion policy. Several participants made precisely this point, arguing that devolution would automatically force abortion up the agenda, and so compel politicians to take a stance. Given that public sentiment appears strongly in favour of abortion rights, pro-choice campaigners should surely see devolution as a welcome opportunity to lobby for implementation of the existing law, as well as potentially to drive through the abolition of the two-doctor requirement – a point stressed in the literature (Beynon-Jones, 2011), and an issue that participants seemed particularly aware of. For these reasons, pro-choice groups in Scotland should have the confidence to support the calls for devolution.

5. Conclusion and Recommendations

5.1 Conclusion

The dissertation has made a number of important findings. Firstly, as the literature review makes clear, Scotland fails to implement the 1967 Abortion Act in respect of late term abortion provision. Requiring women to travel to England for late term abortions, often with some delay and at considerable up-front expense, stigmatises Scottish women, obstructs the "pursuit of their health goals" (CEDAW, 1999: 4), and therefore constitutes a clear human rights violation. Secondly, interviews conducted with Scottish politicians found cross-party consensus that Scotland's health boards are not autonomous and should not be able to ignore the will of the Scottish Government. It is clear that the ultimate 'problem owner' in this case is the Scottish Government – they, rather than the health boards or other stakeholders, have the ultimate responsibility to implement the 1967 Act. Thirdly, although many Scottish politicians appear to be unaware of inequities in abortion provision, the Scottish Government *has* considered the issue and opted to leave the matter to health boards rather than force through implementation of the Act. Lack of awareness, therefore, is not the problem. Finally, the Scottish Government's unwillingness to take ownership of the issue appears to stem from a general political reluctance in Scotland to touch what is considered a political 'hot potato'. The interviews made clear that Scottish politicians regard abortion as a visceral and divisive issue that has the potential to draw them into what they see as needless controversy. Faced with this, and notwithstanding their awareness of inequities in provision, many politicians and parties choose not to engage with the issue.

Applying the CEDAW criteria outlined in section 3, Scotland's failure to provide late term abortion appears to be driven by a combination of institutional and structural challenges (namely, political unwillingness to act) and social barriers (namely, the perceived divisiveness of abortion as a social issue). These factors combine - the social barrier reinforcing the institutional reluctance of politicians to engage in the issue. The third criterion specified by CEDAW - practical and economic challenges – appears less problematic, with the participants in general agreement that full implementation of the 1967 Act is both financially and practically viable.

In summary, therefore, the broad finding is that Scotland's failure to provide late term abortion is no longer – if it ever was – driven by religion or social conservatism. The participants describe a country in 2015 that is rather different from the patriarchal, politically reactionary, and religion tinged Scotland of the 20th century described in the literature review. Indeed, if the 1967 Act were enacted today, it seems likely that Scotland would not implement it any differently than the rest of Britain. In this sense, Scotland's restrictions on abortion access should be seen as an unfortunate historical legacy, but one that remains as yet unchallenged by politicians. Changing the status quo is not easy for politicians, and anti-abortion pressure groups remain vocal enough to make the average MSP think twice before engaging on the issue. As Wilson (2015b: para.5) comments of Scottish politics generally, "the most influential policy-making tool is inertia and the power of yesterday". Confronting this inertia will require abortion rights campaigners to change the terms of the political equation. Doing nothing about abortion must be made more politically costly than doing something. This leads directly onto recommendations for action.

5.2 Recommendations for Action

The first recommendation is for the ultimate problem owner, the Scottish Government, to implement the 1967 Abortion Act in its entirety. To ensure that implementation takes place in the most efficient and least disruptive manner possible, views should be invited for a White Paper on full implementation of the Act. In particular, consideration should be given to setting up a national abortion service capable of managing Scotland's dispersed population and geographical complexities. In this consultation the views of health boards, clinicians, and other stakeholders should be given due consideration, but the views of patients themselves must be given priority.

Secondly, the two doctors' signature requirement should be removed from the legislation, as recommended by the UK CEDAW Working Group in the UK CEDAW Shadow Report (2013: 124). As Beynon-Jones (2011: 56-7) notes, the two doctors' requirement undermines the autonomy of the pregnant woman and frames the decision as one for rational doctors rather than a supposedly irrational patient. The requirement further magnifies the sense of stigmatisation experienced by abortion patients, and so should be abolished. If abortion policy is devolved, the Scottish Parliament will have an opportunity to do this.

These two recommendations are directed towards the ultimate problem owners, namely politicians. As noted above, however, it is unlikely that politicians will implement the necessary measures until action becomes more politically attractive and advantageous than inaction. This places an important responsibility on abortion rights campaigners to increase the political salience of Scotland's failure to fully implement the 1967 Act.

The third recommendation, therefore, is for pro-choice groups in Scotland to do more to draw attention to inequities in abortion provision. It is noteworthy, for instance, that Scotland's failure to provide late term abortion did not even feature in the 2013 UK CEDAW Shadow Report. As the interviews with politicians made clear, anti-abortion groups are highly vocal and often intimidate politicians into silence. This constitutes a social barrier to implementation of the Act. It is important that those arguing the opposite case robustly counter this lobbying and draw attention towards the human rights implications of forcing Scottish women to travel to England for late term abortions. The example of same sex marriage offers promising evidence that the public is amenable to issues framed in terms of human rights and equality. Furthermore, there is encouraging evidence of growing awareness of Scotland's failure to provide late term abortion, with the issue featuring prominently in the *Daily Record* in recent months (Brown, 2015a). Given the overwhelming support of the Scottish public for abortion rights (Brown, 2015b), increasing the political salience of abortion should, unquestioningly, help to bolster the pro-choice cause.

The importance of political salience leads to a fourth recommendation: abortion rights groups should drop their opposition to the devolution of abortion (Wilson, 2015a). As several participants argued, devolving abortion policy to Holyrood would immediately force the issue up the political agenda, thereby giving an opportunity to abortion rights campaigners to demand implementation of the 1967 Act. It is true that devolution would also provide an opportunity for anti-abortion groups, many of them well-organised and well-funded, but the evidence of widespread public support for abortion rights, together with the strong support of Scottish Labour, the Scottish Green Party, and influential sections of the SNP as well – including, critically, the First Minister herself (BBC, 2012) – should give

pro-choice groups confidence that this is a battle they can win. The example of same sex marriage, which was successfully implemented in Scotland despite the opposition of SNP donor Brian Souter – allegedly "far more active in opposing gay rights than abortion" (Daniel, 2014: para.11) - offers a useful template to follow.

5.3 Limitations of the Study

The limitations outlined in section 3 remain valid. In particular, no representatives from the Scottish Conservatives or the Scottish Liberal Democrats agreed to participate. Unavoidably, this skewed the sample somewhat towards the Left of Scottish politics; although it should be noted that this is where the main weight of influence lies in the Scottish Parliament. It must also be borne in mind that only nine of 129 MSPs (Scottish Parliament, 2015) were interviewed, along with one MP and one councillor. It would be foolish to over-generalise from such a relatively small sample, but the high degree of consensus expressed on a number of issues allows conclusions to be drawn with some degree of confidence.

5.4 Further Research

There is a clear opportunity for further research to explore the Scottish public's attitude towards abortion. Useful polls have been conducted recently (Scottish Legal News, 2015), but intensive interviews, perhaps including focus groups, could more deeply explore Scottish attitudes towards abortion, including the crucial question of properly implementing the 1967 Act. Interviewing Scottish Catholics, for instance, would provide an insightful perspective, given the widespread assumption that Catholics are more strongly opposed to abortion. Furthermore, if abortion policy were devolved, it would be useful for pro-choice

campaigners to know how the public is likely to respond to the various arguments made by both sides.

Appendix A

I Think She Was A She

I think she was a she.
No.
I know she was a she and I think that she would have looked just like me.
full cheeks, hazel eyes and thick brown hair that I could have plated into dreams at night.
I would have stuck glow up stars on her ceiling and told her they were fireflies to protect her from the dark.
I would have told her stories about her grandfather
we could have fed the swans at the park.
She would have been like you too, long limbs
with a sarcastic smile and the newest pair of kicks.
She would have been tough, tougher than I ever was
and I would have taught her all that my mother taught me
and I would have taken her to all the museums and there she could see the bone dinosaurs
and look to them and wonder about all the things that came before she was born.
She could have been born.
I would have made sure that we had a space on the wall to measure her height as she grew.
I would have made sure I was a good mother to look up to.
But I would have supported her right to choose.
To choose a life for herself, a path for herself.
I would have died for that right, just like she died for mine.
I'm sorry but you came at the wrong time.
I am not ashamed. I am not ashamed. I am not ashamed.
I am so sick of keeping these words contained.
I am not ashamed.
I was a teenage girl with a boy she loved between her thighs that felt very far away.
Duvet days and dole don't do family planning well.
I am one in three. I am one in three. I am one in three.
I had to carve down that little cherry tree
that had rooted itself in my blood and blossomed in my brain.
A responsibility I didn't have the energy or age to maintain.
The branches casting shadows over the rest of the garden.
The bark causing my thoughts, my heart to harden.
I am not ashamed. I am not ashamed. I am not ashamed.
It's a hollowness, that feels full, a numbness that feels heavy.

stop trying to fit how this feels on an NHS bereavement brochure already.
I am allowed to feel it all, I am allowed to feel.
I am woman now, I am made of steel,
and she wasn't a girl and she wasn't a boy.
That's just the bullshit you receive to keep you out of parliament and stuck on maternity leave.
Don't you mutter murder on me.
70,000 per year. 70,000 per year. 70,000 per year.
Dead.
That's 192 per day.
from coat hangers, painkillers, the back alley way way.
Don't you mutter murder on me.
Worldwide performing abortion like homework,
looking for the answer in the groves in our palms, the bulges on our bellies, the whispers in our ears,
only to be confronted with question marks.
Women have been hidden away in the history books.
After all it's history.
His story.
Well this is herstory, ourstory, god damn it,
this is my story
and it wont be written in pencil and erased with guilt.
It will be written in pen and spoken with courage.
You will hear it on the radio on your way to work, you will study it in English,
you will read it on the coffee shops bulletin boards next to the flyer about yoga for babies.
Because I am not ashamed, I am not ashamed, I am not ashamed.
I am woman now.
I will not be tamed.
I have determination that this termination will still have a form of creation.
It will not be wasted.
this is my body. this is my body. this is my body.
I don't care about your ignorant views
when I become a mother, it will be when I choose.

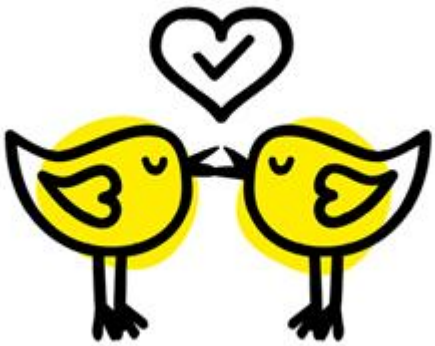
Leyla Josephine, 2014

Appendix B

Amnesty International - My Body My Rights Manifesto, 2014

As governments and others try to impose restrictions in the most private corners of our lives – sex, relationships, birth control – we, the people, have launched this manifesto: seven principles which unite us in our quest to claim control over our bodies, health and the personal decisions that affect our futures.

1



Consensual sex is **never** a crime – whatever our sex, sexuality, gender identity or marital status.

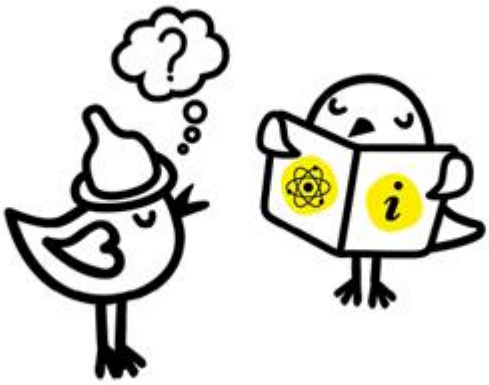
2

Seeking an abortion – or helping someone get one – does NOT make us criminals.

3

Affordable, confidential and quality health services, including access to contraception, is not a luxury – it's a human right.

4



Education and information on sex and relationships must be based on scientific evidence, and should be available to everyone.

5

We all have the right to live free from all forms of violence, including rape.

6

We have the right to have a say in the laws, policies and programmes that affect our bodies and our lives.

7

If our sexual and reproductive choices are denied, we have the right to report it, have it investigated and be confident that justice will be served.

These declarations are not just expressions of belief. They are rooted in human rights that are enshrined in international standards that place obligations on our governments.

It's time for our governments to deliver on these obligations. Only then will we be truly empowered to make our own decisions about our bodies, our lives and our futures.

Appendix C

University of Glasgow

College of Social Sciences

Participant Information Sheet

Study Title and Researcher Details:

Abortion in Scotland

Hannah Pearson
2134781P@student.gla.ac.uk/ 07446919672

Supervisor: Dr Mhairi Mackenzie

I am studying towards an MSc in Equality and Human Rights.

Invitation:

You are being invited to take part in a research study. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you very much for reading this.

What is the purpose of the study?

I am undertaking research in collaboration with Amnesty Scotland and Amnesty's My Body My Rights campaign, into the issue of abortion in Scotland.

Scotland is an uncommon example of a country where abortion is legally permitted, but where women face substantial barriers to access when seeking a late term abortion, i.e. from 16 weeks gestation. In contrast to the rest of Great Britain, abortion at gestations over 20 weeks is not provided in Scotland, and provision of procedures above 16 weeks varies considerably between regions. This situation exists despite abortion being legal in all of Great Britain up until 24 weeks, as made law in the 1967 Abortion Act.

I will be conducting interviews with politicians from the varying political parties in Scotland, as well as party spokespeople and/or policy makers, to gauge:

a) the factors that have contributed to limited access to abortion in the country;

b) the political will amongst parties to implement provision of abortion up to the legal limit;

c) the likely effects of devolving abortion policy to Scotland.

The research will be undertaken between May and September 2015.

Why have you been chosen?

As an MSP/ party spokesperson I would value and very much appreciate your contribution to my research.

I am hoping to interview between 12 and 15 MSPs and/or party spokespeople from different political parties to create an unbiased and comprehensive assessment.

What is involved if you agree to take part?

It is up to you to decide whether or not to take part. If you decide to participate you are still free to withdraw at any time and without giving a reason.

What will happen to me if I take part?

I am planning to conduct qualitative interviews which I anticipate will last between 40 minutes and 1 hour. The interviews will be audio taped, and will take place at a time and location most convenient for you.

Confidentiality?

Participants will not be named and shall be anonymous in the study, identified only by a random ID number. However, participants will have to declare their political party affiliation.

Please note that assurances on confidentiality will be strictly adhered to unless evidence of wrongdoing or potential harm is uncovered. In such cases the University may be obliged to contact relevant statutory bodies/agencies.

How will the results of the research study be used?

The results of the research study will form part of my postgraduate dissertation, which will be completed in September. Copies of the dissertation will be available to all participants on request. Amnesty Scotland will be provided with a copy of the dissertation to feed into their My Body My Rights campaign.

Who is organising and funding the research?

I am organising the research as part of my MSc at The University of Glasgow. The research is not funded.

Who has reviewed the study?

The study has been reviewed by the College of Social Sciences Research Ethics Committee.

Contact for Further Information:

If you have any concerns regarding the conduct of this research project, you can contact the College of Social Sciences Ethics Officer Dr Muir Houston, email: Muir.Houston@glasgow.ac.uk

Appendix D

Interview Themes:

- Their political parties stance on abortion
- Their personal view on abortion
- Their political parties involvement in abortion related policy
- Factors that have contributed to limited access to abortion in the country
- Acceptability amongst their party of implementing provision of abortion up to the legal limit
- The financial viability of such implementation
- Consequences of devolving abortion law to Holyrood

Appendix E

University of Glasgow

College of Social Sciences

Consent Form

Title of Project: Abortion in Scotland

Name of Researcher: Hannah Pearson

1. I confirm that I have read and understand the Participant Information Sheet for the above study and have had the opportunity to ask questions.

2. I understand that the project is for research.

3. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

4. I consent to interviews being audio-taped.

5. I acknowledge that copies of transcripts will be returned to the participant for verification.

6. I agree / do not agree (delete as applicable) to take part in the above study.

Name of Participant	Date	Signature
Researcher	Date	Signature

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