DEBATE ON ABORTION

WEDNESDAY, FEBRUARY 9th, 1938.

THE HON. MR. JUSTICE HUMPHREYS in the Chair.

A debate arranged by the Fellowship of Medicine took place at No. 1 Wimpole Street, W.1, on Wednesday, February 9th. The Hon. Mr. Justice Humphreys occupied the chair and Sir Beckwith Whitehouse proposed the motion "That the law of abortion requires reform." This was opposed by Dr. W. H. F. Oxley. There was a very large attendance of about 350.

MR. JUSTICE HUMPHREYS, in opening the proceedings, said: Mr. Paterson, Ladies and Gentlemen.—My presence here as a stranger among you is due to the fact that the Council of your Fellowship thought it desirable, before you discussed any proposed alteration of the law relating to abortion, that there should be some measure of agreement as to what the law is. Your Fellowship has done me the honour of asking me to come and state, so far as I am able to do so, what is the present law and then to listen to two sides of a question which is undoubtedly one of very great interest, peculiarly perhaps to medical men, but also to most thinking persons.

The position which I have to occupy in another place makes it undesirable that I should express any opinion at all upon any proposed alteration of the law. I know that this is a meeting of medical men and women and certain other people, members of my own profession and others, who can be trusted, but in spite of that, things do leak out sometimes, and the papers employ people called reporters who are exceedingly clever at finding out and then misrepresenting what has been said by those whose opinion some ignorant folks think is worth recording. For that reason it is undesirable that I should express any opinion at all. And even in stating what is the law I hope you will allow me to say that I am not a judge making a pronouncement as to the law, I am merely going to state to you what is the opinion of a man who happens to have spent the greater part of a long life in the study and practice of criminal law.

The law is not concerned, and never has been concerned, with the ethics of abortion. The law is concerned only with abortion in that, at times at all events, abortion becomes a crime, and what the law is exclusively concerned with is that sort of abortion which you and I and every right-thinking person describe as criminal abortion.

If we leave out the times when the termination of pregnancy was undoubtedly a thing abhorred by churchmen (and churchmen were the persons who administered if they did not make the law), and come to comparatively modern times, as early as the first year of Queen Victoria's reign, 1837, there was passed

an Act of Parliament which made it a criminal offence, in practically the same terms as the law which exists to-day, for any person other than the woman herself, to use any means, poison, noxious drugs, or any instrument, for the purpose of procuring a miscarriage. The law in those days was confined to persons who did it other than the woman herself.

In 1861 the law was altered in the sense that in that year the criminal statutes were almost all consolidated and, finding that law, a gentleman of the name of C. S. Greaves, who was primarily responsible for all those consolidated criminal statutes of 1861, thought that a useful addition could be made to the law, and he was responsible for that which now forms the first part of Section 58 of the Act of 1861. As most of you are aware, it reads as follows:—

“ Every woman, being with child, who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with like intent ”

then the Section goes on to repeat practically what had been the law since 1837, that whoever with the like intent administered these things to a woman was guilty of the offence. That crime was made a felony and punishable with penal servitude for life.

That is the law, and the whole law, relating to abortion, subject to this that in 1929 it was feared—how rightly I do not know—amongst others by the late Lord Darling, who had retired from the position of High Court Judge and had become a member of the House of Lords, that there might be a hiatus between the time when a woman who had been operated on could be said to have had a miscarriage, and the time when the child having been born could be said to be a living being because it was having its being apart from its mother. Therefore an Act was passed in 1929, called the Infant Life Preservation Act, and it brought into existence a new crime called child destruction. It provides that any person who with intent to destroy the life of a child capable of being born alive by a wilful act causes the child to die before it has an existence independent of its mother, shall be guilty of this offence of child destruction. That was treated in the same way as abortion in that it was made a felony, and the maximum penalty again was penal servitude for life. I need not remind you that the maximum penalty does not mean that that penalty has to be inflicted in every case.

The question has sometimes been asked, and for anything I know it may be asked to-night—and I want to answer it so far as I am able in advance—whether the words of the Statute of 1861 make it a criminal offence for a doctor to do the things which are mentioned in Section 58 in a case where these circumstances are found. Let us assume him to be a reputable member of his profession, and that he has decided, solely in the interests of his patient and with a view to saving her life, which he thinks may be in danger if the pregnancy is allowed to continue, after consultation with one or more other members of his profession, and with all the usual aseptic precautions attending an operation, to terminate the pregnancy. I am not sure that one can describe an abortion procured by a doctor as an operation, though perhaps that may be the correct expression. If a doctor behaves in that way is he guilty of a criminal offence? Doctors have said to me, “ Do not tell us that the answer is that nobody would be fool enough to prosecute. Do not tell us that the answer is that if prosecuted we should get off, and even if we did not no judge would dream of punishing us. As reputable members of the profession we object to being placed in the category of persons who are committing a crime

and of having to say, 'Please do not prosecute us, because we are doing it with the best intentions.'"

What I am now about to say as to the law is my private opinion and no more. It might be—though I think it is unlikely—that some judges would differ from my view. In my opinion there is no doubt whatever that a medical man who in those circumstances terminated the pregnancy is committing no offence against the law. I do not say this because there is in this section the word "unlawfully," for that is put in for reasons with which I am not going to trouble you (they are too technical for all but lawyers). It would not be a good ground for saying that since the statute makes it an offence to do it unlawfully, therefore you may do it lawfully. That is not a good argument, and does not appeal to the criminal lawyer. If that is a good answer in the case of this Section it must be a good answer to every other Section, and let us see to what ridiculous lengths it would carry us. The burglar who wishes to escape being caught by a policeman, turns round and shoots the policeman. That man commits an offence against Section 18 of this same statute, which provides that if any person shoots at or wounds another with intent to resist his lawful apprehension, amongst other things, he shall be guilty of a crime. That section begins with the word "unlawfully." One can hardly imagine that the legislature meant that there are circumstances in which you may lawfully shoot a person who is lawfully attempting to apprehend you.

No, the reason why I say the doctor acting in the way I have described is committing no crime is just this, that criminal statutes, like the rest of the statutes, must be construed reasonably, and the criminal law is not so stupid as ever to have provided that a medical man in an effort to save life is committing a criminal offence punishable with penal servitude for life. The thing to my mind is unthinkable. It is absurd, and the only possible ground for supposing that it could be an offence is that we do not find in the statute actually some such words as "unless it is done with the intent to save the life of the person." It is a curious comment upon that that when in 1929 Parliament was passing this new Act and making this rather curious new crime of child destruction, they did put in those very words. There is a proviso to the Section of that Act, "Provided that the statute shall not apply to the case of a person who does what is forbidden by the statute, solely for the purpose of saving the life of the mother." It would be ridiculous to suppose that in 1929 the legislature intended to make it easier for people to commit the new crime than the old. It is only because in 1837 and 1861 the law was made for lawyers, and it was not thought necessary to put in by way of proviso every possible answer to a crime. It was left to the lawyers to understand and interpret in a reasonable manner the statute which was passed in those days. As those of you who are members of Parliament know, every Member of Parliament now thinks that it is his business to interfere with every statute that is put upon the Statute Book! It was found desirable in 1929 to put in a proviso without which, I venture to say, no lawyer would have ever doubted that the offence was not committed by any person who did it with the intent to save life. It was thought better, as it is in numerous other criminal statutes in modern times, to put in everything that could possibly be an answer to the charge, with the result that confusion is often made worse confounded.

Those are the observations that I thought it right to make about the law as it is to-day. When it comes to the question whether the doctor is entitled to terminate a pregnancy with the object of improving the health of the patient, that is one of the matters which will no doubt be touched upon in this debate, and I prefer to remain silent.

SIR BECKWITH WHITEHOUSE in proposing the motion "That the law of abortion requires reform" spoke as follows:—

I think this house will agree when I say that the subject of the debate to-night is one of the greatest interest and importance to all those who are constantly being faced with the difficult problems it raises. Indeed I may go further and observe without contradiction that the matters under discussion intimately concern the lives and domestic happiness of the whole community. It is with full appreciation of these facts that I venture to submit my observations in support of the motion which it is my privilege to move.

This evening the medical profession is honoured by the presence of several distinguished members of the legal profession. May I, on behalf of my medical colleagues, extend a very hearty welcome to our legal brothers, and in thanking them for their presence here at this debate, say how much Medicine appreciates the help and guidance that the Legal profession is always ready to give when, as now, it is most in need.

You have heard from our learned Chairman the present position of English Law in relation to the artificial termination of the pregnant state. This law, dating from the year 1861 is, without doubt, harsh in its implications regarding the potential mother. This harshness is in no way ameliorated by the Infant Life Preservation Act of 1929. The art of Medicine may still only be applied to-day in the legal termination of pregnancy if the mother's or child's life is threatened. The law has not the slightest interest in the mother, apart from dissolution.

But you and I know quite well that both our professions to-day are endeavouring to find loop-holes in the law for making an obviously existing wrong a right. We appreciate that the mother of the English family is a most important unit both in the home life and the public life of the nation. We no longer subscribe to the doctrine that the life of the child is paramount, and that so long as the mother's life is preserved it does not matter what physical or mental wreck she may be. Even my good friend Dr. Oxley, who apparently believes that the law of Abortion, as it stands, is a heaven-sent gift, must sympathize with the poor woman who has had two or more Cæsarean Sections and dreads the advent of another similar ordeal.

I have not the time, nor is it necessary to dilate upon the various indications for the termination of pregnancy which to-day are being advanced. Some of these are generally acceptable, others are flippant, and the majority involve not the life but the health of the woman involved. As matters stand to-day, all such operations are illegal. Abortions generally, in this country, are increasing as elsewhere. There is no doubt about this fact. There is also no doubt that the number of so-called "therapeutic abortions"—operations deliberately performed in and out of hospital by reputable members of the medical profession and for *bona fide* medical reasons—is on the increase. It is for this group that I ask for reform in the existing law. These operations, as the law stands, are really illegal, and I am not prepared to accept the argument that they are "lawful" on the basis that they are "not unlawful." I am quite prepared to hear my colleague, Dr. Oxley, assert that the existing law requires no change because, by the use of the word "unlawful," it tacitly condones "lawful" operations to preserve the maternal health.

Mr. Justice Salter's observation that the use of the word "unlawful" implies that there is such a thing as "lawful abortion" and the late Lord Riddell's remarks

on this point always appear to me as being a thoroughly honest attempt to correct an obvious wrong. But surely such arguments would be unnecessary if, as is stated in Taylor's Jurisprudence "7th Edition," the law were re-enacted to-day by the insertion of an express proviso "to exempt from liability the fully qualified practitioner who terminated a pregnancy for the *bona fide* purpose of preserving the mother from special danger to life or health."

This then is my first point. I submit that the existing law should be reformed to include not only the life but the *health* of the mother as a possible indication for the legal termination of pregnancy.

And now I pass to two much more debatable items. Thus far I have pressed for relaxation in the existing law by extending the scope of the indication for legalized Abortion. My next plea is to suggest the introduction of two clauses designed to tighten up certain weaknesses which the preceding clause would inevitably introduce.

It is, I think, common knowledge that illegal though it is, so-called therapeutic abortion is being performed to-day by accredited and well-known members of the medical profession for indications which are not accepted by other members of the same profession. I, like others, can quote instances of pregnancies being terminated by obstetric surgeons for conditions where, actually in the same patient, I have refused to interfere. I would not go so far as to say that in some instances a medical indication has been found, but I am very sceptical about the sympathetic attitude with which the problem is sometimes approached.

If the law is reformed to include the health of the mother as a possible indication, there is no doubt that unless special precautions are taken, the number of these entertainments on the pseudo-illegitimate stage will increase. How can these obvious dangers be circumvented? I submit that two weapons are available for defence against the unscrupulous patient and the "sympathetic" practitioner. These are (a) notification of all cases of therapeutic abortion before the operation is performed, and (b) the unanimous agreement and consent of a board of three individuals, viz.: the family practitioner, the surgeon who performs the operation, and a disinterested physician, surgeon, obstetrician or alienist, with special knowledge of the condition for which the operation is suggested.

With regard to "notification" the question will probably be asked as to the reason for this innovation. What good will it serve? My firm belief is that whilst notification is no hardship to the genuine patient, it will act as a deterrent to the potentially criminal type of applicant. The mere fact that the case is to be "notified" "somewhere" and to "somebody" will inevitably reduce the number of cases in which it is necessary. The British temperament does not like publicity and notification. We see it time after time in connection with the "Puerperal Pyrexia" regulations. How often is the question raised—"Must I notify this case?" An objection will probably be raised that notification is interfering with the privacy and liberty of the individual. Well, the same argument might be raised in connection with all other "notifications," some of far less gravity to the individual and the state. It may also be said that notification might have the result of "throwing the Christians to the lions," viz.: the professional criminal abortionists. If such is the case, which I doubt, notification will surely make the path of the evil-doer more stoney, and his detection easier. This is, perhaps, hardly the time or place to discuss the debatable question as to whom notification should be made.

The Local Authority, County Authority, and Ministry of Health all have their claims in this respect. In the small community, no doubt, either the County Authority or Ministry of Health would be favoured, in order to avoid the danger of local publicity of essentially domestic details.

This, I regard as a minor point in face of the contention that some form of notification of therapeutic abortion is a reform which is urgently and increasingly necessary in this country. By its introduction I submit that not only would the number of patients seeking Abortion be reduced, but that the light of medical and public criticism would be focussed for good or evil upon those individuals who develop a special "penchant" for this type of practice.

And finally, I suggest that no therapeutic abortion should be performed without the joint acquiescence of a board of three individuals, one of whom has no interest in the case other than a special knowledge of the condition for which the abortion is asked. This reform will be recognized also as a suggestion to tighten up the existing law and limit the activities of the medical abortionists. Again, no hardship is imposed upon the genuine patient, and the division of responsibility would be welcomed by the honest and *bona fide* practitioner.

What has the existing law done? In the present world we know that abortion, both criminal and therapeutic, is commonplace. Not only do statistics indirectly show that both types are increasing, *sub rosa* and illegally, but we know also that much of our maternal mortality and morbidity is to be laid at the feet of this demon. Are we content to acknowledge that all is well, and that no reform is required to remedy these evils which we acknowledge?

Is Dr. Oxley prepared to say that the present law, as it stands, is sufficient protection against the professional abortionist, the sympathetic practitioner, and the force of public opinion?

I have said little or nothing about "public opinion" hitherto, but I think we all know and appreciate what those two words imply. Unfortunately, we live to-day in a world which, on the surface, at any rate, appears to pay tribute to the superficialities rather than to the essentials of life. In this world woman must be protected against herself and her false counsellors. I shall never subscribe to the doctrine that the individual has the right to the control of his or her own life and destiny. The argument that is sometimes heard, that a woman has also the sole right to decide the continuation or otherwise of her own pregnancy, is but an example of the utter selfishness and callousness of the present age. If "reform" of the Law of Abortion simply implied increased license in the performance of an operation which the majority of obstetric surgeons detest, then I can honestly say that I should be no party to it.

What we should like to see is the law so amended that when the genuine indication arises, we may say to ourselves, and our patients, irrespective of questions of life or death, "This operation is both justifiable and legal." Further, we are anxious to eliminate from our practice and our profession anything that savours even remotely of the suggestion of illegality.

On February 29th, 1932, a weaver and a wool-teaser at the Leeds Assizes were indicted before you, Sir, for killing by means of an illegal operation a widow with seven children who had remarried and was again pregnant. In the defence the strange term "Ethics of Abortion" was used by counsel. In July, 1932, at the

Centenary of the British Medical Association, I referred to this case when opening a discussion on "the indications for the induction of abortion," and I observed that had that poor 8-para consulted her own doctor, the pregnancy might very rightly, properly, and safely have been terminated after full consideration of the medical questions involved.

Six years have passed, and I am more convinced than ever that to-day that woman's life would have been saved, still by an "illegal operation" mark you, but performed by a medical practitioner with the connivance if not with the consent of the law! In other words, the medical profession is at present under an obligation to the English law, an obligation which I submit should be removed. It gives me much pleasure, therefore, to propose to this house the motion "*That the Law on Abortion Requires Reform.*" Indeed, I feel that my task has been an easy one, for I cannot conceive that anybody, even the next speaker, in his heart of hearts, is satisfied with the present position.

DR. W. H. F. OXLEY, in opposing the motion, said: Perhaps my reply to Sir Beckwith Whitehouse will not quite follow the lines he has laid down in his opening—I had no opportunity of seeing in advance what he was going to say—and it may go rather wider than the very narrow issue which he has called "reform of the law of abortion."

The agitation for the reform of the law relating to abortion is being carried on in the main by three groups of persons. Stated briefly, the first group wishes to enlarge the scope of abortion so as to include all cases where women wish to have their pregnancy terminated, whatever the reason may be. A second group aims, on the other hand, at a reduction of the number of illegal abortions by means of an increased stringency of the laws and regulations or orders made under them. The third group, affecting only the medical profession, is anxious to have a clear statutory definition of the indications which would make artificial termination of pregnancy lawful.

Group I.—Relaxation of the Law.

The issues involved in the arguments of the first group are rather ethical than medical, but concern us all as citizens. It is implied that a woman's body is her own and that she should be free to get rid of the products of conception if she so desires, and as a corollary it is added that secret abortion with its high mortality would thus disappear. The corollary may be correct but the main contention is anti-social, cuts at the whole basis of society and family life, and is considered by most inhabitants of this country to be immoral. While much sympathy is aroused in some cases where abortion has been performed on account of poverty or other economic causes, the wholesale legalization of abortion is never likely to meet with the approval of the State. The Soviet Republic in the first glamour of the emancipation of women, and in the difficult economic conditions following the revolution, allowed abortion for practically every reason provided it was performed in hospital, and hundreds of thousands of women took advantage of the facilities specially provided by the State. If we are to believe the reports the loss of life was very small. Moscow reports 175,000 abortions with nine deaths. Now that economic conditions have improved repressive legislation has been passed forbidding the performance of abortion except in order to preserve health and life, or to prevent the transmission of serious hereditary disease⁽¹⁾.

(1) *Moscow News*, July 8th, 1936.

Group II.—Increased Stringency of the Law.

While I wholeheartedly agree with the object of the second group, namely, the prevention of illegal abortion, I believe that many of the arguments they advance are unsound and that the methods they advise would prove ineffective. They argue that intentional abortion is increasing greatly in spite of the law and they suggest reforms which in their opinion would enable information to be more easily obtained and would increase the likelihood of convictions.

In the first place, there is no proof that abortion is increasing in this country; in fact, the only reliable figures that we possess tend to disprove it. The following table has been compiled from the histories given by patients attending hospital:

Period.	Place.	No. of women.	Total pregnancies.	Percentage ending in abortion.
1845-6	... Manchester	2,000	8,681	14.3
1897-8	... London	898	3,964	15.7
Prior to 1903	... Birmingham	4,000	12,127	18.99
1909-13	... do.	1,208	6,021	17.7
1924-25	... do.	1,148	3,910	16.9

Although some abortions may have been omitted by these patients, it is obvious that this consideration applies to the whole of the period covered, and there is no reason to suppose that women prevaricate in this respect less now than they did in the nineteenth century. The deaths attributed to abortion are as follows:—

Deaths attributed to abortion.

			1926	1927	1928	1929	1930	1931	1932	1933	1934
Certified by doctor	...	380	369	348	356	424	347	379	378	394	
Inquest cases	...	51	47	57	67	67	79	69	85	100	
Total	...	431	416	405	423	491	426	448	463	494	

The first of the tables I have given is taken from the Interim Report of the Maternal Mortality Committee, 1930, p.42, and the second from the Report on Maternal Mortality, Ministry of Health, 1937, p.213.

Over the nine years, 1926-34, the total deaths attributed to abortion have shown a slight rise, due entirely to the increase in inquest cases. This may be due to extra vigilance on the part of coroners since the question of abortion has been so much in the public mind. Somewhere at about the time of the rise the regulations of the Registrar-General to the Registrars as to informing coroners of abortions were made more strict and certain coroners made it their business to inquire very carefully into the causes of deaths from abortion. Altogether it seems quite clear that while the situation is a little disquieting there is nothing like the amount of abortion in this country that there is in some continental countries. Our problem is comparatively small and does not warrant panic legislation.

However, having without sufficient justification satisfied themselves that illegal abortion is increasing by leaps and bounds, the advocates for reform of the law now assert that many abortionists cannot be brought to trial because of the difficulty in obtaining evidence against them. They combat this by advising that doctors who attend cases of abortion, whether spontaneous or induced, should be required to notify them to the local Medical Officer of Health. Supposing the Medical Officer of Health had a small number of abortions last year, say ten, and this year he has thirty, he will say, "There is an abortionist at work." What is he going to do? He cannot go and search people's houses. The only reasonable thing he can do is to inform the police.

Notification of abortion is an interference with the liberty of the subject. I do not mind that, for civilization itself is a constant interference with the liberty of the subject, but the best government is that which effects the least interference, and before any such law is passed it should satisfy certain criteria. The reasons for it must be sufficiently weighty, it must have a good chance of success and it must be shown that there are no other practical means at the disposal of the authorities. Notification of abortion does none of these and would do positive harm. The great trouble now is that women will not go to the doctors in time, even for innocent abortions, and are they not much more likely to delay going if they know there may be a police inquiry? The illegal cases would not call in doctors at all, so that the cases in regard to which information is wanted would be the very ones in which it would not be forthcoming. According to Taussig⁽²⁾, and the Report of the Ministry of Health, 1937, this has been the experience of those countries which have adopted notification.

The next step advocated by these reformers is the alteration of the wording of Sections 58 and 59 of the Offences against the Person Act, 1861, by deleting the word "noxious" from the phrase "poison or other noxious thing," since according to them many abortionists have been acquitted because the substance administered or supplied was not in fact noxious although it had caused the abortion or serious illness of the woman. I cannot think that this is correct, for surely anything which has caused an illness or an abortion is *ipso facto* noxious. Things other than poisons, which are innocuous if properly used, will be noxious if taken in excess or administered in the wrong way. Simple aperients taken in excess are harmful. Soap and water are good when applied to the hands but noxious if injected into the uterus. I suspect that the reasons for these acquittals are the sympathy of the jury with the accused person. Public opinion is certainly against the punishment of the woman with child who attempts or succeeds in bringing about abortion, and in some cases is not at all convinced that the abortionist has done wrong. While that is so, no tinkering with legal phraseology will make a ha'porth of difference.

Yet another suggestion is that the sale of substances used for procuring abortion should be restricted under the provisions of the Pharmacy and Poisons Act, 1933. The sale of lump lead plaster was restricted in this way and could no longer be used for that purpose, but other things had taken its place, and so it may go on for ever, for the most effective and most commonly used drugs are simple aperients used in excess. To be effective the sale of such necessary things as Beecham's pills, Higginson's syringes, and knitting needles, would have to be made illegal, which is absurd.

(2) *Abortion, Spontaneous and Induced*. F. J. Taussig, 1936.

I believe that the law has done as much as it is ever likely to do in catching and punishing these offenders, and that entirely different methods must be adopted if a substantial decrease in these practices is to be effected.

Recent reports have led us to believe that the vast majority of intentional abortions have been brought about by simple means by respectable married women with families. They have done this to avoid more children because they are too poor, or because they have to keep at work to maintain the home, or because their housing accommodation is insufficient for a larger family, or because their health is poor. To some extent, though I believe a minor one, they have done it because another child would be likely to interfere with their pleasure. But in my experience women of the working classes as a whole have such love for their children that no thought of danger to life or fear of punishment is going to deter them from doing what seems to them best in their children's interests, and it is only by eradicating these economic causes that we can produce the desired result. I have seen a copy of the Report of a Committee appointed by the New Zealand Government on this subject, and it makes some very interesting proposals in this sense. It is to be hoped that the Inter-Departmental Committee will very carefully consider this aspect of the problem.

Abortion is a social evil which can only be seriously combated by remedies which attack the cause. More provision for large families, development of maternity homes, domiciliary midwifery services within the reach of the poorer classes, marriage bonuses, increased prosperity, etc. Many such social changes have recently been made in Germany with a view to stopping the fall in the birth rate, and it will be interesting to see whether they will reduce the very large abortion rate in that country.

Group III.—The Views of the Medical Profession.

Let us turn finally to the views of the medical profession on the legal aspect of abortion as expressed by the report of the B.M.A. Committee. Their chief conclusion is that owing to doubt as to the interpretation of the word "unlawfully" in Sections 58 and 59 of the Offences against the Person Act, 1861, medical men who have performed an abortion for therapeutic reasons may run the risk of prosecution. Even if conviction does not follow, the indictment alone, they say, may seriously damage the doctor's professional reputation.

I do not think there is any justification for this fear. If the whole Act be read it will be seen that in many sections the word "unlawfully" is used. Thus, whoever shall unlawfully administer poison (sect. 24), whoever shall unlawfully wound (sect. 18), whoever shall unlawfully apply chloroform or opium (sect. 22), whoever shall unlawfully cause gunpowder to explode (sect. 29). But it is not used in other sections as in that making furious driving an offence. In all those sections where the word is used the action can be performed lawfully in certain circumstances—a soldier may lawfully cause gunpowder to explode, if attacked by a burglar a man may lawfully cause wounds if necessary in self defence, and a doctor if exercising the art of healing in good faith may lawfully cause wounds, give chloroform, administer poison and perform abortion. No prosecution will occur unless there is *prima facie* reason to believe that he has stepped outside his province, and he can guard against this by following one of the golden rules of the profession and never performing an abortion without obtaining a second opinion from a medical man of standing. I do not believe prosecution has ever occurred where this has been done, and I see no reason for alteration of the law

in this respect. The doctor must act in accordance with his generally recognized duties, namely, of saving the life or the health of his patient, and would not be justified in performing abortion for sociological or eugenic purposes. It is not for the doctor to decide such questions as to whether abortion should be performed to terminate a pregnancy following rape, nor for the purpose of preventing the transmission of hereditary disease.

GENERAL DEBATE.

PROFESSOR V. B. GREEN ARMYTAGE: On listening to this very interesting debate I was reminded of a story in the life of Dr. Samuel Johnson. Boswell asked him, "What, sir, do you think is the greatest pleasure in life?" And the great cham answered, "Sir, to scratch the part that is itching." That is what the opposition to the existing law has been doing to-night, and I think their arguments are rather like an inverted Mr. Micawber. Instead of waiting for something to turn up, they have been trying to turn something down.

Of course we all know, and have absolute evidence that there are a very large number of these cases which arouse our sympathy, but I need not remind you that hard cases make bad law. If the law is to be altered as Sir Beckwith Whitehouse would have it, by Act of Parliament, that is, by hard and fast rules, a state of inelasticity will arise, with no extenuating circumstances permitted, and this, I am sure, will benefit neither doctor nor patient. For, as Dr. Oxley has pointed out, family skeletons will be brought out. Family peccadilloes, family intimacies will be tossed about like so many shuttlecocks for legal and public discussion. To my mind the object that the opposition to the existing law have will be rather to unbridle lust, as well as to permit the widow, the erring wife, the unmarried woman, to get rid of her bundle of trouble efficiently and quietly. To-day, with our new Divorce Act, and the propaganda of the birth-controllists, and the "female pill" vendor, a woman has sufficient licence as it is to get rid of her troubles.

I must differ from you, sir, when you suggested that the operation of abortion was a slight one. It is not. It carries very serious risks. Not only does it carry a very high morbidity rate, but still more important from the point of view of the State, it carries a very large post-sterility rate. This is important because the State at the present moment in its economic structure depends upon a high birth rate, and if we are going to have abortion made easy it means a high sterility.

Sir Beckwith Whitehouse, I notice, spoke about notification. Now, notification of abortion or the appointment of a medico-legal *conseil d'Etat* would not serve the purpose at all. It would make matters worse for the genuine case because it would mean publicity, and we all know that publicity in our private lives is the last thing we want. I do not know whether the law will ever permit such a thing as a woman having jurisdiction over her own issue. I hope not. If so, what is the position of the man, her husband? Where does he come in? Has he not a right to ask that there should be issue and so seal his own wedlock? This question was all fought out in pre-Hitler days in Germany with disastrous results. I hope before you pass this motion you will be like Agag and walk delicately.

DR. LETITIA FAIRFIELD: I was only too delighted, sir, to hear your pronouncements at the beginning of this meeting. I have had many a battle with my medical friends over this matter, and I find now that I myself have been in the right, because I have only been saying what you have just said. It is a very interesting

story about the medical profession having been led into what I firmly believe is an error, and it is interesting to know at what date in the various editions of the medico-legal text-books any doubt came to be thrown upon the position of a member of the medical profession in this respect. It came in as a side wind. It was not a *bona fide* doubt at the beginning. I should like to add that the practical interpretation of the law as regards the health of the mother, not her life only, is so broad that in practice it seems to me entirely to do away with the necessity for the very limited and measured reform that Sir Beckwith Whitehouse proposes. I oppose that reform because, being an official myself of 26 years' standing, my very blood curdles at the thought of a medical board or tribunal of three persons. I know only too well what that means in the way of necessary formalism, delay, obstruction, and interference in clinical matters. These things have to be at times, but they are only a necessary evil, and it does a great deal of credit to the adolescent innocence of Sir Beckwith Whitehouse in this respect when he suggests setting up a regulation for the profession.

The necessity for therapeutic abortion is extended I take it, in the view of the law, to a very wide interpretation as affecting the mother's life and health. It is only due to the fact that there is not a sufficient mixture of Scottish and Irish blood in the English race that there is such a desire manifested to be on the right side of the law! Why we should be so grateful for legal support in doing the thing we have never been interfered with for doing I cannot imagine. I suggest that the line of argument which Sir Beckwith Whitehouse has pursued is a dangerous one for any surgeon to adopt. There are many things that a surgeon does in the course of his profession which have no express authority in law. It may be that for a surgical operation he has no legal authority.

I should like to refer to the question of the increase of abortion. I take it the figures which Dr. Oxley has produced were derived from gynæcological patients attending women's hospitals. We have recently investigated the case histories of over 17,000 women in the maternity wards of the L.C.C. hospitals—women who have come to term or given birth to a viable child—and among these women there is a history of under 7 per cent. of abortions. Our own figures show that abortion is not increasing. The number of septic abortions in our hospitals was precisely the same in 1931 as it was in 1936, in spite of the fact that during those five years the maternity accommodation of the hospitals has been very greatly extended. The deaths from abortion, although they have fluctuated considerably, are certainly not increasing and were lower in 1936 than at any time during the previous seven years.

MR. T. ANDERSON DAVIES (Solicitor): I am afraid after I have spoken in favour of the motion that the proposer of it may pray to be preserved from his friends, but there is one aspect of this matter which is close to my own experience and has, I think, not been mentioned by any speaker so far. It is the question of the incidence of abortion among unmarried women. I have had some ten years' experience in Petty Sessional Courts, and I have found that there are three stages through which a person is forced when the law in regard to abortion becomes operative. The law against abortion is designed to prevent abortion. When that is effective with the unmarried woman, three things follow. The child is born. Either affiliation proceedings are taken, in which case two people are necessarily held up to stigma, and at least one of them is aggrieved, and the child starts life with a tremendous handicap; or, alternatively, no affiliation proceedings follow, but there is a forced marriage, and the parties usually are again before the Courts

before very long. The two people concerned go into that union with a great handicap, one of them feeling that he has been trapped into it, and the other resenting that feeling on the part of her partner. They are open to the ridicule and contempt of their fellow men. The children of the union bear also a certain stigma, and the ultimate result is that the child of illegitimate birth, or of a forced marriage, instead of being a valuable citizen to the State, is likely to be the reverse. I know nothing of pre-natal influences, but it does not seem far-fetched to suppose that a child born of a mother who is anxious to be rid of it is not likely to be a child who will grow up physically or mentally—particularly physically if some effort has been made at abortion—to the advantage of itself, its parents, or the State.

In the case of the unmarried mother it might be open to her to apply to a board—that despised conglomeration of intellects which the last speaker described—of three people. Here may I differ from the proposer of the motion. I would suggest that we do not want three doctors. It would be well to have two doctors and another person such as a court probation officer or someone of that kind who knows the circumstances of the people concerned. Let those three people decide whether it is in the interests of the State that the child should be born. If they say, "Yes," let the pregnancy continue. If they say "No," let an abortion be performed under proper circumstances. But do not let the mother be kicked about, a partner of an unwilling husband, or the stigmatized mother of an illegitimate child, quite possibly a child of weak intellect, who will be a burden on her and on the State.

DR. BINNIE DUNLOP: It is rather difficult for a poor speaker like myself to follow the gifted orators who have already spoken. But I am concerned to question your view, sir, that the law has no concern with the ethics of the question. That surprises me, because I should have thought we owe the law to ethical if not religious considerations. That was the reason for the existence of the law; it was a religious question. Therefore it always strikes me as rather strange to hear medical people discuss this as if they were discussing a medical law, whereas what they are discussing is a religious law, an old church law, and they are endeavouring to produce medical reasons for it.

I cannot vote for either side. I would rather see the law abolished. I think it would be a great benefit to the public happiness if the law were abolished. My hope is that vasectomy is going to be the ultimate remedy for these economic and social conditions. I look forward to the time when vasectomy will be available to all fathers. That is the right solution of many of the difficulties which have been mentioned to-night.

I feel that this law has really no right to exist at all. If you say, "Oh, yes, it is a law against murder," then you have no right to interfere even on therapeutic grounds with a pregnancy. You are in that dilemma. Either it is a religious law and should be left alone, or it is not a religious law and should be got rid of. However, in order to meet the strong prejudices that prevail and to help the poor women who are tortured by the hundred thousand, I would have it that legal abortion should be available to any woman who has had one or two confinements.

With regard to the question of the non-increase of abortions, what a tribute the figures are to old England, because if you read the literature, you find that in all the other countries of Europe abortion is said to be increasing tremendously. Even in far-away New Zealand there was lately a report which showed that abortion

was increasing there with great rapidity. Therefore I am very much surprised to learn that it is not increasing in this country.

MR. HARCOURT KITCHIN (Barrister-at-law): I have only one point to bring forward, and I do not think it has been formulated very clearly, namely, that at the back of our organization in this country there is a thing called the rule of law. The law is very truly our sovereign in its administration by such men as our Chairman, and I think, simply as a citizen, that I want my sovereign to treat me as a reasonable man should treat another, that is, he should say with reasonable clearness what he means. I think it is a pity if the law is vague, and under this vague meaning people do collectively what they have found it best to do and find that they are possibly behaving illegally. The medical profession do not want to behave illegally.

I was interested to hear the Chairman say that there was no reason to believe that abortion for the sake of the woman's health was lawful. I had always thought it was.

THE CHAIRMAN: I did not say that about health. I said that was one of the questions about which I preferred to remain silent.

MR. KITCHIN: I beg your pardon. You said that it was lawful to terminate a pregnancy for the sake of a woman's life, but not for the sake of her health. But people do terminate pregnancies to save health, and nobody would dream of prosecuting them for it. Therefore I think it should be lawful.

THE CHAIRMAN: Unless it is lawful already.

MR. KITCHIN: I should like to see a sub-section declaring that it is lawful for a registered medical practitioner to bring about the miscarriage of a woman if he believes reasonably and in good faith that should her pregnancy be continued it would cause certain damage to her health. I would also include the rather rare cases of pregnancy following rape and incest. I think it is repugnant to the public conscience that such pregnancies should be allowed to continue. I have no use for the medical board proposed, or for any system of notification. Subject to that safeguard I think the doctor should be left in the same position as at present. But it should be made clear that he can do what he is doing at present, and what everyone applauds him for doing.

DR. G. H. ALABASTER: I was very much impressed by what Dr. Oxley said that you cannot detach this question from other questions. The reasons for abortion should be considered, and in my experience the reasons for abortion are nearly always reputable. What we ought to do is to strive to make pregnancy more acceptable and more agreeable. The whole question of our population and the future of the Empire depends upon that. It is on the question of making pregnancy more acceptable that the reform of the law regarding abortion really turns.

DR. DORIS ODLUM: Two rather Gilbertian conclusions have arisen from this debate. Quite a number of people seem to have stressed the point that the law should not be changed because in fact it is not enforced. It is quite obvious that the actual wording of the law would seem not to permit of abortion in order to save the life of the mother. That is its explicit wording, and it seems to me to be juggling with words to accept any other interpretation. We do know that the doctor is not proceeded against if he procures an abortion for the health of the mother, and the fact that the law winks the other eye in a case which it

feels to be legitimate is put forward as a good reason for accepting the law as it stands. That seems to be entirely illogical. I think the French would laugh at us for our illogical conclusion.

The other Gilbertian conclusion is that it does not matter what the law is because in fact neither the woman nor the doctors would consider it for a moment if it did not happen to concur with their own ideas. The women concerned in these cases will put first the interest of their families whatever the law may be. I think that is quite true. The poor woman, when it is a question of considering the advent of another child, considers first the economic interests of her household. Another speaker has said that he is convinced that if he were faced with a woman whose health required an abortion, whatever the law he would carry out that abortion. Therefore we have this delightful conclusion that the law really does not matter. The law will be construed according to each person's own ideas—the woman according to hers, the doctor according to his.

I should like to conclude by saying how much I agree with those who have stressed the real crux of the problem, which is the economic question, the cost of living. A woman is faced with the probability of a frequent increase in her family on a rate of subsistence that is going to make for practical starvation. If more children come it may be impossible for the family to obtain a dwelling, because we know that in some of the working-class houses the number of children permitted is limited. As long as these economic conditions persist, the law will be broken whatever the law is.

Therefore I would say that I do not think there is any point in changing the law as it at present exists, because this great principle has emerged to-night that unless the law is in consonance with public opinion it will not be carried out. We had an example of that in America in the case of the prohibition law. It is not punishment that stops people doing wrong; it is a consensus of opinion as to what is right. It is only by getting co-operation and a positive attitude in the minds of the public that we shall get the law respected. It is a waste of time to change the law unless you change the social status.

DR. JOAN MALLESON: I think there are many reasons for objecting to the idea of notification. There is one point in particular that Sir Beckwith Whitehouse raises on which I must disagree. It seems to me that he is considering one small section of women at the expense of the others. His interest seems to be just in those women who could have therapeutic abortion to save their health, and he is not concerned with that large mass of women who are going to have criminal abortion performed in any case, whether we like it or not. He suggests that if there were notification it would knock out of the business those practitioners who are "generous" in their interpretation of the law as things are at present. He resents them very much. We are not really interested in the morality of other members of our profession, but we have got to bear in mind that because members of our profession will be "generous" in interpreting the law to some of their patients, those women are thereby spared self-inflicted criminal abortion. And I would remind you that it is that form of abortion which brings the highest morbidity and sterility rate. It seems to be shortsighted to knock the "generous" practitioner out by notification in favour of increasing criminal abortion.

DR. DOUGLAS LINDSAY: The question, as I see it, is whether the law should be left as it stands or any alteration made in it, and if we can put forward one case that justifies an alteration then we must support the motion. The case I should like to mention is one which I met some years ago and it cost me a great

deal of worry. A girl of 13 was holiday-making in a Scottish resort. She had an "affair" with a farmer's boy aged 16. I was called in obstetrically. The boy was arrested under the Criminal Law Amendment Act, charged with rape, the girl at 13 not being legally a party who could give consent. The boy was duly sentenced and imprisoned and I had the unfortunate duty of seeing that young girl of 13, of very good family, go through that pregnancy and give birth to an illegitimate child. Now I am satisfied that on the strength of that solitary case there should be an amendment in the law. On the general view, I do not think the law requires amendment. As a practising gynaecologist as I see therapeutic abortion, the man, who performs such an abortion sincerely, has no fear of the law. He has, however, in England, I think, some legitimate dread of the coroner's inquiry, and some of us are more timorous of the coroner than we would be in the more serious surroundings of a criminal court where the individual presiding is of higher status, greater legal training, and more likely to administer the law with equity. As a Scottish graduate, and having had some Scottish experience of these inquiries as carried out by the procurator-fiscal, where there is no attendant publicity in the case unless it has a criminal element, but yet where no criminal element is allowed to escape, I found myself happier in procuring the occasional therapeutic abortion than I do in England. At the same time I feel we are well enough protected by English law.

In conclusion I should like to point out an aspect of the figures which Dr. Oxley has shown. He gives the deaths in 1926 as 431, and in 1934 as 494. I think this is an increase within that period of 15 per cent.

DR. OXLEY, in reply, said: There is very little for me to say by way of reply. When I said that there was no need for reform of the law I did not mean that there was no need for the alteration of a comma here and a comma there. By reform I mean an alteration in principle. The only point I should like to take up was that mentioned by Mr. Anderson Davies when he suggested that the child of the unmarried woman was usually a child of weak intellect and weak physique. That is absolutely untrue. The majority of illegitimate children are better off in these respects than the legitimate.

SIR BECKWITH WHITEHOUSE, also in reply, said: It is a concession on the part of Dr. Oxley to admit that even he "wishes a few commas put into" the existing law! He has told us that "whatever it may entail, he will still continue to perform abortion when he considers it justifiable to do so." He has even referred to the "right to perform abortion." Now, I should like to know who has given Dr. Oxley that absolute right to follow his own indications in this matter?

In this City we know that abortion is performed practically every week, and in nine cases out of ten the operation is for alleged reasons of health, and health only! Not so very long ago I remember a well-known obstetrician saying in this hall that he had terminated a pregnancy because the woman was going out to Central Africa where she would not be able to obtain the services of an efficient obstetrician. Was that operation legal or illegal?

What I complain about is that as the law stands to-day practically all therapeutic abortions are illegal. The life or death of the mother does not enter into the indication, so-called. Fortunately we have in Britain an understanding administration which interprets the law generously, but are we always to be indebted to that?

Dr. Letitia Fairfield has paid me the compliment of referring to my "adolescent innocence"! I regret to say that I am neither so young nor so innocent as she evidently thinks. I have certainly had my eyes open sufficiently long to appreciate the fact that in this country of ours, all is not well in the matter of abortion. Reform is most *certainly* necessary in some directions. Dr. Fairfield has been destructive without being constructive and helpful.

In many respects Dr. Oxley and I have much in common. The figures he quoted could have been just as useful to stress some of my arguments. Indeed you probably noticed that when certain figures did not substantiate his reasoning he airily glossed over the details by observing that they were probably the result of "too much vigilance" on the part of the compiler!

I was glad to hear Dr. Oxley refer to the Russian experiment on abortion. The Russian people have found out that the termination of pregnancy is not the easy and simple thing they thought. I am afraid that in this country a number of persons outside the medical profession still do not regard abortion as a very important matter. Dr. Green Armytage has done good work when he stressed the seriousness of the operation. I entirely agree with him. It does not matter whether a pregnancy is terminated legally or illegally, the operation is likely to be followed by certain sequelæ, in some cases long after the incident has been forgotten.

Finally, do let me make it quite clear that when I ask for "reform" in the present law of abortion, *I am not asking for increased license*. On the contrary, I want the law tightened up in order to prevent so many of these so-called "therapeutic" pseudo-illegitimate operations which are sully the medical profession to-day.

MR. JUSTICE HUMPHREYS: Perhaps I may add a few words on my own. I have been interested in what has been said by every one of the speakers. I said rather a silly thing when I suggested that the procurement of abortion may not amount to an operation. What was in my mind was not the possible sequelæ. The means used are so very different from those employed in the case of one's friends who undergo from time to time a serious operation. But it is well that it should be known—it is well that I as a mere layman should know—that a person who undertakes to procure an abortion on a woman is undertaking something which is not necessarily going to end with the miscarriage.

May I just say a word about the statistics which have been presented to us? I doubt very much whether the statistics are very reliable as statistics of criminal abortion. My experience dates from about 1889. I have seen a great many abortionists in the dock. I have defended them, prosecuted them, and during the last ten years I have tried them. The number of doctors among them is infinitesimal, and the police reports which I have read—confidential reports presented to the Home Office—about the amount of abortion believed to be rife in a particular place deal with doctors scarcely at all. The abortions are, as far as my information goes, to a very large extent, as one of the speakers suggested, carried out by the women themselves, and when successful these, of course, never get into the statistics at all. Others are carried out by people, almost all of them—though not quite all—women who have some slight medical knowledge, a sort of half-training as a nurse, or something of that kind. They are professional abortionists and commit a crime—because nobody will doubt that in their case it is a crime—for money. They commit them wholesale, and many of them boast of the hundreds of women they have helped out of their trouble. On the other hand, doctors, even

the most successful "therapeutic abortionists," I do not suppose ever deal with hundreds of cases in a year. That is why I think these statistics are not of great reliability.

I am bound to say that my information is that the crime of abortion is increasing, though not to any great extent. Dr. Oxley and Dr. Letitia Fairfield said something that is very interesting to me. Dr. Oxley said in effect, "I believe that I am entitled to do my best for my patient. I consider no law while I am dealing with my patient, and if I am satisfied that my patient's interests require it, I perform that particular operation, and I shall not be stopped from doing so, by the consideration that I might possibly be getting myself into trouble." Any law which comes between the doctor and what he as an honest and skilful man believes to be really necessary for his patient is, in Dr. Oxley's view, a ridiculous law which would never be enforced by public opinion. Dr. Letitia Fairfield added this, that there are many things which doctors do which may be said to give rise, if not to criminal prosecution, at any rate to a serious risk of an action for damages against them if anybody were foolish enough to bring such an action. That is perfectly true. Every time a doctor handles a patient he commits a technical assault. Of course, if the patient is able to talk and to understand what is going on the patient's consent is a complete answer. But what about a patient who has had an accident on a country road, and the doctor called to the case has to do something to save him from bleeding to death? Is the doctor going to hesitate because the patient, when he comes to, may say, "What right had you to apply a tourniquet to me?" What right the doctor had in law I do not know, but in humanity he had every right.

Dr. Oxley has said—I do not say I agree or disagree—but it is what a brave man would say and would practise—"Consider your patient, consider nothing but your patient's welfare, and if you come to the honest conclusion that your patient's welfare demands that you take a certain course, take it, and run the risk of somebody taking a different view." I am quite sure that Dr. Oxley would agree with me in this, that it should not be done in a hole-and-corner way, because in that case people may doubt your *bona fides*. You should get your brother physicians or surgeons around you, you should get a thoroughly qualified hospital nurse to come and attend whatever it is you are going to do, you should let the whole world know what you are doing and why you are doing it. Otherwise the man who carries out an abortion which in certain circumstances might be a criminal offence is a fool.

The reason why I said I could not advise you as a matter of law whether the operation of procuring abortion for the purposes of helping the patient's health was illegal or not was just this, that I do not know what you mean by assisting the patient's health, and nobody has ever been able to put into words how far you propose to go. When somebody puts a concrete case to me, and gives me the history of the patient, saying that the doctor found out this, that, or the other, and came to the honest conclusion that it was essential that an operation should be done, then I do not think the jury would disagree with the view that the judge would take in that matter, and it would be a view favourable to the doctor. But until you can get some form of words as simple as the words "for the purpose of saving life," I hesitate to say that the doctor is entitled to perform an operation for procuring miscarriage merely to make the patient more healthy, because I do not know what it is you are proposing. I think you would find if you went to Parliament and asked for an alteration in the law in that respect, it would be your great stumbling block. You would find it very difficult to get any formula which,

on the one hand, would be what you medical men want in order to be allowed to carry out the procedure, and, on the other hand, would not allow professional abortionists to do what you do not want them to do.

On MR. JUSTICE HUMPHREY'S summing-up it was suggested that a vote be taken on the motion "That the law of abortion requires reform," and on a show of hands a majority, but not a large majority, was in favour of the motion. The hands were not counted.

DR. LEONARD FINDLAY proposed a vote of thanks to the Chairman and speakers, particularly to Mr. Justice Humphreys, not only for his valuable help in the Debate, but also because his presence in the chair had made it possible to have this combined symposium of the medical and legal professions.

The vote of thanks was supported by MR. H. J. PATERSON, Chairman of the Executive Committee of the Fellowship, who said that it ought to be widened to include in it Dr. Findlay himself, because he had been responsible for making all the arrangements for the debate.

The vote of thanks was duly accorded, and the proceedings terminated.

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