*'Are we going to stand by and let these children come into the world?': The Impact of the 'Thalidomide Disaster' in South Africa, 1960-1977**

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Thalidomide is in many ways the archetypal drug of our era. Produced in the mid-1950s by German firm Chemie-Grünenthal GmbH, and sold directly by them or by licencees, it was one of a multitude of medications industrially created during the post-war boom in synthetic drugs and aggressively marketed for multiple uses on a global scale. Most notoriously given to pregnant women suffering from morning sickness, without adequate testing for either toxicity or effectiveness, thalidomide was advertised as being 'completely non-poisonous, completely safe'. Instead, in what became known as the 'thalidomide scandal', it caused malformations resulting in at least 10,000 children being born with severe disabilities. Previous research has shown that thalidomide was given out as samples, sold over the counter, or distributed via national health

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facilities in at least 46 countries across the world. It has become conventional wisdom that there are no histories to be told of thalidomide in South Africa, or in the continent more widely. We challenge this view. We focus specifically on South Africa, and describe how the country narrowly missed an 'epidemic of deformity' in the late 1950s and early 1960s. We then demonstrate that the international thalidomide scandal affected South Africa in at least two significant ways. First, it informed the passage of the Medicines and Related Substances Control Act (No. 101) of 1965, which established the Medicines Control Council of South Africa. Second, it played an important role in the debate over abortion law reform in the early 1970s, in particular regarding the desirability of a eugenic clause in South Africa's first statutory law on abortion, the Abortion and Sterilization Act (1975).

Over the last several decades, controversial, even scandalous, uses and effects of scientific medicine have become well known in South Africa, entering the everyday discourse of news reportage and public knowledge.[1] Yet South Africa escaped what has been widely termed for more than half a century 'the world's worst drug scandal of all time', the 'thalidomide disaster' of the early 1960s. [2] Often regarded as a watershed moment in many branches of late twentieth century science, medicine, pharmacology, law and reproductive rights, thalidomide has become a metonym for the worst that can happen when medicine unintentionally goes very badly wrong, when modernity produces not progress but novel forms of damage on an unprecedented scale.

[1] Examples include studies of colonial scientific racism, psychiatry and eugenics; the modernist development of biochemical and nuclear weapons; conflicts/clashes between the post-apartheid state and its own Medicines Control Council over the Virodene 'fake AIDS medicine'; Mbeki's AIDS denialism; and civil rights struggles over intellectual property and pharmaceutical patent laws.

[2] This term is still ubiquitous in the history of pharmacology and in the media. For example, see J. Stone, 'The Nazis and Thalidomide: The Worst Drug Scandal of All Time', *Newsweek,* 10 September 2012.

Thalidomide's German manufacturers and Distillers Biochemicals Limited (DCBL), whose parent company, Distillers, had accepted assurances about the drug's safety and bought the rights to distribute thalidomide in the United Kingdom (UK), have both consistently denied 'ever distributing in South Africa'.[3] We argue, however, that even if this is strictly accurate, and even though there was no substantial impact of thalidomide in terms of the number of children afflicted by it, the drug nonetheless had far-reaching effects. In this article we discuss two instances in South African history when thalidomide, or the threat of it, had significance in the country's scientific and political discourse, and influenced the passage of regulatory legislation. Neither development – stricter regulation of medicines and eugenic abortion – is unique to the country, but thus far historians have not considered the effect that thalidomide has had on South Africa. First we sketch a brief history of the global 'thalidomide scandal', so called because for more than half a century, its victims have struggled for recognition and compensation and because of Grünenthal's unflinching refusal to admit that in the 1950s and early 1960s it had practised anything less than exemplary medical science or legitimate marketing. We then explain just how closely South Africa avoided this 'epidemic of deformity', before exploring thalidomide's role in shaping two important pieces of South African legislation.

A Brief History of 'the Monster Drug' Thalidomide

Created by the German firm Chemie-Grünenthal GmbH, thalidomide (alpha-phthalimido-glutarimide) is in many ways the archetypal drug of our era. It was produced as one of the many medications industrially created in the hugely profitable boom after World War Two in synthetic drugs, and marketed on a vast scale by expanding multinational corporations diversifying their

[3] Email correspondence from Dr M. Johnson, then Director of the Thalidomide Trust (UK) to J. Parle, 16 January 2013. Distillers Biochemicals Limited (founded 1942 and known by the acronym DCBL) was a subsidiary of the multinational giant British Distillers Company, which sold whiskey and other best-selling alcohol brands. DCBL was amongst the first companies to produce penicillin in Europe.

products from alcoholic drinks and cosmetics to pharmaceuticals. Initially developed as an anti-convulsant, it did not prove successful as such. Nonetheless, Grünenthal soon aggressively marketed 'K-17' (the in-house code-name for the drug) for multiple uses. Indeed, for a short while this 'wonder drug' seemed to be the answer to the anxieties of the post-war modern condition, especially of women. Under its dozens of brand names, such as Asmaval (for asthma), Tensival (for hypertension), Valgraine (for migraine), Distaval (its most common name in Britain), Kevadon (in North America), Softenon (in West Germany), and Entero-Sediv (for dysentery) to name just a few, it rapidly brought Grünenthal, and other distributors, very substantial profits.

Promotional materials advertised thalidomide products as being 'completely non-poisonous … astonishingly safe…non-toxic…fully harmless';[4] and as a 'completely safe, non-toxic sedative', for both adults, including pregnant women, and children.[5] Instead, it led to a range of serious complications, including that of peripheral neuritis in many hundreds of adult patients. More widely known, and most notoriously, across a swathe of countries – including but not limited to Australia, Germany, the UK, Switzerland, Sweden, Canada, Belgium and Japan – thalidomide caused an epidemic of terribly deformed babies.[6] Only in late November 1961 did Grünenthal reluctantly withdraw thalidomide from sale. By that time an estimated 10,000 living children suffered disabilities as a consequence of what was now being called the 'monster drug',

[4] See J. Braithwaite, *Corporate Crime in the Pharmaceutical Industry* (Abingdon, Oxford, Routledge, 1983 and 2013), p. 68, available via Google Books, retrieved 3 February 2014.
[5] This phrase is quoted in many sources, e.g. B. Brookes, *Abortion in England 1900-1967* (Abingdon, Oxford, Routledge, 1988 and 2012), p. 151.
[6] The most well-known effects of thalidomide taken in early pregnancy are phocomelia, or limb damage, but there are other complications, too. These include 'congenital heart disease, microphthalmos and coloboma, intestinal atresia, renal malformations, abnormal pinnae, and facial naevus', R. W. Smithells and C.G.H. Newman, 'Recognition of Thalidomide Defects', *Journal of Medical Genetics*, 29, 10 (October 1992), p. 716.

the teratogen, thalidomide.[7] Yet the drug continued in circulation in some places. While DCBL had ceased sales of Distaval in December 1961, in Canada Kevadon was officially available until March 1962. In Japan thalidomide continued to be sold in some rural pharmacies until as late as 1965. It is now thought that there were many more victims, and that 'about 40 percent of thalidomide victims died before their first birthday'.[8]

Between 1957 and 1961 thalidomide was sold, or distributed via national health facilities, in around 46 countries around the world. The significance of international markets has often been underplayed by researchers. Yet, as Stephens and Brynner remind us, 'During the peak year of 1961, 25 percent of thalidomide sales were in foreign countries'.[9] These included seven in Africa: Angola, Ghana, Guinea, Mozambique, Somalia, Sudan and 'West Africa'.[10] In several others, including South Africa, both DCBL and Grünenthal anticipated and sometimes overtly competed for markets, but the official distribution of thalidomide was hindered or unsuccessful. In some cases heroic individuals single-handedly appeared to have prevented this pharmaceutical plague. The best known of these was the US Federal Drug Administration's Frances Oldham Kelsey. Less well known, but similarly regarded as a national hero, was Professor S. T. Aygun who '… is credited with blocking the importation of thalidomide to Turkey from 1958 to 1962, thereby averting the tragedy of deformed babies...'[11]

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[7] 'Teratogen', from the Greek, meaning 'monster'.
[8] Dr W. Lenz, 'The History of Thalidomide: Extract of a Lecture given at the 1992 UNITH Conference', available at http://www.thalidomide.ca/victim-of-drug-thalidomide, retrieved on 27 January 2014.
[9] T. Stephens and R. Brynner, *Dark Remedy: The Impact of Thalidomide and its Revival as a Vital Medicine* (Cambridge, Mass, Perseus Publishing, 2001), p. 16. By 'foreign' they mean outside of West Germany and the UK.
[10] 'The Many Faces of Thalidomide (from 1957 to 1966)', compiled by Randy Warren, available at http://www.thalidomide.ca/many-faces-of-thalidomide, retrieved 7 May 2013.
[11] See M. J. Fischer, *Anthropological Futures* (Durham, NC, Duke University Press, 2009), p. 97.

With renewed interest in the records of the 'Contergan Trial' (during which between 1968 and 1970, the West German Ministry of Justice initiated criminal proceedings against a number of Grünenthal executives and company owners), it is now becoming possible to uncover more of the history and impact of thalidomide across the Middle East and Africa.[12] For example, it is now certain that from the late 1950s various preparations of the drug -- Softenon, Contergan and Entero-Sediv in particular -- entered more African countries than the seven listed above, albeit sometimes only in tiny amounts via informal direct importing agents, including general dealers.[13] Moreover, contrary to previous assumptions, some thalidomide-affected children *were* born in African countries, including Uganda and Kenya.

In African countries, as was the case elsewhere, including West Germany and the UK, many of the thalidomide-affected children were born into middle-class families, including – in a tragic irony – many involved in the medical professions, 'i.e., businessmen, clerks, professional men (doctors, lawyers, veterinarians, dentists, etc.)'.[14] Where documentary testimony exists of pregnant women affected by thalidomide in Africa, unsurprisingly they were usually recent immigrants from Europe, wives of employees of multi-national corporations (such as British

[12] The Contergan Criminal Trial Records are part of the Rhineland Section of the State Archives of North-Rhine Westphalia, Germany. They were moved from Düsseldorf to Duisburg in early 2014. Important documents sourced from this collection, including correspondence between Grunenthal and Distillers, were assembled in the course of a 2011-2012 class action suit on behalf of Australian thalidomider, Lynette Rowe. See 'Supreme Court of Victoria at Melbourne, Common Law Division, Major Torts List, No. S CI 2011 3527, between L. S. Rowe and Grünenthal GMBH and The Distillers Company (Biochemicals) Limited (00518031) and Diageo Scotland Limited (SC000750). Hereafter 'Rowe Papers'. Available at http://images.theage.com.au/file/2012/07/26/3492315/thalid.pdf?rand=1343304467483, retrieved on 27 January 2014.

[13] Including Ethiopia, Libya, Eritrea, Somaliland, Rhodesia, Togo, Cameroon, Madagascar and Tunisia. Information collated on behalf of the authors by Tobias Arndt in June 2013 from Landesarchiv Nordrhein-Westfalen, Abteilung Rheinland (LAV NRW, Abt. Rheinland), Gerichte Rep. 139, 15, 194. We thank Tobias Arndt for this information, and Dr Ludger Wimmelbücker for its verification and his guidance on the referencing format.

[14] C. H Frantz, M.D., 'The Increase in the Incidence of Malformed Babies in the German Federal Republic (West Germany) During the Years 1959--1962', *ICIB*, 2, 2 (1962), available at http://www.acpoc.org/library/1962_02_001.asp, retrieved on 5 April 2013.

Petroleum) or, women in more well-to-do white families, families being exposed to a rapidly expanding range of sedatives, tonics, tranquillizers and modern pharmaceuticals for use by both adults and children.

These families picked up the drug themselves during trips to countries where it was legally available, or were given samples by sales representatives, doctors or family members who had acquired thalidomide from elsewhere. This was the case with what the South African newspaper, *The Star*, on 4 August 1962 called 'South Africa's "first thalidomide baby"'. The newspaper reported that while on holiday in Mozambique, Mrs Mary Perdigao of Johannesburg had 'on the advice of a doctor' bought the drug in 1961 for her then 15-month old son. After her return to South Africa, and during the early part of her second pregnancy, 'she had taken "nearly half a bottle of the pills herself as a tranquillizer".'[15] Fortunately, her second son, born on 19 May 1962, was 'perfectly normal', his mother having presumably missed taking the drug during the 'sensitive period' of between 20 and 34 days after fertilisation when, it was later established, thalidomide wrought its most devastating effects on the developing embryo.[16]

The Star's article reveals several notable points. Firstly, it illustrates how the same thalidomide medication was often used for both children and adults. Secondly, immediately after it had been confirmed that Mrs Perdigao had indeed taken thalidomide, 'a conference of gynaecologists was called … [and] some doctors advised her to terminate the [then five months'] pregnancy at once'. Thirdly, fears of giving birth to a 'thalidomide baby' were widespread, and this is not surprising as it would take years to establish with certainty when and how the drug reacted in the body with teratogenic effect. Finally, it clearly shows that thalidomide-containing medicines could be easily and legally brought into South Africa from across its borders.

'Spared the Horror' of a Thalidomide Crisis in the 1960s [17]

[15] '"Drug" Baby's Mother Tells of Anguish', *The Star*, 4 August 1962.
[16] J. H. Kim and A. R. Scialli, 'Thalidomide: The Tragedy of Birth Defects and the Effective Treatment of Disease', *Toxicological Sciences*, 122, 1 (2011), pp. 1--6, available at http://toxsci.oxfordjournals.org/content/122/1/1.full.pdf+html, retrieved on 27 January 2014.

The existence of a potential market for such pharmaceuticals in South Africa can be seen in the announcements of new products placed by multinational and local South African companies. These included British Drug Houses, DCBL and Smith & Nephew (Pharmaceuticals) Ltd. Some of their products' promotional material was chillingly similar to that of Contergan, Softenon or Distaval. For instance, Smith & Nephew's 'Dormwell' was described as 'a safe, non-barbiturate sedative and hypnotic', 'particularly suitable for elderly patients…[w]hile the paediatric tablets are very well tolerated by children and babies'.[18] This was not the only sedative for children being marketed in South Africa at the time. Westdene Products were the 'sole South African agents for Astra International of Sweden'. At the time, Astra Laboratories was the Swedish distributor of the prescription-free sedative, Neurosedyn, a brand name for thalidomide, which it sold under licence from Grünenthal. A September 1960 infomercial in the *South African Medical Journal* announced also that '… many more products of original research from the Astra Laboratories will be reaching South Africa during the coming months as a result of the new link with Westdene's Ethical Division'.[19]

Moreover, Grünenthal applied for a South African patent for thalidomide as early as 1956, granted the following year.[20] This may have simply been a defensive move – to exclude competitors – but their applications in 1958 to register the trademarks of several products containing thalidomide suggests that Grünenthal intended to launch these preparations in the

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[17] D. Birch, 'Twenty Years Ago …A Man had a Headache in South Africa and thus the Country was Spared the Horror… of THALIDOMIDE', *Weekend Argus*, 22 December 1979.
[18] *South African Medical Journal*, (hereafter *SAMJ*), 35, 3 (4 March, 1961), p. 184.
[19] *Ibid*., 34, 3 (10 September 1960), p. 793.
[20] CIPRO IP Online Services: 'Applicant 2158723. Chemie Grünenthal G.M.B.H, Steinfeldstrasse 2, Stolberg IM Rhineland, Full Name of Inventors: 2158725. Dr Willi Kunz and 2158724, Dr Herbert Keller'. The 'Address for service' was listed as 105048. ADAMS & ADAMS, Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria.

South African market. They included Algosediv (an anti-fungal) and the sleeping aides, Pantosediv and Noctosediv.[21]

And thalidomide was, in fact, available in South Africa, albeit likely in small amounts only. Grünenthal's own records, compiled for the Contergan Trial, indicate that H. Wolf Ebert, 'Guarantor [representative or agent] of Grünenthal in S. Africa', and listed as 'Importer, 28, Victori Quay, Port Elizabeth/South Africa', received 'Samples' and 'Goods' of Softenon tablets, syrups, suppositories and drops. The records note the following: 'Contractual obligations: - no records - ; 4 Registration (patents, possibly testing); 5 First distribution of products containing thalidomide – Samples September 1960, Goods September 1960.'[22] There were no package inserts or leaflets, and there was, as was the situation in Germany, no legal requirement for these drugs to be made available via prescription.

Thalidomide, however, was not officially marketed in South Africa. The precise reasons for this are as yet unclear, although the available evidence points to a combination of commercial competition, luck and the growing regulatory oversight on the part of South African medical and pharmaceutical bodies. First, inconvertible evidence exists, showing that Grünenthal and DCBL were competing for the South African market. In correspondence between the two in January 1961 DCBL reported that its sales areas 'in all contract market areas [were] good', noting:

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[21] *South African Pharmaceutical Journal* (hereafter *SAPJ*), 25, 1 (September 1958), pp. 33 and 25, (2 October 1958), p. 33.

[22] LAV NRW, Abt. Rheinland, Gerichte Rep. 139, 15, 'Record of importer: H. Wolf Ebert, 28, Victoria Quay, Port Elisabeth, South Africa; export of thalidomide preparations', no date. In the *Braby's Commercial Directory of South, East and Central Africa* (Durban and Cape Town, A. C. Braby, 1958), Wolf Ebert is listed as an 'indent [general] dealer'.

> At the beginning of 1960 the turnover was £400 per month, now it is about £4000 per month….The following figures are estimates for 1961 for the current tablet formulations – without syrup:
>
> Central Africa £7000
>
> East Africa £12000
>
> West Africa £8000 [23]

However, there were a number of ongoing disagreements over who had exclusive rights to which markets, especially those of the Commonwealth.[24] Britain's *The Sunday Times* newspaper cites a 1961 Grünenthal source as insisting that 'in respect of South Africa "…we have to reserve ourselves exclusive rights for this territory".... [it went on to add] I have also thoroughly studied the question of Australia and New Zealand. Also in this case I regret we cannot grant you distribution rights'. [25] The *Times* continued: 'Although Gruenenthal [sic] later relented and gave DCBL rights in Australia and New Zealand, the effect of this decision at this time must have been to give DCBL an incentive to push thalidomide harder in the market it did have: Britain.'[26] DCBL did not, however, have as yet a market in South Africa. It is unclear why, although in later years its local marketing representative, Mr. Frank Wayne, would claim that after using 'Thalidomide samples' for sleeplessness during his travels, he had

[23] 'Rowe Papers', p. 34; 'GRT. 0001.00030.0155: 27 January 1961. File Concerning a Discussion at Distillers in England with Grt.'
[24] See, Sunday Times Insight Team, *Suffer the Children: The Story of Thalidomide* (London, Futura, 1980; first published by Andre Deutsch in 1979), pp. 40--61 and Rowe Papers, especially pp. 126--8.
[25] European Commission of Human Rights, Strasbourg, Application No, 6538/74, Times Newspapers Ltd, and others against United Kingdom, Report of the Commission (Adopted on 18 May 1977), pp. 126--7.
[26] *Ibid.*

> developed a headache and this made his approach to the pills more guarded. And, after a few months, when he used the pills again and got another headache he was puzzled….He subsequently received a report about a side-effect of Thalidomide and he decided to think the whole matter over very carefully….There were delays, and the new drug remained unlaunched in South Africa. [27]

A similar combination of fortune and financial factors was invoked in 1965 in the South African Parliament by Minister of Health, Dr Albert Hertzog, who remarked 'We in South Africa were spared the dreadful results of this drug in England, but only by luck. Fortunately, the firms were so busily engaged in marketing this wonder drug in other countries that it was only later marketed in South Africa and then only to a small extent…'.[28] This last point is intriguing. It is uncertain whether Hertzog was referring to Ebert's sales of Softenon, but this seems unlikely as in late August 1962, having only received on the ninth of that month instruction from Grünenthal to return any outstanding stocks, Ebert wrote that he had been '… just about to order another 1,000 tablets…', but had instead withdrawn '5 x 100 tablets'. He added that '…the affected (patients) were very reluctant and angry, as they swear on your product and felt no side effects'.[29]

Both Grünenthal and DCBL might also have been holding back from launching thalidomide in South Africa until the matter of legitimate markets -- and the new Republic of South Africa's position within the Commonwealth -- had been settled. Had they done so they

[27] Birch, 'Twenty years ago'.
[28] Republic of South Africa, *House of Assembly Debates* (hereafter *Hansard*), 5 May 1965, columns 5329--30.
[29] LAV NRW, Abt. Rheinland, Gerichte Rep. 139, 61 118, correspondence between Wolf Ebert, Port Elizabeth, to Chemie Grünenthal G.m.b.H. Postfach 129, Stolberg im Rheinland, 22 and 27 August 1962.

would have learned of the existence of medical and pharmaceutical bodies already attuned to the possible teratogenic effects of some chemicals -- this, despite the fact that a full legislative, infrastructural and scientific apparatus was not yet in place, nor was it yet required that medicines be tested for safety and efficacy,

Indeed, the 1950s had seen expanding state control over the manufacturing and approval of pharmaceuticals. In a letter to the *South African Medical Journal* in early 1961, Dr. J. H. Rauch, member of the Council of the South African Bureau of Standards (SABS), established in 1945, described how the SABS had laboratories for testing medical products, including intravenous fluids, 'vitamin preparations, surgical sutures, insulin injections and other forms of drugs'.[30] By 1961, the SABS had expanded their network of laboratories to include ones for testing pharmaceuticals, vitamins and amino-acids. Rauch also reported that the SABS had to 'submit frequent reports on the failure of many of the preparations submitted…As a result of this vigilance', a greater number of 'the importing agents of overseas companies…and…more and more products have been, and are continuing to be, submitted… for control purposes.' [31]

The SABS was presumably aware of an important South African study that had alerted scientists to the fact that in some cases even miniscule concentrations of chemicals can have teratogenic effects. In the late 1940s, a small team of scientists working at the University of the Witwatersrand's Medical School investigated a dye called trypan blue 'and found that it and several other similar dyes could produce deformities in rats, though not necessarily in other species, at dosages far too low to have had any toxic effect on the mother rat'.[32] Published in the

[30] J.H. Rauch, 'The Testing and Control of Pharmaceutical Products', *SAMJ*, 35, 1 (January 1961), p. 4.
[31] *Ibid*.
[32] Sunday Times, *Suffer the Children*, p. 74.

South African Journal of Medical Science in 1948, according to one history of thalidomide, the findings 'rapidly became something of a teratological classic'.[33]

That the implications of the 'trypan blue' study were well known to and taken seriously by influential South African scientists across several disciplines is shown in a letter in the archive of the Contergan Trial. Writing to the Swedish prosecutor of Astra, the Professor of Pharmacology at the University of Pretoria and specialist in the field of veterinary medicine Douw Steyn 'enclosed an article from 1954 in which he had warned of drugs for pregnant women'. He wrote:

> [B]efore that time and since 'I have constantly impressed this danger on my medical students and pleaded that all drugs likely to be administered to pregnant women should be tested for their possible teratogenic effects…. Screening methods for testing the teratogenicity of drugs were available before the thalidomide disaster ... any firm manufacturing pharmaceutical preparations should for decades have been fully aware of the possible dangers of drugs to pregnant mothers and foetuses….'[34]

'Thalidomide Babies' and the Creation of a National Medicines Regulatory Body

News of the thalidomide disaster provided ballast for the South African state's efforts to establish a national medicines regulatory body.[35] Already in the 1950s, the Pharmaceutical Society of South Africa (PSSA) had expressed 'concern about the evident side-effects of some of the powerful new cures on the market' and subscribed to the view that 'Societies should make it

[33] *Ibid.*
[34] LAV NRW, Rheinland Section, Ger. Rep. 139, 385. Steyn's article 'Disturbances of Mitotic Processes and Teratism' was published in the *SAMJ*, 28, 1 (1954), pp. 1--4. It cites the trypan blue study.
[35] P. I. Folb, 'Drug Policy in a Future South Africa', *South African Journal of Science*, 85, 8 (August 1989), pp. 498--502.

a first priority to ensure that pharmacists were acquainted with the effect of these new medicines in the body'. [36] The recommendations of the 1951 *Commission of Enquiry into Pharmaceutical Education in South Africa* (the Bremmer Report) bolstered the profession's status and control over the dispensing of medicines.[37] But by the end of the decade, the rising costs of health care, and the seemingly intractable conflicts over the rights to control who could dispense drugs and poisons and under which circumstances, led to the appointment of the (Snyman) *Commission of Inquiry into High Cost of Medical Services and Medicines.* Douw Steyn was one of its members, but he was the sole Commissioner with expertise in pharmacology, a fact the PSSA resented.

The Commission held hearings between February 1960 and April 1962 – contemporaneously, in fact, with other legal reform investigations into drugs and medicines elsewhere, such as in the USA and the UK.[38] Indeed, Snyman noted that whilst he had been 'engaged on another mission overseas', he had examined and compared 'various facets of the enquiry with conditions in Europe, Canada and the U.S.A. In this way valuable information was also obtained, not only on the factual position as it existed at that time … but also on general trends and developments. Many of these overseas organisations subsequently provided the Commission with further information.'[39]

In the view of the Commission the pharmaceutical industry in South Africa had, since the 1930s at least, been delaying the implementation of more effective legislation for the

[36] D.W. Goyns, *Pharmacy in the Transvaal, 1894-1994* (Braamfontein, Johannesburg, Pharmaceutical Society of South Africa, Southern Transvaal Branch, 1995), p. 68.
[37] *Ibid*., pp. 68-69.
[38] *Ibid.* In the USA and UK, the Kefauver committee and Hinchcliffe Report, respectively, were instituted only a short while earlier to investigate concerns about rising medicines costs.
[39] R.P. 59/1962, *Commission of Inquiry into High Cost of Medical Services and Medicines* (Pretoria: Government Printer, 1962), p. 3. Hereafter, 'Snyman Commission'.

'registration and control of medicines', especially those pertaining to human beings. By comparison, it said, the regulation of veterinary medicine was 'effective', but 'no provision had been made for the protection of the very people who have made this available to their animals'.[40] It went on to recommend the formation of 'an expert board or committee to evaluate new medicines and to issue information on such drugs to the profession'.[41] This was eventually realised in the establishment of the Medicines Control Council (MCC) of South Africa, under the Medicines and Related Substances Control Act (Act No. 101) of 1965.

In an interview with Professor Peter Folb (who chaired the MCC from 1981 until 1998), we were alerted to a significant conduit of information about thalidomide and drug regulatory measures, and a major figure in the drafting of the Medicines Control Act of 1965: Professor Guy A. Elliott, O.B.E. Elliott was a member of the MCC Executive, and Chairman of its Safety of Medicines Committee, until his death in 1975.[42] He was also Professor of Medicine at the University of the Witwatersrand, Chief Physician at the Johannesburg Hospital for 20 years and Director of the Cardiopulmonary Research Unit at the Council for Scientific and Industrial Research. Elliott published on a wide range of clinical, psychiatric and medical ethics issues. A member of the South African Medical and Dental Council, he held a range of committee memberships and positions both in South Africa and internationally. Significantly, he also, in 1955, had co-edited the book *Medicine in South Africa*, with Joseph Gillman, co-author of the trypan blue study.[43]

[40] Snyman Commission, pp. 130--1.
[41] *Ibid*, p. 131.
[42] T. H. Bothwell, 'In Memoriam: Guy Abercrombie Elliott', *SAMJ*, 49, 10 (25 October 1975), pp. 1896--7.
[43] G.A. Elliott and J. Gillman (eds), *Medicine in South Africa* (Johannesburg, Eagle Press, 1955).

Folb told us that in the early 1960s, if not before, Elliott had already been working to persuade the Department of Health that 'the laws governing medicine should be reviewed, and there should be [a] regulatory authority'.[44] Indeed, as early as 1962 Hertzog, had suggested that Elliott undertake a study of 'production, control and clinical use of drugs'. This he did, as a World Health Organization Travelling Fellow, from October 1964, submitting his Report in 1965. He visited the USA, UK, Canada, Holland, Sweden, Switzerland, France and the Federal Republic of Germany.[45] The impact of the 'thalidomide scandal is the backdrop to almost every meeting he had with dozens of leading scientists in each country. The 'Diary' of more than 300 pages that he kept in addition to the 101-page official 'Report' details his packed schedule. His first day of business in the USA included a meeting with 'Dr Frances O. Kelsey (who kept thalidomide off the US market)'.[46] Later that day, he noted with some humility that 'this [was his] first acquaintance with the most formidable drug control regulations in the Western world'.[47]

After reviewing the different review bodies and laws of the countries he visited, Elliott urged the need for responsibility and flexibility, and recommended devising a 'statutory drug control system which is workable and acceptable to the State, the drug industry and the profession'.[48] He not only suggested new legislation, but also that

> [O]ur philosophy and practice of teaching drugs to medical students and trainee specialists …be modified to ensure that as future practitioners they will use drugs with effective understanding and appreciate that a drug, like a scalpel, in an unskilled hand is a

[44] Authors' interview with Professor Folb, Cape Town, 25 April 2013. Audiotape and transcript in possession of authors.
[45] G. A. Elliott, 'Report on Six Months' Tour to Study the Production, Control and Clinical Use of Drugs' (unknown place of publication, WHO, 1965). A chapter in the 'Report' concerned teratogenicity and, unsurprisingly, thalidomide was discussed.
[46] G.A. Elliott, 'Diary of Six Months' Tour to Study the Production, Control and Clinical Use of Drugs' (unpublished Diary, held in UCT Health Sciences Library Special Collections) , pp. 1--2.
[47] *Ibid,* p. 6.
[48] Elliott, 'Report', p. 15.

dangerous weapon, but in a skilled hand is of great benefit in the prevention, alleviation and cure of disease.[49]

In the event, however, the legislation proved politically difficult to navigate through Parliament. The PSSA resisted, believing that the integrity of its members, if not the very profession itself, was being undermined. Some lobby groups, such as that representing the Pharmaceutical and Chemical Manufacturers' Association, worked with Lawrence Wood – a pharmacist and United Party (UP) Member of Parliament for Berea, Durban – 'to filibust' Parliamentary debate on the Bill.[50] Thalidomide, however, provided, in the most unequivocal way possible, evidence that a body to ensure the 'quality, safety and efficacy' of medicines should not be delayed. As Mr J. W. Jack, then President of the PSSA, commented in a speech in June 1964: 'It is our duty to face the tragedy of Thalidomide, and to ask how and why it happened, whether it could happen again, and how we should act to guard against similar tragedies in the future'.[51] Parliament assented to Act 101 of 1965 in June of that year, which became effective on 1 April 1966.

Thalidomide and the Abortion and Sterilization Act (1975)

Just a few years later the spectre of thalidomide emerged once again in the South African House of Assembly but in a very different, disturbing way. This time the disastrous drug was invoked during the parliamentary debate sparked by the government's requirement to craft the country's first statutory law on abortion.

[49] *Ibid*., p. 1.
[50] Goyns, *Pharmacy in the Transvaal*, 78.
[51] Supplement to *SAPJ*, 30, 10 (June 1964), p. 4.

Some background on the abortion debate: Since 1910 the courts had been guided by the Roman-Dutch and British common laws on abortion. Their origins dated from the Dutch and British colonial periods: abortion was permitted only when necessary to save a woman's life.[52] Women, of course, routinely circumvented the law and there was widespread practice of clandestine abortion.[53] Starting in the late 1960s, critics of the common law – most prominently doctors and feminists – inspired by the liberalisation of abortion legislation in Britain (1967), various states in the USA (e.g., Colorado and California in 1967), Canada (1969) and elsewhere, began a high-profile campaign for abortion law reform.[54] Groups and prominent individuals with disparate and sometimes clashing motives demanded the state pass legislation liberalising and regulating the procurement of abortion. Highly attuned to international developments, advocates of law reform said the time had come for South Africa to catch up to countries where abortion laws had been reformed.

Initially the National Party (NP) Government perceived the movement for abortion law reform as a symptom of 'permissiveness', the dreaded disease of moral laxity that was rapidly spreading throughout white South Africa, and resisted calls for action. But by the early 1970s abortion became a prominent political issue, and criticism of the *status quo* by respected

[52] S.A.S. Strauss, 'Therapeutic Abortion in South African Law', *South African Medical Journal*, 42, 1 (July 1968), pp. 710--14.
[53] H. Bradford, 'Herbs, Knives and Plastic: 150 Years of Abortion in South Africa', in T. Meade and M. Walker (eds), *Science, Medicine, and Cultural Imperialism* (New York, Palgrave Macmillan, 1991), pp. 120--47.
[54] On abortion law reform in Britain, the US and Canada see Brookes, *Abortion in England, 1900-1967*; S. Brooke, *Sexual Politics: Sexuality, Family Planning, and the British Left from the 1880s to the Present Day* (Oxford, Oxford University Press, 2011); K. Luker, *Abortion and the Politics of Motherhood* (Berkeley, University of California Press, 1984); A. McLaren and A. T. McLaren, *The Bedroom and the State: The Changing Practices and Politics of Contraception and Abortion in Canada, 1880-1997*, 2nd ed. (Toronto, Oxford University Press, 1997); M. Haussman, *Abortion Politics in North America* (Boulder, Colorado,, Lynne Rienner Publishers, 2005).

members of the medical profession and judiciary had the effect of undermining the legitimacy of the common law, resulting in what the *Cape Argus* termed a 'confused and unsatisfactory legal situation'.[55] The tipping point was the acquittal in 1971 of Dr. van Druten, charged with performing an illegal abortion on a 15-year-old white girl who had been raped by her brother. Clearly the authority of the common law was in doubt and the government had to act.[56]

In February 1972 the official Opposition's shadow minister of the Ministry of Health, MP E.L. Fisher (United Party; hereafter UP), moved a motion in Parliament to appoint a select committee to examine the abortion issue with the goal of developing draft legislation.[57] Fisher, a medical doctor, was alarmed by the prosecution of fellow physicians for performing abortions and wanted a law that would provide clear direction to members of his profession. He argued that the common law was anachronistic and that abortion should be made available for additional reasons than solely to save a woman's life – including the probability the pregnancy would result in a mentally or physically 'deformed' child.[58] Deploying the eugenic argument that disability posed an economic burden on society, he stated 'therapeutic' abortion should be available when there is 'danger that a child might be brought into the world who would mentally be so retarded that it would be unable to fend for itself at any time and hence become a burden on the State'.[59] He continued,

> Very few women are not aware of the risks that they take when they fall pregnant and wish to continue the pregnancy. They know full well that they may bring into the

[55] 'SA's Abortion Deathrate "Appalling"', *Cape Argus*, 26 September 1973.
[56] S. M. Klausen, '"Reclaiming the White Daughter's Purity": Afrikaner Nationalism, Racialised Sexuality and the 1975 Abortion and Sterilisation Act in Apartheid South Africa', in special issue on Reproduction, Sex and Power in the *Journal of Women's History,* 22, 3 (2010), pp. 39--63.
[57] *Hansard*, 18 February 1972, column 1410.
[58] *Ibid.*, column 1413.
[59] *Ibid*., column 1412.

> world a child who may be permanently deformed, physically or mentally. This could happen, if a woman took or was given certain drugs, especially those in the tranquilizer group. We know the case of the thalidomides [sic] and the result of that ....Are we going to stand by and let these children come into the world....is it fair to bring such children into the world, children born deaf, blind, dumb, without arms, without legs?....I do know...that if therapeutic abortion is allowed...far fewer crippled children, deformed mentally and physically, will be brought into the world.[60]

A select committee, he said, should investigate the matter.

The NP, along with the other political parties, was prepared for Fisher's motion and the ensuing discussion about abortion was surprisingly civil. For once, the NP, UP and the Progressive Party agreed: abortion was a complex and contentious issue but the time had come to develop a statutory law.

MPs across Party lines also agreed with Fisher's eugenic thinking, stating that medical abortion should be available in cases of foetal deformity. For example, Dr. Van Der Merwe (NP) said 'if a baby is born from a mother who had German measles, he will at the age of 20 have cost the State approximately R76,000 because of two cataract operations, an open heart operation and a bilateral hernia operation which he will have had to undergo'.[61] And Helen Suzman of the Progressive Party (PP) added,

> I think that abortion should be legalized in cases where the mother's life is in danger or her physical or mental health will be affected....Secondly it should be allowed where

[60] *Ibid*., columns 1413--4.
[61] *Ibid*., column 1417.

there is a considerable danger that the unborn child, when born, will be seriously retarded mentally, or physically deformed...[62]

Rarely did outspoken, liberal-minded Suzman agree with the likes of Van Der Merwe but on this matter there was consensus between members of the UP, NP and PP.

Eugenic thinking was nothing new to South Africa. Since the inter-war era, educated whites, like elites in modernising nation-states around the world, subscribed to the idea that reproductive practice should be guided by theories of heredity.[63] Such thinking, as Levine and Bashford explain, 'always had an evaluative logic at its core', meaning the assumption that 'some human life was of more value – to the state, the nation, the race, future generations – than other human life'.[64] By the time of the abortion debate in South Africa this 'evaluative logic' was transnationally normative.[65]

One such idea was that it was acceptable, to some even necessary, to abort a foetus known to be, in Fisher's words, 'deformed mentally or physically'. The disease rubella (German measles) and thalidomide played a profound role in turning abortion from a sinful to a morally defensible act by the early 1970s. The arrival of 'thalidomide babies' was a frightening event that was widely covered by media around the world. Descriptions of deformed infants and parents'

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[62] *Ibid*., column 1429.
[63] S. Dubow, *Scientific Racism in Modern South Africa* (Cambridge, Cambridge University Press, 1995) and 'South Africa: Paradoxes in the Place of Race', in *The Oxford Handbook of the History of Eugenics* (Oxford and New York, Oxford University Press, 2010), pp. 274--66; and S. M. Klausen '"For the Sake of the Race": Eugenic Discourses of Feeblemindedness and Motherhood in the *South African Medical Record*, 1903-1926', *Journal of Southern African Studies*, 23, 1 (1997), pp. 27--50 and *Race, Maternity, and the Politics of Birth Control in South Africa, 1910-39* (Basingstoke, Palgrave Macmillan, 2004).
[64] P. Levine and A. Bashford, 'Introduction: Eugenics and the Modern World', in *The Oxford Handbook of the History of Eugenics*, pp. 3--4.
[65] See the essays on numerous nation-states and colonies in *ibid*.

shock struck fear into the hearts of many about the prospect of having a severely disabled child. And at least in the USA, popular magazines like *Time* and *National Enquirer* published photographs of thalidomide babies; the latter peddled images and descriptions of the children as 'freaks' to be gawked at and feared.[66] Just one year after the thalidomide crisis, an epidemic of rubella started in Europe and subsequently spread to the USA in 1964--65, 'leaving thousands of damaged infants in its wake'.[67] In the USA, at least, where thalidomide had been denied regulatory approval for sale, the harm to children caused by rubella played a key role in making abortion respectable.[68] And as Van Der Merwe's statement above shows, South Africans also referred to rubella when calling for a eugenic abortion clause.

Many white South Africans were well aware of the thalidomide disaster, for numerous newspapers, English and Afrikaans, closely followed various international aspects of the story in 1962. They reported on the birth of thalidomide-affected children in Britain,[69] West Germany,[70] Canada,[71] Norway and Sweden,[72] and on the fears of Mrs. Perdigao of Johannesburg, to our knowledge the only South African case covered by the press, discussed above.[73]

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[66] L. Reagan, *Dangerous Pregnancies: Mothers, Disabilities, and Abortion in Modern America* (Berkeley, University of California Press, 2010), pp. 60--2.
[67] S. Plotkin, 'The History of Rubella and Rubella Vaccination Leading to Elimination', *Clinical Infectious Diseases*, 43**,** Suppl. 3 (2006): S164.
[68] Reagan, *Dangerous Pregnancies*, p. 169.
[69] 'Aid Fund for Drug-crippled UK Babies', *Cape Times*, 10 July 1962; 'Responsibility for Crippled Children', *Daily News*, 14 July, 1962; 'The Flipper Baby Drug Menace', *Sunday Tribune*, 15 July 1962; 'Church against Mercy Killing of Drug Maimed Babies', *Daily News*, 18 July, 1962; 'Genadedood Vrugafdrywing is soms Toelaatbaar', *Die Burger*, 19 July 1962; 'Doctors Fight Drug Menace', *Sunday Tribune*, 22 July 1962; 'Mother in Drug Redress Battle', *Daily News*, 3 August 1962; 'Doktors Waarsku Teen Nuwe Middel', *Die Burger*, 4 August 1962; 'New Danger Threatens from Drug', *Sunday Tribune*, 5 August 1962; 'Expert to Check on New Drugs in Britain', *Daily News*, 11 August 1962; 'Nuwe Feite oor Gevolge van Voorminkpil', *Die Burger*, 17 August 1962.
[70] '"Verminkpil" het 5,000 Duitse Kinders Getref', *Die Burger*, 21 July 1962; 'Relief for Swedish "Drug Mothers"', *Cape Times*, 3 August 1962.
[71] 'Landwye Soektog na Pille wat Babas Vermink', *Die Burger*, 30 July 1962; 'Canada in Uproar over Drug that Causes Birth of Deformed babies', *Daily News*, 1 August, 1962.

The press, especially *Die Burger*, also produced detailed daily coverage of the dramatic trial in Belgium of Suzanne Vandeputte, who had taken thalidomide while pregnant and consequently murdered her severely deformed eight-day old baby. She killed the infant, born without limbs, with barbiturates prescribed by the parents' sympathetic doctor, Dr. F. Casters, who was charged along with Vandeputte's husband, mother, sister with aiding and abetting infanticide. Sympathy for Mrs. Vandeputte was intense, demonstrating widespread popular approval of the act of killing a severely deformed child. A petition for her release was presented to King Baudouin, and anti-riot police 'with loaded revolvers' were stationed outside the Liege courthouse as the trial drew to a close; a verdict of guilty, it was feared, would provoke a riot. Every day, as the five accused were transported to and from the courthouse, sympathetic crowds awaited them chanting 'Acquit! Acquit!' Ultimately, the court acquitted Vandeputte and her co-accused.[74]

In addition, the press tracked the frantic attempts in 1962 of the American Sherri Finkbine to procure an abortion.[75] Finkbine had taken thalidomide early in her pregnancy and

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[72] Thalidomide se Gevolge in Noorwee', *Die Burger*, 9 August, 1962; 'Thalidomide Payouts', *Rand Daily Mail*, 18 December, 1962.
[73] 'First "drug" Baby Born in S. Africa', *Daily News*, 3 August, 1962; '"Drug" Baby's Mother Tells of Anguish', *Star*, 4 August 1962.
[74] 'Petition Asks that Mother be Freed', *Daily News*, 20 August, 1962; 'Armed Police await "Baby Case" Verdict', *Daily News*, 9 November 1962; 'Verdict in Baby Case Tonight', *Daily News*, 10 November, 1962; 'Acquit! Acquit! is Public Cry', *Sunday Tribune*, 11 November, 1962; 'Godfather to Another Drug Baby', *Daily News*, 14 November, 1962. In *Die Burger* see: 'Wanskape Baba se Ouers op Moordklag', 5 November, 1962; 'Wanskape Baba se Dood: Moeder Ween in die Hof', 6 November, 1962; 'Mense in Hof Sien Foto's van Wanskape Babas', 7 November, 1962; 'Wanskape Baba: Mense Juig Doktor Toe', 8 November, 1962; 'Wanskape Baba: Konstabels Huil in die Hof', 9 November, 1962; 'Babasaak: Honderdema's Skryf aan Regter', 10 November, 1962; 'Wanskape Kind se Dood', 10 November, 1962; 'Mev. Vandeput is Vry: Chaos in Hof', 12 November, 1962; 'Dood van Baba: Vatikaan Veroordeel Uitspraak', 12 November, 1962; 'Die Belgiese Baba-saak', editorial, 13 November, 1962.
[75] 'Pill Mother, Challenging Law, Fears Deformed Baby', *Daily News*, 28 July, 1962; '"Drug" Actress Leaving', *Cape Times*, 3 August 1962; 'Mother's Drug-baby Fear: Off to Japan?', *Cape Times*, 4 August

learned soon afterwards about the impact of thalidomide on a developing foetus. As a married, white, middle-class, attractive mother of four, and host of the children's show Romper Room in Phoenix, Arizona, her desire to terminate her fifth pregnancy out of fear of thalidomide made her a 'persuasive and compelling figure to the American public'. Her case, which received political attention from the US Congress and President Kennedy, became 'the opening act' of the subsequent public debate over abortion in the USA.[76] But the effect of her story was not limited to the USA, for people around the world watched with sympathy and fascination as she struggled to obtain a legal abortion, which she finally received in Sweden.

Significantly, during the time that Finkbine was being denied an abortion in the USA, Mrs. Perdigao, discussed above, was being advised by a number of doctors in Johannesburg to abort her five-month-old foetus. Ten years later the NP shared the view that abortion on eugenic grounds was acceptable. After Fisher tabled his motion to form a select committee, newly appointed Minister of Health, Dr. Carel de Wet, informed Parliament that Cabinet agreed legislation was required and assured members of the House that its production would be guided by 'Christian values'. Abortion, he said, *should not* be made available on demand, or used as a form of contraception or to address the 'population explosion'. Abortion *should* be available for four reasons, including when a child 'will be born an abnormal one' as a result of, among other things, 'certain diseases contracted, for example German measles, or as a result of taking drugs

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1962; 'U.S. Couple may go to Japan for Operation', *Daily News*, 4 August, 1962; 'Aktrise gaan Soek Hulp in Swede', *Die Burger*, 6 August, 1962; 'Sherri Finkbine Wag Nog 'n Dag', *Die Burger*, 7 August, 1962; 'Sherri Finkbine in Swede Ondersoek', *Die Burger*, 8 August, 1962; 'Thalidomide Babies and the Moral Problems', Letter to the editor, *Daily News*, 10 August, 1962; 'Abortion Means Murder to Many People', *Sunday Tribune*, 12 August, 1962; 'Sherri Voel "Goed" na Operasie', *Die Burger*, 20 August, 1962.

[76] F. D. Ginsburg, *Contested Lives: The Abortion Debate in an American Community*, rev. ed. (Berkeley, University of California Press, 1998), p. 15, 36; Reagan, *Dangerous* Pregnancies, p. 58.

such as thalidomide...'.[77] De Wet informed Parliament that the Department of Health was at that very moment developing legislation in order to rectify the 'present confused and extremely unsatisfactory position', and he hoped the draft Bill would be ready for public comment before the end of the session.[78] He therefore convinced Parliament it was unnecessary to appoint a select committee to investigate the matter at that time.

However, as the months passed the promised draft legislation failed to materialise. Though refusing to explain the delay, the NP Government, very likely may not have proceeded as quickly as planned because it had not yet obtained the blessing of Afrikaner elites. Given the patriarchal and heteronormative nature of Afrikaner nationalism and the apartheid sex code, the government could not possibly table legislation related to an issue so fraught with sexual and moral implications as abortion without consulting nationalist leaders outside of the NP, in particular those in the Dutch Reformed Church (DRC). It was impossible for the government to take official action on the explosive issue of abortion until answers were found to thorny questions such as the following: should abortion ever be permitted on grounds other than to save a woman's life? If yes, what were they? And as it transpired, leaders of the DRC had not yet clarified their thinking on the issue.

Ultra-conservatives in the DRC, as in the Catholic Church, approved of the common law position and did not want to expand the list of indications for abortion beyond the need to save a woman's life. They responded to Parliament's initial discussion about abortion law reform with the blunt assertion that 'from a biblical point of view', the church could not approve of

[77] The other three reasons were: to save the life of the pregnant woman, when there was danger to the woman's physical or mental health, and when pregnancy was the result of rape. *Hansard*, 18 February 1972, column 1446.
[78] *Ibid*., column 1445.

broadening the abortion law.[79] Similarly, the DRC's Association for the Preservation of Public Morals was hostile to increasing criteria for legal abortion.[80] But ultra-conservatives did not have a monopoly on Afrikaner religious opinion; religious leaders were in reality divided on the issue. Nine days before Fisher first raised the topic in Parliament, the Afrikaans Calvinist Movement (ACM) entered the fray with the provocative statement that abortion *was* morally justifiable on a number of grounds – including if there was a strong chance that 'the foetus has little chance of normalcy in life'. The ACM stated in its monthly religious journal *Woord en Daad* it agreed with critics of the common law that it was time to draft new legislation and recommended that the government take into consideration the opinion of doctors and psychiatrists.[81] Clearly there was a debate about abortion underway within the *volk*.

Three months after de Wet reported that legislation was being drafted, the DRC's Synod of Northern Transvaal appointed a commission to examine the abortion issue. The *Commission for the Investigation of Medical Ethics* comprised eight men: one gynaecologist, a judge, psychologist, surgeon and social worker, and three theologians.[82] For a year they studied the matter and the resulting report declared the abortion law *could* be reformed in such a way as to be in keeping with the church's values.[83] Specifically, the commissioners declared that abortion could be allowable on the advice of experts appointed by the Minister of Health for four 'biblically founded' reasons:

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[79] 'Abortion Not Justified, says "Kerkbode"', *Cape Times*, 29 February 1972.
[80] 'Legalising Immorality, says DRC "Watchdog"', *Sunday Times*, 11 February 1973.
[81] 'Calvinists Call for Abortion Law Change', *Rand Daily Mail*, 9 February 1972.
[82] The Commission consisted of the Reverend Henno Cronje (chair), Prof. J.A. Heyns and Dr. J.S. Kruger, theologians; Dr. P.M. Bremer, a gynaecologist; Mr. Justice J. Trengrove; Dr. H.F. Exner, a psychologist; Dr. J.F.J. Hattingh, a social worker; and Dr. J.C. van der Spuy, a surgeon.
[83] Rev. Cronje reported the investigation took one year. See his testimony in Republic of South Africa, *Report of the Select Committee on the Abortion and Sterilization Bill* (hereafter the *Report of the Select Committee*) (Pretoria: 1973), p. 49, Abortion Reform Action Group (ARAG) Records, File 50, Killie Campbell Africana Library, University of Kwa-Zulu Natal, Durban (hereafter KCAL).

(a) when the life or health of the mother is threatened as a result of continued pregnancy

(b) when pregnancy was the result of rape

(c) when mental deficiency is prevalent in the man and/or woman

(d) when a woman is too mentally disturbed to understand the meaning of intercourse

Significantly, the synodal commission stated there were three reasons for which abortion was *unacceptable*: socio-economic, social and eugenic. In fact, the commission thoroughly 'deplored' the eugenic justification for abortion. 'Lesser deformities', the report stated, were insufficient grounds, and having ingested thalidomide *in particular* would not be an acceptable excuse for an abortion because 'the baby could grow into a useful human being from God's point of view'. However, it did allow that 'at the utmost' abortion would be acceptable when 'the foetus after pre-natal investigation is so deformed, that according to medical definition it is a monster, i.e. considered to be utterly irreparable'.[84] The report did not include definitions of 'lesser deformities', 'monster' or 'reparable', which left the discussion of eugenic abortion riddled with ambiguity.[85] Nevertheless, what mattered to the government and the movement for abortion law reform was that the report overturned the DRC's longstanding uncompromising position. The commission's findings were crucial, for while there was no single, 'official point of view' on abortion for all the DRC churches in South Africa, its position was adopted as 'representative' of Church opinion.[86]

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[84] Prof. G. C Oosthuizen, 'Termination of Pregnancy – A DRC Viewpoint', *Proceedings of the Symposium of Termination of Pregnancy (Abortion) Held Under the Auspices of Natal Council of Churches 4 and 5 May, 1973,* (hereafter *Proceedings of the Symposium*), p. 32, KCAL: 'NG Kerk Eases Abortion Attitude', *Daily News*, 20 March 1973. The essay by Prof. G. C. Oosthuizen, 'Termination of Pregnancy – a DRC Viewpoint', was reprinted the following year in G.C. Oosthuizen, G. Abbott, M. Notelovitz (eds), *The Great Debate: Abortion in the South African Context* (Cape Town, Howard Timmins, 1974), KCAL. See pp. 60--6 for relevant passages.
[85] Oosthuizen, *The Great Debate*, 64; 'Abortion Probe Findings', *Cape Argus*, 3 April 1973.
[86] Oosthuizen, 'Termination of Pregnancy – A DRC Viewpoint', *Proceedings of the Symposium*, 27.

In February 1973 the NP finally tabled the Abortion and Sterilization Bill, which increased the number of reasons permitting medical abortion. New acceptable grounds included reasons (a), (b) and (d) recommended by the DRC cited above, and others such as when the pregnancy 'may constitute a serious threat to [the mother's] physical or mental health'. To the consternation of Afrikaners who supported the synodal commission's findings, another of the amendments was inclusion of a eugenic clause: abortion should be made available if there was substantial risk that the child to be born will be physically or mentally 'abnormal'. The Bill was immediately referred to a *Select Committee of Inquiry on Abortion and Sterilization* (SC), comprised of ten senior MPs (all men), to examine the Bill. The SC received written submissions from 56 organisations and individuals, and interviewed 18 witnesses (including only one woman and no blacks).

Three representatives of the DRC made an oral presentation to the SC -- the Revs. J.S. Gericke and H. Cronje, and Professor J.A. Johan Heyns (the latter two had been members of the synodal commission). Generally they approved of the proposed Bill; Rev. Cronje, for example, expressed 'high respect' for the Bill, which was 'based on sound medical principles'.[87] However, they wanted amendments: Cronje said the Church wanted the separation of physical and mental indications for abortion and, regarding the latter, there should be a proven threat of 'permanent mental damage'.[88] Second, he stated emphatically, the Church 'definitely can not accept' the eugenic clause.[89] In the exchange between members of the SC and representatives of the DRC the latter made clear their disapproval of eugenics because they did not subscribe to a 'certain perspective about life whereby only the physically and mentally healthy person can lead a

[87] *Report of the Select Committee*, pp. 49--50.
[88] *Ibid*., pp. 51--2.
[89] *Ibid*., p. 54.

purposeful and useful life', nor to the idea that the only valuable members of society were 'people who could compete with other people'.[90]

The SC submitted its report to Parliament on 11 June 1973 as the parliamentary session drew to a close. Unable to complete its mandate in time, the SC was converted one month later into a commission of inquiry composed of the same ten men who were instructed, ominously, 'to make recommendations regarding amendments' to the Bill.[91] After a public consultation lasting only a few days, the *Commission of Inquiry into the Abortion and Sterilization Act* (CI) submitted an amended Bill to Parliament on 21 February 1974.

To feminists and liberals who found the original Bill deeply flawed but appreciated its increase in access to medical abortion, the revised Bill came as a major blow. Advocates of a far more restrictive law had won the day. The CI was 'overwhelmingly' in favour of allowing abortion 'in exceptional cases only' and 'under…strictly controlled conditions'. The report stated, 'Your Commission finds that the concept of abortion on demand is repugnant to the religious, moral and ethical principles of the vast majority of the inhabitants of South Africa, White as well as non-White, and that it is unacceptable to the South African community'.[92]

The amendments, which included the need for 'proof' of a threat of 'permanent mental damage' to obtain permission on the grounds of mental health, would make procuring a legal medical abortion extremely difficult. The amended Bill clearly aimed at policing white women's

[90] *Ibid*., pp. 49--57.
[91] Republic of South Africa, *Report of the Commission of Inquiry into the Abortion and Sterilization Bill* (Pretoria, Government of South Africa, 1973), viii, ARAG Records, File 50, 'Reports – 1973 to December 1974.
[92] *Ibid*., 4.

reproductive sexuality and the 'liberal' doctors willing to assist them in controlling their fertility.[93] Anxiety about the erosion of apartheid culture and the spread of 'immorality' among whites trumped demands for a relatively liberal law. In 1977 the Moderator of the Northern Transvaal Synod of the DRC bragged on state television that the CI had adopted the DRC's recommendations.[94]

Yet, significantly, the amended Bill disregarded one of the synod's unequivocal demands, namely to disallow eugenic justifications for abortion. Clause 3(1)(c) of the amended Bill provided for a legal abortion '[w]here there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped…'. But the NP was determined to keep the clause. The following year, during the final parliamentary debate prior to passing the amended Bill into law, only one MP objected to the eugenic clause: UP MP P.A. Pyper accused the NP Government of being disingenuous when continuously claiming the Bill was in keeping with 'Christian principles' – if that were so, he asked, then why had the government ignored the DRC's 'total rejection' of Clause 3(1)(c)?[95]

Others who spoke on the matter accepted a eugenic indication for abortion as commonsensical, and Dr. L.A.P.A. Munnik (NP) ended the debate by bringing it full circle and referring to thalidomide: While discussing England's abortion law of 1967 he said, 'It was in 1966 that something happened that brought public opinion to a standstill. The world was shocked by the disaster of thalomide [sic] babies'. (Helen Suzman at that point corrects him by interjecting 'Thalidomide'.) Munnik resumed: 'Hon members will remember that that was

[93] See Klausen, *Abortion Under Apartheid* and '"Reclaiming the White Daughter's Purity"'.
[94] J. Cope, *A Matter of Choice: Abortion Law Reform in Apartheid South Africa* (Pietermaritzburg, Hadeda Books, 1993), p. 123.
[95] *Hansard*, 12 February 1975, column 629.

the time when babies were born without limbs, some in fact in a terrible physical condition. That was an event which actually broke the hearts of many people. It was that which gave a stimulus to those people who wanted reform of the abortion laws in Britain'. He then went on to cite the eugenic clause in the British law.[96] The Bill subsequently passed into law, the Abortion and Sterilization Act (1975).[97]

Although Munnik was wrong about the year of the thalidomide disaster he was entirely correct that it had a profound effect on Britain's reassessment of abortion in the early 1960s and, ultimately, the liberalisation of the law in 1967. In their 1971 account of these events, MP Keith Hindell and Madeleine Simms, the latter a leading member of the pro-choice Abortion Law Reform Association (ALRA), explain that after decades of languishing, '[the] drug thalidomide was the motor that reinvigorated the ALRA and which paved the way for reform'. They also write that the 'impact of thalidomide on the imagination and conscience of the British public and the British press is hard to exaggerate'.[98]

Indeed, thalidomide had a massive impact on the authors themselves: they dedicated their book thus: 'To the thalidomide mothers for whom reform came too late'. The authors argued that the thalidomide scandal purged abortion of the taint of immorality – i.e., the common assumption that only 'promiscuous' girls needed abortions – and 'placed it firmly in the [context] of public health'.[99] Because the misfortune of thalidomide had struck a severe blow to respectable married

[96] *Ibid*., columns 664--6.
[97] For a detailed discussion of events preceding passage of the Act see S. M. Klausen, *Abortion Under Apartheid: Nationalism, Sexuality and Women's Reproductive Rights in South Africa, 1948-1990* (Oxford and New York, Oxford University Press, forthcoming).
[98] K. Hindell and M. Simms, *Abortion Law Reformed* (London, Owen, 1971), p. 108.
[99] *Ibid*.

white women and their families, the public perceived as perfectly reasonable the desire for abortion to avoid having a disabled child.

Clare Parker has argued, similarly, that in the case of Australia, 'media coverage given to deformities [caused by thalidomide], and therefore to those who desired or advocated legal abortion under these circumstances', was crucial to ending the silence and stigma previously associated with abortion. Thalidomide, she said, was vital to beginning a discussion that culminated in abortion law reform in some Australian states.[100] This argument can be extended to South Africa. We suspect it also applies to numerous other national contexts, despite how surprisingly little has been written about the impact of thalidomide on public opinion and legislative reform outside of Britain, the US and Australia, at least in the English-speaking world.

To summarise, though the NP's overwhelming opposition to abortion was thoroughly drenched in patriarchal, heteronormative, anti-modernist Calvinist religious discourse, in one respect its perception of abortion was entirely modern: it fell within the eugenic trope of disabled people as, essentially, costly social parasites. Indeed, during the 1975 parliamentary debate, the NP explicitly defended the proposed abortion law from what it termed 'a modern point of view'.[101]

Conclusion

[100] C. Parker, 'From Immorality to Public Health: Thalidomide and the Debate for Legal Abortion in Australia, *Social History of Medicine*, 25, 4 (October 2012), p. 864.
[101] See comments by NP MP Dr J.J. Vilonel in his speech lauding the proposed law. See *Hansard*, 12 February 1975, column 600.

The NP's regulation of the importation of drugs and deployment of eugenic thinking in the production of abortion legislation exemplify Deborah Posel's argument that the apartheid state was a modern state. It embodied a belief in the 'science of government', for it saw itself as the primary agent of social improvement – an example of how 'modern governmentality represented the tasks of government as the technically expert management of the "problems of population"'.[102] The histories of thalidomide discussed in this article demonstrate this to be the case, albeit in different ways. They also demonstrate that thalidomide was both repressive and productive in its impact on state institutions, structures and regulation, *and* in the forces shaping the most profoundly personal of decisions and attitudes towards conception, birth, death and the desirability (or not) of life.

In South Africa, the crux of the debate about abortion – the epicentre of the political war over its meaning – was about the control of white women's reproductive sexuality: who should have control, doctors, the state, or women themselves? In such a conservative (white) society as apartheid South Africa only a relatively small group of liberals and feminists thought women should have the right to decide whether or not to bear children. In contrast, except for Catholics and the ultra-conservative wing of the DRC, most white South Africans appear to have thought it commonsensical to seek abortion rather than knowingly have a disabled child, including anti-abortionists such as members of the NP and prominent individuals like Dr. Christiaan Barnard.[103] This morally problematic assumption played an important role in reorienting the political elite's, and possibly the general (white) public's, attitude towards abortion, and fostering acceptance of the government's move to replace an outdated common law on abortion with a 'modern' one.

[102] D. Posel, 'A Mania for Measurement: Statistics and Statecraft in the Transition to Apartheid', in S. Dubow (ed.), *Science and Society in Southern Africa* (Manchester, Manchester University Press, 2000), p. 118.
[103] 'Dr Barnard Opposes Abortions', *Milwaukee Journal*, 4 May 1970.

In contrast, by playing an important role in the foundation of post-World War Two medicines regulatory legislation, including in South Africa, thalidomide also deeply affected the opinion and practice of some of the world's leading and most progressive medical researchers and scientists about the relationship between science, medicine and social and political responsibility. For instance, Peter Folb, who worked in Britain during the early 1970s, recalled that at that time there had been an enormous upsurge of interest in clinical pharmacology, 'and that interest was directly stimulated by the thalidomide experience'. In his view, the thalidomide disaster had led many medical researchers to challenge the boundaries that separated clinical scientific laboratory science, ethics and public health. Before thalidomide, he said '…pharmacologists were academics, hidden from the realities, and from the toxic effects of drugs'.[104]

Indeed, in his Inaugural Address as Professor of Pharmacology at the University of Cape Town in September 1977 -- a time of intensifying apartheid brutality), Folb called on South African medical practitioners and scientists to be bolder. He called 'for a progressive and socially responsible academic and practical pharmacology' that, at a time when 'the majority of our society is struggling for the most fundamental amenities of comfort, dignity and justice', was 'relevant and important to all'.[105] The title of his talk – and its inspiration – was 'The Thalidomide Disaster and its Impact on Modern Medicine'.

[104] Authors' interview with Folb, 25 April 2013.
[105] P. I. Folb, 'The Thalidomide Disaster and its Impact on Modern Medicine', Inaugural Address as Professor of Pharmacology, University of Cape Town, 8 September 1977. Folb had a long, principled and prestigious career. In 1997, for instance, he gave testimony at South Africa's Truth and Reconciliation Commission on the malfeasance of the medical profession under apartheid and in particular the role played by some doctors in not attending to Steve Biko, who was already in detention on the night of Folb's Inaugural lecture and died of his injuries four days later.

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