

Abortion At-Home and At-Law During a Pandemic

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I INTRODUCTION

Abortion law has long been preoccupied with place, that is, where an abortion happens. In the nineteenth century, growing commercial markets in so-called “ladies’ remedies” justified stricter criminal laws, which confined legal abortion to the medical clinic.¹ Abortion law today continues to authorize certain places of care and to outlaw others, unfairly restricting supply and frustrating access. During the COVID-19 pandemic, clinic-based restrictions on abortion access became the targets of advocacy, leading to authorizations for the remote provision and local delivery of abortion pills. People could now access abortion without leaving their homes: abortion at-home.

Homes are built structures, but they are also inventions.² Abortion law creates the places that it regulates and thus shapes the experience of abortion within them.³ Yet homes are also imbued with meaning by the people who live there. The law may thus anticipate abortion at-home, but its practice within the home will also come to shape the law that authorizes it. Rooted in this relationship of law and place, this chapter explores abortion at-home during the COVID-19 pandemic. After an introduction to abortion pills and abortion law in Section II, Section III examines features of COVID-19 authorizations for abortion at-home in Europe and the United States. Despite differences among them, all the authorizations reflect a crisis management discourse, designed to conserve access to care during the pandemic, but conserving much more in the continued clinical control of abortion and the social norms of abortion law. Against this conservative view, in an alternative legacy, Section IV speculates on how abortion at-home, normalized within the everyday tasks, products, and people of home life, may lead to a radical change in its practice, especially during a time when people have formed new relationships to their home

¹ John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (1988); James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800–1900* (1978).

² Henri Lefebvre, *The Production of Space* (Donald Nicholson-Smith trans., Basil Blackwell 3d ed. 1992).

³ Irus Braverman et al., *The Expanding Spaces of Law: A Timely Geography* (2015).

and invested new meaning in it. This chapter concludes by imagining a future for abortion law born of the pandemic but radicalized in the home.

II ABORTION PILLS AND ABORTION LAW

A common regimen of early abortion with pills involves a person swallowing one tablet of mifepristone to block the hormone progesterone needed to sustain a pregnancy, and twenty-four to forty-eight hours later, inserting four tablets of misoprostol between the gums and cheeks to induce contractions.⁴ The abortion takes place over a period of days with cramping and bleeding stronger than a usual menstrual period and similar to an early miscarriage.

The science behind abortion pills was revolutionary, but their effect in the world was not. In 1988, after French authorities approved mifepristone, the company that developed the drug Roussel-Uclaf abandoned distribution because of a social backlash.⁵ The minister of health intervened, declared mifepristone the “moral property of women,” and returned it to market, but Hoescht Marion Roussel proceeded cautiously thereafter. Global registration was slow, and regulatory agencies adopted strict prescription and dispensing controls on the drug.⁶

In 2000, when mifepristone was approved in the United States, the cover of *Time* magazine heralded, “The Little White Bombshell: This Pill Will Change Everything.”⁷ It did not. The Food and Drug Administration (FDA) imposed strict distribution controls, including a ban on retail pharmacy access,⁸ and later subjected mifepristone to a Risk Evaluation and Mitigation Strategy (REMS), requiring that people both access and take the drug in-clinic.⁹ Many countries imposed similar controls on misoprostol, especially after a campaign by its manufacturer to dissuade its off-label use for abortion, but misoprostol has not been similarly restricted in Europe or the United States.¹⁰ Many of the controls on mifepristone remain to this day, including unique prescriber registration, restricted in-clinic distribution, and/or the supervised taking of the pill.

Rather than any revolution, abortion pills were folded into abortion law and made subject to its norms and conceits. Abortion law, even the most liberal variant, follows

⁴ World Health Org., *Medical Management of Abortion* (2018).

⁵ Alan Riding, *Abortion Politics Are Said to Hinder Use of French Pill*, *NY Times*, July 29, 1990, at 1, www.nytimes.com/1990/07/29/world/abortion-politics-are-said-to-hinder-use-of-french-pill.html.

⁶ Beverly Winikoff & Carolyn Westhoff, *Fifteen Years: Looking Back and Looking Forward*, 92 *Contraception* 177 (2015).

⁷ Margot Talbot, *The Pill that Still Hasn't Changed the Politics of Abortion*, *New Yorker* (Apr. 4, 2016), www.newyorker.com/news/news-desk/the-pill-that-still-hasnt-changed-the-politics-of-abortion.

⁸ Lars Noah, *A Miscarriage in the Drug Approval Process?: Mifepristone Embroils the FDA in Abortion Politics*, 36 *Wake Forest L. Rev.* 571 (2001).

⁹ Mifeprex REMS Study Grp., *Sixteen Years of Overregulation: Time to Unburden Mifeprex*, 376 *New Eng. J. Med.* 790 (2017).

¹⁰ Yap-Seng Chong, Lin-Lin Su & Sabaratnam Arulkumaran, *Misoprostol: A Quarter Century of Use, Abuse, and Creative Misuse*, 59 *Obstetrical & Gynecological Surv.* 128 (2004).

a logic of control. Abortion is lawful within the provisions of the law, and any act taken outside of them with the intent to end a pregnancy – including to prescribe, administer, or supply any drug – is prohibited.¹¹ Legal abortion is a place-bound practice, figuratively and literally. Abortion must be practiced within the provisions of the law, which often authorizes the physical places of care.

Place-based control of abortion can be tracked to the mid-nineteenth century in Europe and the United States, when the medical profession campaigned for stricter criminalization.¹² These campaigns were premised on the moral wrong of abortion and its unsafe practice, although abortion early in pregnancy was relatively safe. Rather, historians identify professional self-interest and social control as the primary motivations. The medical establishment was concerned with a growing and profitable market in home-use abortifacients, which reflected the frequency of abortion in White, middle-class homes. The professional self-interest in quashing this market coincided with a patriarchal and nativist fear that women within these homes were abandoning their familial duties, leading to declining birth rates among this social class. To stem this threat, criminalization, as an act of medical and social control, took abortion from the home and confined it to the clinic.

The clinic is therefore not only a physical place but an institution of control, and by raising the prospect of a “post-clinic abortion,” abortion with pills thus threatens the control of the law.¹³ For this reason, even in relatively liberal contexts and despite decades of advocacy, abortion at-home remained but an idea prior to COVID-19. In the United Kingdom, the home use of misoprostol was allowed by executive orders, but a criminal statute, the Abortion Act 1967, mandated in-clinic prescription and administration of mifepristone.¹⁴ French law similarly did not allow telemedical abortion, requiring that mifepristone be administered in-clinic in the presence of a physician or midwife.¹⁵ In the United States, despite a relaxation of the REMS that allowed the pills to be taken at home, federal law still required that mifepristone be dispensed in a clinical setting, and so prohibited its distribution by mail, pharmacy, or online.¹⁶ Moreover, some state laws prohibited abortion at-home by bans on telemedical abortion or remote provision regardless of federal drug regulation.¹⁷

¹¹ Antonella F. Lavelanet, Brooke Ronald Johnson & Bela Ganatra, Global Abortion Policies Database: A Descriptive Analysis of the Regulatory and Policy Environment Related to Abortion, 62 *Best Prac. Resch. Clin. Obstet. Gynaecol.* 25 (2020).

¹² Keown, *supra* note 1; Mohr, *supra* note 1.

¹³ Emily Bazelon, The Dawn of the Post-Clinic Abortion, *NY Times Mag.* (Aug. 28, 2014), www.nytimes.com/2014/08/31/magazine/the-dawn-of-the-post-clinic-abortion.html.

¹⁴ Abortion Act 1967, c. 87, § 3 (Eng.); Jordan A. Parsons, COVID-19 Governmental Decisions to Allow Home Use of Misoprostol for Early Medical Abortion in the UK, 124 *Health Pol'y* 679 (2020).

¹⁵ French Public Health Code, arts. R2212-9–R2212-19, R2212-1–R2222-3.

¹⁶ FDA, Mifeprex (Mifepristone) Information (Dec. 16, 2021), www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information.

¹⁷ Guttmacher Inst., State Law and Policies: Medication Abortion (2020), www.guttmacher.org/state-policy/explore/medication-abortion.

Abortion law before COVID-19 required some “touch” to a clinical setting, however formal or perfunctory. The fact that people already consumed abortion pills at home and ended their pregnancies at home proved of little persuasion in changing the law. This is because the in-clinic requirements of abortion law have always been as much discursive as real. They maintain the social control of the law. During COVID-19, when clinics shuttered and hospitals overfilled, and any safety pretense for these restrictions strained the most common of sense, abortion with pills found its revolutionary context – or perhaps not.

III ABORTION AT-HOME AS CRISIS MANAGEMENT

There is a popular notion that crises create an opportunity to reform the status quo by threatening the structures that underlie it.¹⁸ Yet, in the thick of crisis, reform is often not a priority. In conventional crisis management, the imperative is to “bring things back to normal.” Reform comes only from the desire to change something so that everything else can stay the same. COVID-19 authorizations for abortion at-home in Europe and the United States reflect this idea.

In 2020, five European countries (Ireland, England, Wales, Scotland, and France) introduced executive orders or other measures that authorized abortion at-home by allowing for patient consultations by video or phone (remote provision), designating the home as a site of abortion care, and/or permitting the online purchase, home delivery, or local pharmacy pick-up of abortion pills.¹⁹ In the same year, authorization in the United States came via litigation. The FDA refused to suspend the in-clinic distribution requirement for mifepristone despite doing so for other drugs. The American Civil Liberties Union filed a lawsuit challenging this requirement for mifepristone and found early success when a federal district court judge ordered the FDA to suspend its enforcement during the pandemic.²⁰

These authorizations were all designed to ensure access to abortion during the pandemic, limit exposure to the virus, and conserve health system resources.²¹ They achieved these aims, but they also conserved certain social norms of abortion law. This section explores these conservative features of the COVID-19 authorizations.

First, the authorizations often framed abortion at-home as a mere practice innovation under the law to ensure continued access to care – that is, doing the same thing a different way. The Irish minister of health explicitly introduced remote provision as a revised model of abortion care to emphasize that it required no reform

¹⁸ Arjen Boin & Paul ‘t Hart, Public Leadership in Times of Crisis: Mission Impossible? 63 *Pub. Admin. Rev.* 544 (2003).

¹⁹ Caroline Moreau et al., Abortion Regulation in Europe in the Era of COVID-19: A Spectrum of Policy Responses, *BMJ Sexual & Reprod. Health* (2020), <http://dx.doi.org/10.1136/bmjsex-2020-200724>.

²⁰ *Am. Coll. of Obstetricians & Gynecologists v. U.S. Food & Drug Admin.*, 506 F.Supp.3d 328 (D. Md. 2020).

²¹ Michelle J. Bayefsky, Deborah Bartz & Katie L. Watson, Abortion during the COVID-19 Pandemic – Ensuring Access to an Essential Health Service, 382 *New Eng. J. Med.* e47 (2020).

of abortion law.²² In Ireland, the Health (Regulation of Termination of Pregnancy) Act 2018 requires that a medical practitioner “examine the pregnant woman” to stay within the law and avoid criminal sanction.²³ According to the minister, this requirement did not preclude clinical examination by phone or video.

Continued clinical control was the most emphasized feature of the authorizations. “No touch protocols” promised that medical practitioners could and would do everything they ever did to administer abortions at-home.²⁴ The English order promised that the “medical practitioner” would carry out the “treatment” (abortion) as authorized by law, which restricts provision to “nine weeks and six days” on the day “mifepristone is taken.”²⁵ The Scottish order required practitioners to continue to file the green approval and yellow reporting forms under the law.²⁶ When the Christian Legal Centre challenged the UK authorization as ultra vires of the Abortion Act 1967 because abortion at-home would not be “carried out” by practitioners, but by patients, the Court of Appeal denied the review by emphasizing the control of the doctor, who “remains in charge [of the abortion] ... even if they do not perform every part of it.”²⁷ Medical organizations led the charge for abortion at-home in every country.²⁸ In April 2021, after the US elections, when the FDA announced that it would not enforce the in-clinic distribution requirement for mifepristone, it did so by letter to the American College of Obstetrics and Gynecologists, the lead plaintiff in the American Civil Liberties Union lawsuit.²⁹ Even after the FDA permanently removed the in-person requirement, the REMS still required that a certified provider pledge they can date pregnancies accurately and will remain in control of the abortion throughout.³⁰

²² Valerie Ryan, Telemedicine Abortion Consultations Permitted – Health Minister, Irish Med. Times. (Mar. 27, 2020), www.imt.ie/uncategorised/telemedicine-abortion-consultations-permitted-health-minister-27-03-2020/.

²³ Health (Regulation of Termination of Pregnancy) Act 2018 § 12 (Act No. 31/2018) (Ir.).

²⁴ Elizabeth G. Raymond et al., Commentary: No-Test Abortion: A Sample Protocol for Increasing Access During a Pandemic and Beyond, 1010 *Contraception* 361 (2020).

²⁵ Dep’t of Health & Soc. Care, The Abortion Act 1967 – Approval of a Class of Places (Mar. 30, 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876740/30032020_The_Abortion_Act_1967_-_Approval_of_a_Class_of_Places.pdf.

²⁶ Scottish Gov., Abortion – COVID-19 – Approval for Mifepristone to be Taken at Home and Other Contingency Measures (Mar. 31, 2021), [www.sehd.scot.nhs.uk/cmo/CMO\(2020\)09.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2020)09.pdf).

²⁷ R (Christian Concern) v. Sec’y of State for Health & Soc. Care, [2020] EWCA (Civ) 1239.

²⁸ Brit. Pregnancy Advisory Serv., Open Letter to: Rt. Hon. Matt Hancock MP, Secretary of State for Health (Mar. 28, 2020), <https://drive.google.com/file/d/1TujbubXHjaN7H6FD2U5CvZvFTmqjCXD/view>; Statement by Am. Coll. of Obstetricians et al., Abortion Access During the COVID-19 Outbreak (Mar. 18, 2020), www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak.

²⁹ Letter from US Food & Drug Admin. to Am. Coll. of Obstetricians & Gynecologists (Apr. 12, 2021), <https://twitter.com/ACOGAction/status/138178110980501512>.

³⁰ US Food & Drug Admin., Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation (Dec. 16, 2021), www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifeprex.

Rather than disrupt the status quo – abortion as a clinically controlled practice – abortion at-home conserved it. Virtual examinations are still medical examinations, telemedicine is still medicine, and the home is no different, and, most importantly, not inferior to the clinic. This conception of non-inferiority reflects a convention of abortion research and was central to all the authorizations, which cited evidence showing that abortion at-home was not unacceptably less safe or resulted in substantially worse outcomes than the status quo.³¹ The routine citation of this research softened any radical edge to abortion at-home, specifically because research is always revisable with new evidence, and thus so too, the authorizations premised upon it. With the UK orders set to expire within a month, the government continued to consider “all the evidence” before deciding whether to make abortion at-home a permanent feature of the law.³²

This is a second conservative feature of the authorizations, their temporary status, born and time-bound to a historic state of emergency. Sunset clauses were attached to the orders in Ireland and Wales, which meant they were to be automatically revoked with the end of emergency COVID-19 legislation.³³ In England, the secretary of state for health and social care reissued its order because this clause was mistakenly left out.³⁴ In Scotland, an accompanying letter explained the order’s temporary status with the stated intention to return to the status quo when abortion at-home was “no longer necessary in relation to the pandemic response,” that is, when “there was no longer a serious and imminent threat to public health posed by the ... coronavirus in Scotland.”³⁵

This temporary status reflected an effort to allow abortion at-home with as little change to existing law as possible. This is a third conservative feature of the authorizations. In the United Kingdom, the Abortion Act 1967 authorizes a medical practitioner to carry out an abortion in a hospital or other approved place.³⁶ Abortion in any other place is a criminal offense. The English and Welsh orders both temporarily approved the “home” as a “class of place” for abortion under the Act.

³¹ Katherine Gambir et al., Effectiveness, Safety and Acceptability of Medical Abortion at Home Versus in the Clinic: A Systematic Review and Meta-Analysis in Response to COVID-19, 5 *BMJ Glob. Health* e003934 (2020).

³² Polly Toynbee, Will Easy, Early Abortions Become Another Casualty of the Tories’ Culture War?, *Guardian* (Feb. 10, 2022), www.theguardian.com/commentisfree/2022/feb/10/abortions-tories-culture-war-doctors-covid-women.

³³ Health Serv. Exec. & Dep’t of Health, Revised Model of Care for Termination in Early Pregnancy (Apr. 7, 2020) (Ireland); Welsh Minister for Health, The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) (Mar. 31, 2020), <https://gov.wales/sites/default/files/publications/2020-04/approval-of-a-class-of-place-for-treatment-for-the-termination-of-pregnancy-wales-2020.pdf>.

³⁴ Paul Waugh, Home Abortions Made Easier As Law Relaxed During Coronavirus Outbreak, *Huffington Post* (Mar. 30, 2020), www.huffingtonpost.co.uk/entry/hancock-home-abortion-easier-coronavirus-lockdown_uk_5e8213e5c5b66149226ba985.

³⁵ Scottish Gov., *supra* note 26.

³⁶ Abortion Act 1967, c. 87, § 12 (Eng.).

The Scottish order was more restrictive, approving the home only where a medical practitioner “considers that it is not advisable or not possible for the [patient] ... to attend a clinic.”³⁷ The approval of abortion at-home, in other words, was entirely consistent with the aims of a criminal statute, and more so, with the nineteenth-century physician-led campaign for its enactment, given that telemedical abortion was justified as necessary to protect against a growing online market in abortion pills.³⁸ Indeed, before COVID-19, the FDA in the United States acted similarly to shut down this online supply for breach of the REMS.³⁹ The intended effect of approving abortion at-home was to channel all abortion into a single controlled system. The UK orders thus did not challenge the control logic of abortion law but traded on it.

In France and the United States, authorizations for abortion at-home were also anchored in existing abortion law, albeit constitutional rather than criminal. When French authorities justified the legality of the order authorizing teleconsultation and direct pharmacy pick-up of abortion pills, they referenced the constitutional status of abortion rights, declaring that the “[COVID-19] health crisis must not call into question our most fundamental values: those of the emancipation of women and their right to their bodies.”⁴⁰ Constitutional abortion rights doctrine also anchored the US authorization and then undid it. In 2020, the US federal district judge who suspended the in-clinic requirement reasoned that it posed an undue burden on the right to abortion, namely by increasing the risk of COVID-19 infection for oneself or family.⁴¹ When the Supreme Court later reinstated the requirement on an emergency motion, it reasoned from the same constitutional doctrine and against a strong dissent that emphasized the undue burden of the requirement, especially for people of color and from low-income communities, who faced greater risk.⁴² For those outside the United States, its constitutional doctrine on abortion rights is indeed “strangely disorienting ... a sort of fascistic madness,”⁴³ especially when it proves futile to keep people safe during a pandemic. Moreover, abortion at-home challenges basic ideas

³⁷ Scottish Gov., *supra* note 26.

³⁸ Sonia Elks, Millions of Women Feared at Risk of Backstreet Abortions During Pandemic, Thomson Reuters Found. (Apr. 3, 2020), <https://news.trust.org/item/20200403144228-3cop8>; Abigail R. A. Aiken et al., Demand for Self-Managed Online Telemedicine Abortion in the United States During the Coronavirus Disease 2019 (COVID-19) Pandemic, 136 *Obstetrics & Gynecology* 835 (2020); Abigail R. A. Aiken et al., Demand for Self-Managed Online Telemedicine Abortion in Eight European Countries During the COVID-19 Pandemic: A Regression Discontinuity Analysis, *BMJ Sex. Reprod. Health* 150 (2021).

³⁹ US Food & Drug Admin., Warning Letter to Aidaccess.org re: Causing the Introduction of a Misbranded and Unapproved New Drug into Interstate Commerce (Mar. 8, 2019).

⁴⁰ Le Conseil d'Etat, IVG Médicamenteuse à Domicile durant l'état d'urgence Sanitaire – Décision en Référé du 22 mai (May 22, 2020); Gouvernement de France, Communiqué de Press, Face à l'épidémie, le Gouvernement se Paris, le 3 Avril 2020 Mobilise pour Maintenir les droits des Femmes en Matière d'IVG, (Apr. 3, 2020).

⁴¹ Am. Coll. of Obstetricians & Gynecologists, 427 F.Supp.3d at 216.

⁴² Am. Coll. of Obstetricians & Gynecologists v. U.S. Food & Drug Admin., 141 S. Ct. 578 (2021).

⁴³ Robin West, Reconsidering Legalism, 88 *Minn. L. Rev.* 703 (2003).

in US abortion law, for example, altering the path to an abortion and so too the opportunity for substantial obstacle, yet any radical implications of the post-clinic abortion were held off in constitutional argument, which proceeded by established doctrine.⁴⁴ When the FDA eventually changed course to allow abortion at-home, it cited no constitutional right but rather the evidence of the safety of the practice.

Together these conservative features of the COVID-19 authorizations reflect the paradox of a crisis management discourse. Crisis creates an opportunity to reform the status quo, as much as it supports the status quo as solace in a risk-filled world. In these authorizations, abortion at-home conserved the clinical control and social norms of abortion law. The home was merely a temporary place to weather the storm.

IV ABORTION AT-HOME IN RADICAL SPECULATION

In the COVID-19 authorizations, whether court judgments or administrative orders, the home itself received little attention. In the English order, for example, the home was described simply as a permanent address or usual residence.⁴⁵ Yet the home is so much more. Indeed, there is a long tradition in creating meaning from the empty abstractions of law. This part speculates on the ways abortion at-home, as authorized by law, but normalized in the home, may lead to a radical change in its practice. In challenge to a conservative view of these authorizations, this part asks: What if everything does not stay the same? What if abortion at-home does more than remove access barriers and otherwise leave everything else the same?

When nineteenth-century criminal statutes took abortion from the home and the market, and relocated care to the clinical setting, it not only restricted access to abortion, but also changed the people and practices of abortion, the experiences, and even the nature of it. In the United States, criminalization outlawed domestic practice by midwives, many Black and Indigenous women, suppressing the knowledge and norms of their practice.⁴⁶ These included beliefs about abortion rooted in people's perceptions and experiences of their bodies, including beliefs in their acts as no abortion at all but as the bringing back of the menses and health.⁴⁷ By giving the medical profession authority over abortion, the law displaced these ways of knowing and doing abortion.⁴⁸

⁴⁴ Yvonne Lindgren, When Patients Are Their Own Doctors: Roe v. Wade in an Era of Self-Managed Care, 107 *Cornell L. Rev.* (2021).

⁴⁵ Dep't of Health & Soc. Care, The Abortion Act 1967 – Approval of a Class of Places (Mar. 30, 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876740/30032020_The_Abortion_Act_1967_-_Approval_of_a_Class_of_Places.pdf (last visited Apr. 12, 2021).

⁴⁶ Melissa Murray, Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade, 134 *Harv. L. Rev.* 2025 (2021).

⁴⁷ Laurie A. Wilkie, Expelling Frogs and Binding Babies: Conception, Gestation and Birth in Nineteenth-Century African-American Midwifery, 45 *World Archaeology* 272 (2013).

⁴⁸ Stephen Turner, What's the Problem with Experts?, 31 *Soc. Stud. of Sci.* 123 (2001).

With abortion at-home, this history may reverse as the medical practitioner is invited into the home, a place of experience that reflects the person who lives there and over which they have greater control. In many ways, the practice innovations of abortion at-home reflect this shift of control.⁴⁹ Ultrasounds to date pregnancy are replaced by “LMP,” an acronym for last menstrual period, something medical practitioners know from their patients. Routine clinic follow-ups are replaced by self-administered pregnancy tests to assess the success of an abortion. Most importantly, step-by-step instructions are shared on dosage and routes of administration, how many pills to take and how to take them, and how to care for the patient (yourself) throughout the process. There is a know-how quality to this information, which reflects not simple instruction, but a belief and trust in people and their bodily experiences of abortion. Medical practitioners may instruct, but the purpose of their instruction is to support people to have abortions on their own and ultimately to let go of control.⁵⁰

At home, people know things and do things that a medical practitioner cannot. At home, people may improvise or improve on standard practice – or create new practices. The off-label use of misoprostol for abortion came from such tinkering.⁵¹ In-clinic restrictions, even requirements that abortion pills be picked up from a clinic rather than a local pharmacy or mailed by post, affect the experience of them. When people must face the world outside in leaving their home, or the comforts of home life, there is a sense of the observation of others, the clinic staff and other patients, and an attention to some external environment, the path to the clinic, the world around it, and the clinic itself.⁵² Being in these places imprints on the experience of abortion, by marking the pills as controlled objects and the abortion itself as clinical care. Abortion at-home originates in a different place, within the material cultures and social relations of the home.⁵³

The home is also a place of multiple influences, which makes it difficult for the law to keep its promise of control. Today, an ever-growing suite of social media platforms, such as YouTube, Reddit, and Facebook, as well as abortion apps (one affectionately nicknamed, the *abortion siri*) and popular magazines (e.g., *Teen Vogue*, *Self*), promise everything anyone ever needed or wanted to know about managing abortion at-home.⁵⁴

⁴⁹ Kathryn Fay, Jennifer Kaiser & David Turok. The No-Test Abortion is a Patient-Centered Abortion, 102 *Contraception* 142 (2020).

⁵⁰ Wendy Simonds et al., Providers, Pills and Power: The US Mifepristone Abortion Trials and Caregivers’ Interpretations of Clinical Power Dynamics, 5 *Health* 207 (2001).

⁵¹ Helena Lutésia Coelho et al., Misoprostol: The Experience of Women in Fortaleza, Brazil, 49 *Contraception* 101 (1994).

⁵² Lori A. Brown, *Contested Spaces: Abortion Clinics, Women’s Shelters and Hospitals: Politicizing the Female Body* (2013).

⁵³ Christina Buse, Daryl Martin & Sarah Nettleton, Conceptualising ‘Materialities of Care’: Making Visible Mundane Material Culture in Health and Social Care Contexts, 40 *Sociol. Health Illn.* 243 (2018).

⁵⁴ Steph Herold, Need an Abortion? There’s an App for That (Jan. 22, 2020), www.bitchmedia.org/article/abortion-apps-spreading-misinformation; DIY Abortion: How to Have an Abortion When the Abortion Clinics Shut Down, Reddit, www.reddit.com/t/preppers/comments/6jia1t/diy_abortion_how_to_have_an_abortion_when_the/.

In contrast to a (tele)medical consultation, within these information networks, people speak in their own voice and narrate their own experiences apart from the scripts of the law. Moreover, people not only share information on abortion, but also produce new knowledge about abortion based on the practice of it.⁵⁵ Such information gains authority by its usefulness, not its legal authorization.

The association of abortion at-home with a commodity (pills), rather than a service, may also change the social relations around it, including by patients reidentifying as consumers in the navigation of abortion markets.⁵⁶ The very term “abortion pills” signals this change, a deliberate denotation that questions the status of mifepristone and misoprostol as medicines, and thus the prescription and other controls on their distribution. When abortion pills are mail-ordered, home-delivered, and picked up in local retail pharmacies, they circulate in ways more common to other household products of need and leisure. Home abortion paraphernalia, such as pregnancy tests, ibuprofen, and soothing teas, can already be added to an Amazon cart. This materiality of abortion at-home may augment other features of it. The telemedical consultation may start to resemble more of a checkout counter than a doctor’s visit, leading people to question the need for a prescription at all, but also the more general belief that only regulated systems of medical control can guarantee abortion safety.⁵⁷

Abortion services in Europe and the United States have always functioned as a market, even if highly regulated, but abortion is rarely seen or talked about as such.⁵⁸ These markets have been dominated by a small set of organizations, strongly aligned with the medical establishment, and at least in Europe, with state provision. The markets in abortion pills, however, are much more diverse, involving more people and connections between them. Authorizations for abortion at-home were motivated in part by a desire to extinguish these markets or protect people from them, and while they may have had this effect in the short term, over time this effect may diminish, especially as the abortion markets themselves, the regulated versus unregulated, become harder to distinguish. In the United States, for example, many start-up abortion clinics began to advertise services during the pandemic and online pharmacies began shipping pills directly to patients.⁵⁹ People themselves may also come to feel differently about these markets. As abortion at-home becomes a more

⁵⁵ Bushra Alama, Amy Kaler & Zubia Mumtaza, Women’s Voices and Medical Abortions: A Review of the Literature, 249 *Eur. J. Obstet. Gynecol. Reprod. Biol.* 21 (2020).

⁵⁶ Arjun Appadurai, *The Social Life of Things: Commodities in Cultural Perspective* (1986); Ruth Fletcher, Reproductive Consumption, 7 *Feminist Theory* 27 (2006).

⁵⁷ Steph Black, What I Learned from Buying Abortion Pills Online (Feb. 8, 2021), <https://rewirenewsgroup.com/article/2021/02/08/what-i-learned-from-buying-abortion-pills-online/>.

⁵⁸ Jody Lynce Madeira, Conceiving of Products and the Products of Conception: Reflections on Commodification, Consumption, ART and Abortion, 43 *J. L. Med. Ethics.* 293 (2015).

⁵⁹ Carrie N. Baker, How Telemedicine Startups Are Revolutionizing Abortion Health Care in the U.S., *Ms. Mag.* (Nov. 16, 2020), <https://msmagazine.com/2020/11/16/just-the-pill-choix-carafem-honeybee-health-how-telemedicine-startups-are-revolutionizing-abortion-health-care-in-the-u-s/>.

mundane affair, the medical controls of regulated access may also become more burden than protection. People may become comfortable with forms of consumer protection familiar to small-scale community distribution and online commerce in securing a safe supply of abortion pills.⁶⁰ Despite the expiry dates on its authorization, abortion at-home, once a habitual practice, may thus prove a more permanent feature of home life.

Speculating on abortion at-home as commodity and consumption also invites reflection on the social and cultural norms around it, including the inequalities of relying on private markets to fulfill constitutional rights. This lesson came early for abortion with pills when mifepristone was pulled from the French market for fear of commercial boycott and lost profits. As against the commercial context of abortion pills, however, the normalizing of abortion within the intimate and interior spaces of the home may also change the sociality of it. Abortion may become less a solitary act of the body than an act of home life, taken to support the social and economic well-being of a household. Support for abortion at-home during the pandemic, for example, centered on the home and life within it: loss of household incomes or housing itself, the care burdens of young children in the home, and violence that makes it difficult for people to leave their homes.⁶¹ In the end, these contradictions of the home as a place of care and consumption, protection and risk, freedom and control may prove the most radical element of abortion at-home and confound the control of the law.

V CONCLUSION

In 1990, when the UK Abortion Act 1967 was reformed to allow the health secretary to designate a “class of place,” the amendment was criticized as a backdoor to abortion at-home, or worse yet, do-it-yourself (DIY) abortion.⁶² Thirty years later, during the COVID-19 pandemic, “DIY abortion” remains a pejorative term used by critics to denounce abortion at-home as a dangerous practice, one set outside the law and showing contempt for its social norms.⁶³ This critique might explain why the authorizations for abortion at-home reflected a crisis management discourse, one designed to conserve access to abortion care during the pandemic, but conserving much more in the continued clinical control of abortion and the social norms of

⁶⁰ Chloe Murtagh et al., Exploring the Feasibility of Obtaining Mifepristone and Misoprostol from the Internet, 97 *Contraception* 287 (2018).

⁶¹ Patrick Butler, Two-Child Benefit Cap Influencing Women’s Decisions on Abortion, Says BPAS, *Guardian* (Dec. 2, 2020), www.theguardian.com/society/2020/dec/03/two-child-limit-on-benefits-a-key-factor-in-many-abortion-decisions-says-charity.

⁶² UK Parliament, Debate on Human Fertilisation and Embryology Bill (June 21, 1990), <https://publications.parliament.uk/pa/cm198990/cmhansrd/1990-06-21/Debate-17.html>.

⁶³ Natalie Clarke, What Is the Truth about Abortions by Post?, *Daily Mail* (May 28, 2020), www.dailymail.co.uk/femail/article-8367467/Abortions-post-got-rushed-approval-lockdown-troubling-stories-emerging.html.

abortion law. Since their advent, abortion pills have been folded into abortion law and made subject to its control, namely by restrictions requiring some touch to a clinical setting. While place-based abortion law has long been justified as a measure of safety, social control was always a primary motivation. The clinic was never only a physical place, and always an institution of control. On a conservative view, the COVID-19 authorizations brought clinical control into the home during a historic but time-bound state of emergency to conserve the social norms and thus the status quo of abortion law. On an alternative view, by returning abortion to the home, the authorizations may have a radical legacy. The home, after all, is an inhabited space shaped by the people who live there. At home, within the material cultures and social relations of home life, people will learn and create new ways of knowing and doing abortion. Abortion at-home will change what it means to have an abortion, but then again, the law has always known this truth. Every revolution starts at home.