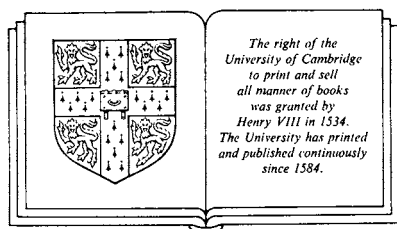


Abortion, doctors and the law

Some aspects of the legal regulation of abortion in
England from 1803 to 1982

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Introduction

Much has been written, particularly over the last twenty years, on the subject of the law of abortion.¹ The bulk of the literature, however, has been concerned with the desirability or otherwise of legal reform, has addressed the subject in the broad context of moral, philosophical, political and sociological considerations, and has related largely to the law in the United States.² Remarkably little academic attention has been given to the development and scope of the law in England, and research that has considered English law has tended to concentrate on the political dimensions of the relaxation of the law by the Abortion Act 1967 (see Appendices, p. 168), and in particular the role played in that relaxation by the Abortion Law Reform Association.³ Not only is research into the development of the law sparse but also the question of the influence both of the medical profession on its development and of the law on the practice of abortion by the profession has been largely ignored. This text seeks to make a contribution to the remedying of these deficiencies.

The book spans the period 1803 to 1982 and considers certain aspects of the development of the law, with particular reference to the influence of the medical profession (that is, registered medical practitioners and their predecessors, the 'regular' as opposed to uneducated practitioners) on its enactment and the degree to which the law has influenced the practice of abortion by the profession. It does not, therefore, present either a comprehensive history of the law itself or a socio-political history of its development. Nor does it address directly the legal status of the unborn child,⁴ the rights and duties of its parents and the doctor in the provision of abortion,⁵ the degree to which the Abortion Act 1967 has achieved its aims, or the vexed question of the desirability of reform. Rather, adopting a socio-legal perspective, it considers what the scope of the prohibition of abortion has been and focusses on aspects of professional

influence on the evolution of that prohibition and of professional practice thereunder.

Against the background of the common-law prohibition of abortion, Chapters 1 and 2 trace the passage of the anti-abortion statutes in the nineteenth century, culminating in the Offences Against the Person Act 1861, and consider the influence of the medical profession on their enactment. Chapter 3 discusses whether this law prohibited, either in theory or in practice, the performance of abortion by the medical profession before 1938. Chapter 4 examines the extent of the profession's influence on the shape and enactment of the Abortion Act 1967, and Chapter 5 how extensively the Act has been interpreted by medical practitioners to allow abortion. Chapter 6 looks at the reaction of the profession to proposals to amend the Act restrictively. The concluding chapter of the book suggests a possible explanation, from a sociological perspective, of the influence of the profession on the development of the law relating to abortion, and its interpretation of that law in its performance of abortion.

The medical sources for this thesis were largely the following: works listed in the *Index Catalogue of the Library of the Surgeon-General's Office* (first four series); and in *Index Medicus* 1903–1982; the *Lancet* 1824–1862 and 1898–1982; the *British Medical Journal* 1857–1862 and 1898–1982; works in the stack lists of the Radcliffe Science Library (1517 d,e,f; 162 d,e,f); and interviews conducted with the following: Dr E. G. Daw F.R.C.O.G. (15 November 1984); Dr P. J. Huntingford F.R.C.O.G. (20 February 1985); Sir John Dewhurst F.R.C.O.G. (21 February 1985); Professor R. W. Taylor F.R.C.O.G. (11 March 1985); Dame Josephine Barnes F.R.C.O.G. (11 March 1985); Dr S. A. Bond M.R.C.S. (12 March 1985); and Sir John Peel F.R.C.O.G. (18 March 1985). A further interview, on the enforcement of the Abortion Act 1967 and the Abortion Regulations 1968, was carried out on 3 April 1985 with two officers of the Department of Health and Social Security: Mr Moutrie (a Department solicitor) and Mr Kirby (who is in charge of the inspection of premises approved under the Abortion Act 1967).