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RESEARCH ARTICLE

Midwives' oaths: everyday life and the law in seventeenth-century England

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Abstract

This article explores historical and legal approaches to past society, asking what each has to offer the other. Using early modern midwives' oaths as a case study, it examines the extent to which the law shapes everyday life and society, and *vice versa* allowing us to situate early modern midwives at the intersection of a number of important and competing seventeenth-century institutions including state, church, society, and profession. We argue that a historico-legal approach to the practices of seventeenth-century midwives demands a reconsideration of the historiography of medical ethics and of the professions more broadly. It situates midwives as holders of formal office, and agents of the emergent early modern state and encourages reflection on the nature of ethical practice, and professional regulation within their social, cultural, and political context.

1. Introduction

The law is an inescapable part of life. It shapes the worlds of work, of rest, and of play in ways that reach every social level both fairly and unfairly. For over a decade, socio-legal scholars have understood the relationship between law and everyday life to be mutually constituted in a dynamic and emergent process, rather than the imposition of the former upon the latter. Law-thought and legal relations, it is argued, dominate self-understandings and understandings of one's relationship to others. Humans internalise the law's meanings. To cite Clifford Geertz the law 'colonises our souls'.¹ If people's identities and relationships are crafted out of legal ideas, then even situations without obvious legal meaning cannot escape the constitutive power of the law. To fulfil a social role, to be a wife, a doctor, a consumer, all tacitly implicate the law.² Laws not only reflect dominant socio-cultural norms and expectations, they are also shaped by them. 'In entering the realm of lived experience', argues Patricia Ewick, 'legal rules are articulated within particular social and historical contexts that shape the law's effects'.³ As such, legal documents offer a window into the moment in which they were drafted and executed.

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For historians, then, the theory of law and everyday life offers an opportunity to see the mutually constitutive relationship between lawmakers, and those subject to the law in the past. This article applies the methodologies of 'law and everyday life' to the oath sworn by midwives in seventeenth-century England. Despite being a form of legal document, the midwives' oath offers a valuable way to study a range of important patterns of change during a crucial period in the formation of the state, and of the medical professions. Taking a socio-legal approach allows us to more thoroughly ground what has been recognised as the midwives' office in social relationships, in state hierarchies and formation, and in the medical professions and the development of medical ethics. It allows us to think about law-making as a collective endeavour, and the way in which the law's presence in everyday life is a source of hegemonic power, while simultaneously exposing the law to forms of resistance, subversion, or challenge. We argue that it is possible to see the law's impact on everyday life in the oath, but that it also makes visible everyday life's impact on the law and on legal documents. This, we suggest, goes some way to explain the incongruities of the midwives' oath particularly when it is compared to the oaths of other office-holders, and to the oaths of the medical professions in this period.

2. The midwives' oath

You shall sweare, First, that you shall be diligent and faithfull, and readie to helpe every Woman labouring of Childe, as well the poore as the riche; and that in time of necessitie, you shall not forsake or leave the poore woman, to go to the Rich.

2. Item, You shall neither cause nor suffer any woman to name, or put any other Father to the childe, but onely him which is the very true Father thereof indeed.

3. Item, you shall not suffer any woman to pretend, faine, or surmise herselfe to be delivered of a Childe, who is not indeed; neither to claime any other womans Childe for her owne.

4. Item, you shall not suffer any Womans Childe to be murdered, maimed, or otherwise hurt, as much as you may; and so often as you shall perceive any perill or jeopardie, either in the Woman, or in the Childe, in any such wise, as you shall be in doubt what shall chance thereof, you shal thenceforth in due time send for other Midwifes and expert women in that facultie, and sue their advice and counsell in that behalf.

5. Item, that you shall not in any wise use or exercise any manner of Witchcraft, Charme; or Sorcery, Invocation, or other Prayers than may stand with Gods Laws and the Kings.

6. Item, you shall not give any counsel, or minister any Herbe, Medicine, or Potion, or any other thing, to any Woman being with Childe whereby she should destroy or cast out that she goeth withal before her time.

7. Item, You shall not enforce any woman being with childe by any paine, or by any ungodly ways or meanes, to give you nay more for your paines or labour in bringing her a bed, then they would otherwise do.

8. Item, you shall not consent, agree, give, or keepe counsell, that any woman be deliverd secretly of that which she goeth with, but in the presence of two or three lights readie,

9. Item, you shall be secret, and not open any matter appertaining to your Office in the presence of any man, unless necessity or great urgent cause do constrain you to do so.

10. Item, if any childe bee dead borne, you yourselfe shall see it buried in such secret place as neither Hogg nor Dogg, nor any other Beast may come unto it, and in such sort done, as it may not be found or perceived, as much as you may; And that you shall not suffer any such childe to be cast into the Jaques or any other inconvenient place.

11. Item, if you shall know any Midwife using or doing any thing contrary to any of the premises, or in any other wise than shall be seemely or convenient, you shall forthwith detect open to shew the same to me [the bishop] or my chancellour for the time being.

12. Item, you shall use yourself in honest behaviour unto the woman being lawfully admitted to the roome and Office of a Midwife in all things accordingly.

13. Item, That you shall truly present to my selfe, or my Chancellour, all such women as you shall know from time to time to occupie and exercise the roome of a Midwife within my foresaid Diocese and jurisdiction of [name of Diocese] without my License and admission.

14. Item, you shall not make or assigne any Deputie or Deputies to exercise or occupie under you in your absence the Office or roome of a Midwife, but such as you shall perfectly know to be of right honest and discreet behaviour, as also apt, able, & having sufficient knowledge and experience to exercise the said roome and Office.

15. Item, you shall not be Privie, or consent, that any Priest, or other partie, shall in your absence, or in your companie, or of your knowledge or sufferance, Baptise any child, by any Masse, Latine Service, or Prayers, than such as are appointed by the Lawes of the Church of Englande; neither shall you consent, that any child, born by any woman, who shall be delivered by you, shall be carried away without being Baptised in the Parish by the Ordinarie Minister, where the said child is borne unless it be in the case of necessitie, Baptised privately, according to the Booke of Common Prayer; but you shall forthwith upon understanding thereof, either give knowledge thereof to me the said Bishop, or my Chancellour for the time being.

All of which Articles and Charge you shall faithfully observe and keepe, so help you God and by the contents of this Booke [the Bible].

The Book of Oaths and The Severall forms thereof, both Antient and Modern. (London: W Lee, M Walbancke, D Pakeman, and G Bedle, 1649), pp. 284–290.

3. Why early modern midwives?

Midwives were subject to a system of episcopal licensing from early in the sixteenth century. The system had been in place since at least 1512, approximately the same time as authority for the oversight of physicians and surgeons was given to the episcopacy by an *Act concerning Phesicians and Surgeons* (3 Hen.VIII.c.xi).⁴ Midwives were not mentioned in the Act, nor to our knowledge was there any formal provision of canon law relating to the licensing of midwives. The Church therefore had

no express authority from either canon or secular law to issue licences for midwifery, yet by the middle of the sixteenth century midwives had been subsumed into the episcopal licensing system.⁵ In order to obtain a licence to practise, a midwife was required to complete an informal apprenticeship to a licensed midwife.⁶ Upon application she would be examined by the local bishop and/or his deputy and potentially a number of local medical men or clergy.⁷ The aspiring midwife would then be required to present both written and oral testimonials from 'honest women of great gravitie' that they had attended during their apprenticeship.⁸ This requirement was not applied to either surgeons or physicians, making the evidence of fitness to practise more onerous for midwives than for medical practitioners. Should everything be to the bishop's (or his representative's) satisfaction, the midwife would be required to pay a substantial fee (between £1 and £2 in London according to Evenden's research) before swearing her oath.⁹ The resulting licence was to be retained for presentation at the bishop's visitations.

The application of midwifery licensing practices was neither uniform nor universal.¹⁰ Samuel Thomas' survey of midwives in seventeenth- and eighteenth-century York has suggested that compliance with licensing practices depended upon the parish incumbent's enthusiasm for administrative detail. A midwife, he found, applied for a licence 'only when Church officials forced her to do so'.¹¹ Yet, whilst licensing practices were far from uniformly applied, there is evidence to demonstrate that licensing was widespread. Doreen Evenden identified 170 licensed midwives in London between 1607 and 1641.¹² David Harley found multiple incidences of medical men providing license testimonials for midwives to the parish authorities in Chester.¹³ Julia Allison documented a further 70 midwives named or identified in provincial parish records across the sixteenth and seventeenth centuries, only three of which were explicitly recorded as being unlicensed.¹⁴ The lack of uniformity in the application of midwifery licensing practices does not mean that these practices were inefficient or ineffective. Episcopal licensing requirements both derived from and legitimised midwives' informal practices, providing a framework against which 'good' midwifery practice was measured and therefore setting the standards for both licensed and unlicensed midwives.¹⁵ This framework was widely understood and appreciated by midwives, by the Church and crucially, by the communities in which midwives worked.¹⁶ Midwives' oaths were central both in articulating this framework of good practice, and in educating the local community about that framework. Early modern midwives therefore were uniquely positioned, subject to regulation from both the state and from society.¹⁷ The oath allows us to study this intersection between state and society in some depth and to understand the pressures that each exerted upon the other. For consistency, we will primarily refer to the midwives' oath contained in the 1649 edition of *The Book of Oaths*.¹⁸ This book was an early attempt to standardise elements of public office and provide reassurance during a period of great social upheaval. It claims to be 'very useful for all persons whatsoever especially those that undertake any Office of Magistracie or publique Employment in the Commonwealth'. The book was reissued three times by different printers and booksellers between 1649 and 1715.¹⁹

Historiographical considerations of the midwives' oath have focused upon midwives' ability to baptise sickly infants. Forbes suggested that, for the Church 'the overriding issue seems at first to have been the proper baptism of the infant'.²⁰

Guy, meanwhile, proposes that the capacity to baptise brought the midwife onto the 'frontline of the church's ministry' thus 'inevitably the Church required a central role in her regulation'.²¹ More recently however, Doreen Evenden has suggested that it is 'unlikely that ecclesiastical licensing of midwives was undertaken primarily out of a concern with baptism'.²² David Harley acknowledges the role of the midwife's oath in policing religious conformity but notes that the process of licensing was 'not irrelevant to the task of assessing the technical competence of those seeking licenses'.²³ Julia Allison similarly dismisses the idea that baptism was the primary concern of the episcopacy when licensing midwives.²⁴ The clauses of the oath on baptismal practice had broader implications for the episcopacy, linked as they were to concerns about conformity to the still precarious Anglican Church. Thus, the matrons who recommended Isabel Grymes for a midwives' licence in 1688 made sure to confirm that:

[she] is a person that is conformable to the Church of England and we humbly Crave your worshipps to graint her a Lycence whereby shee may performe the office of Midwife for wee whose names are under written doe know her having had some experience of her to bee a performer well qualified for the undertaking of such an office.²⁵

The Church's concerns did go beyond the theological in this period. Until the poor law reforms of the early nineteenth century, the parish was the main unit of social administration in England. The Church administered parish relief and maintained social order. It was, therefore, an important enforcer of patriarchal hierarchies. Historians of women's work debate the extent to which the medieval period represented a 'golden age' of female employment, but there is widespread agreement that the early modern period saw the emergence of a secondary labour market for women, more precarious and poorly paid than their male counterparts.²⁶ Women's work, noted Judith Bennett, became increasingly defined as work requiring little training or initial capital, that could be done in spare moments around the demands of young children, and the shared family occupation.²⁷ Midwifery, as a reasonably well-paid occupation, pursued independently of the household, could be seen as a threat to patriarchal hierarchies and therefore necessitating regulation. Recent scholarship by Maria Agren has sought to deepen our understanding of the relationship between the ubiquitous patriarchal hierarchy and subordination of early modern life, and married women's work. Whilst accepting that women's work is much harder to identify in the historical record as any occupational marker is generally subsumed into a descriptor of marital status, Agren suggests that married women had much greater access to economic opportunity. Unmarried women, Agren notes using her 'verb-based' method of identifying women's work, generally held menial service roles whilst married women might trade, teach, provide accommodation, or act as the local midwife.²⁸ Agren's work has led to an overhaul in the way historians are identifying work in the historical record. Single occupational titles have been described as 'fictions of the archive', for men as well as women, with greater historiographical focus being placed upon 'working identities' that emphasise sets of values or ethics shared by groups of workers.²⁹ Working identities in the early modern period were, suggests Hailwood and Waddell, not a case of

what you did, but rather *how* you did it. Looked at from this angle, the midwives' oath represents a clear statement of working identity, within the constraints of a patriarchal society and the competing expectations of family, neighbourhood, church, and state.

4. Law and everyday life

Midwives' oaths reflected and reinforced their role within the social and ecclesiastical hierarchies that governed and regulated early modern lives. Midwifery was one of the few female roles in early modern society that carried with it a formal occupational status.³⁰ In exchange for this status, midwives were accountable to the state in the form of the local parish authorities. Unlike physicians, whose primary accountability was to their colleagues, midwives were required to inform the bishop of unlicensed practice and, as we shall see, help him to exercise control over women's bodies. As such, the midwives' oath firmly allocated a midwife's official allegiance to the regulatory hierarchy in which they operated. This regulatory hierarchy, as Michael Braddick has shown, relied heavily upon local participation and co-operation.³¹ In these local legal hierarchies, where parish officers had a duty to uphold socially agreed standards of morality and public order, local officeholders occupied an important role: identifying transgressions, reporting them to the necessary authorities, and occasionally giving their evidence at court. Yet officeholders, and local opinion more generally, also shaped the effectiveness of this form of government.³² Officeholders were servants of the crown, but they were also servants of the local community creating the potential for conflict where their neighbours did not agree with the laws being enforced upon them.³³ Without the co-operation of officeholders such as midwives, laws and regulation might be difficult to enforce.

Several items in the midwives' oath address questions which today would be classified as addressing obligations of confidentiality. The tensions between the social and the legal expectations of midwives are particularly visible in these clauses which, at first sight, appear contradictory. The oaths' sweeping demand that midwives 'be secret, and not open any matter appertaining to your Office in the presence of any man, unless necessity or great urgent cause do constrain you to do so [item 9]' appears anomalous until it is considered within the broader historical traditions of birthing, and the gendered nature of reproductive knowledge in this period. The word 'secrets' had long been used to describe female reproductive organs, and reproductive processes more broadly.³⁴ As such, the association with midwives and 'secrets' was longstanding: the use of the term in the oath was therefore a reference to midwives' established role as controllers and keepers of reproductive knowledge and practice, rather than confidentiality in the modern sense. Moreover, it is notable that the oath's requirement that midwives maintain secrets was applicable to the office of midwifery. Confidentiality, a promise to be secret, was not restricted to the sharing of occupational secrets as it was in surgeon's oaths of the period but was articulated in a much broader form. The promise to keep secrets also encompassed elements of the birthing woman's confidentiality. This appears to have been an important factor of 'good' midwifery practice as far as birthing women were concerned. When Nantwich midwife, Anne Knutsford, was sued for continuing to practice midwifery following the revocation

of her licence, one of the most common complaints against her was that she 'revealed the secrets of women both to men and to women'.³⁵ Knutsford's indiscretions were alleged to include the amount of bleeding that took place during a birth, the smell of the infant following a delivery, and accusations of women pretending to be unable to breastfeed to deceive their husbands.³⁶ This suggests that, for the women of Nantwich at least, the promise to maintain the birthing woman's confidentiality was valued by local women and therefore a key part of the framework defining 'good' midwifery practice.

While baptism was not the sole, or even the primary, reason for the episcopal licensing of midwives, its inclusion in midwives' oaths reminds us that religious conformity, and the rituals and practices found at what Raymond de Vries has called the 'poles of existence' concerned both the parish authorities, and the state more broadly.³⁷ By virtue of their social status and the important 'office' of midwifery, midwives were allowed to baptise infants where it was thought they might not survive long enough to be baptised by the local clergyman. Liturgical accuracy was the focus both before and after the English reformations, though the precise nature of that liturgy altered several times over the period. Pre-reformation, the concern was on avoiding witchcraft, or consigning the infant to Limbo through the use of improper words or actions (either intentionally, or through ignorance). After the reformations, the focus was on preventing the use of old ways, which might result in the infant being baptised a Catholic (and therefore destined for Hell).³⁸ As such, item five of the oath requires that a midwife 'shall not in any wise use or exercise any manner of Witchcraft, Charme; or Sorcery, Invocation, or other Prayers than may Stand with God's Laws and the Kings'.³⁹ Baptism was not the only religious practice associated with birthing. As a broadly acknowledged moment of mortal peril for the mother and her child, prayers were often said in the birthing chamber.⁴⁰ Some midwives also relied upon the use of charms and objects associated with a safe deliverance from travail.⁴¹ Strict prescription of the nature of the religious rituals of childbirth was of great concern in a period when conformity to the Church of England was conflated with loyalty to the monarch. Item 15 of the oath therefore set midwives the task of reporting instances where a child might be baptised 'by any Masse, Latine Service, or Prayers, then such as are appointed by the Lawes of the Church of England'. As such, midwives were required to act as enforcers of religious conformity.⁴²

The content of midwives' oaths therefore reflected not only their increasing engagement with the state via the parish authorities, but also the state's ever-changing concerns. Naomi Tadmor has emphasised the extent of the control exercised by parish officials, particularly over the lives of the poor. She notes 'it was over the matters relating to women's fertility, however, that the closest surveillance was exercised to forestall any likely charge for child support'.⁴³ Three main areas of concern amongst the parish authorities are evident in midwives' oaths: bastardy and infanticide; maternal status (and the subsequent authority that that status brings); and the proper adherence to the Anglican liturgy in the baptism of sickly infants, and in the burial of stillborn infants. The filiation of illegitimate children was of real concern to parish authorities throughout the early modern period. The Elizabethan poor laws required the parish authorities to maintain for life individuals born within the parish boundaries where their father was not known. Such an

undertaking could be costly and was therefore to be avoided where possible. Midwives were ideally situated to both identify and inform the parish authorities of an infant's paternal details. Item 2 therefore sets out midwives' duty to inform the parish of the name of the father should she become aware of it during the woman's travail.

Item 2, then, articulates age-old concerns about false accusations of paternity. Midwives' social importance in the neighbourhood acquired through their midwifery practice, and their central role in the all-female environment of the birthing chamber, increased the possibility that they would be in possession of accurate information about the paternity of illegitimate infants. Conversely, this privileged access to information about the reproductive lives of the women in their neighbourhood also had the potential to threaten law and order in the parish. Midwives were the only parish officials with access to the birthing chamber. As such, the oath articulates parish authorities' fears of subversion. Item 4 therefore forbade midwives 'suffer any Womans Childe to be murdered, maimed, or otherwise hurt, as much as you may', whilst item 6 cautioned midwives 'not to give any counsel, or minister any Herbe, Medicine or Potion, or any other thing, to any Woman being with Childe whereby she should destroy or cast out that she goeth withal before her time'. These fears reflected the assumed links between illegitimacy, secrecy and infanticide that were fundamental in the passing of the *Acte to pvent the murthering of Bastard Children* in 1624.⁴⁴ The Act targeted the 'many lewd Women that have been delivered of Bastard Children, [who] to avoyde their shame and to escape punishment, doe secretlie bury, or conceale the Death, of their children'. The Act provided that if a woman was delivered of a child who if born alive would be a bastard and she sought in any way to conceal the death of the child:

So that it may not come to light, whether it is borne alive or not but be concealed, in every such Case the Mother so offending shall suffer Death as in case of Murther, *except such Mother can make pffe [proof] by one Witness at the least, that the Child (whose Death was by her soe intended to be concealed) was borne dead* [our emphasis].

Women accused under the Act had to prove either that the infant had been born dead, or that they had not been pregnant. The provisions of this law were reflected in item 8 of the oath which demanded 'you shall not consent, agree, give, or keepe counsell, that any woman be deliverd secretly of that which she goeth with, but in the presence of two or three lights readie'. As prosecutions under the terms of this Act increased, midwives' privileged position in the birthing chamber led to them becoming further entangled in the legal processes of the state. Midwives played a central role as 'expert witnesses' in these prosecutions, assuming an important status in legal and social hierarchies.⁴⁵

Midwives also played an important role in the allocation of maternal, or matronly, status. Marriage, and subsequent parenthood, was an important source of social authority for both women and men in early modern England.⁴⁶ Once married, and having given birth, women acquired a level of social status that not only allowed them to be present in the birthing chamber, it elevated them above their

childless peers in local hierarchies.⁴⁷ Women who had given birth could participate in the legal processes of early modern England, as members of the Jury of Matrons and in accompanying midwives and other parish officers in ‘searching’ the bodies of women suspected of illegitimate or secret pregnancy.⁴⁸ Searching generally involved examining a woman’s breasts for signs of milk, and her stomach for signs of having recently been pregnant. As such, the status that women acquired through giving birth was considerable. Item 3 of midwives’ oaths prevented midwives from allocating women matronly status through false assertions that they had given birth by demanding ‘you shall not suffer any woman to pretend, faine, or surmise herselfe to be delivered of a Childe, who is not indeed; neither to claime any other womans Childe for her owne.’ This clause of the midwives’ oath reflects specific contemporary concerns for early modern parish authorities. These concerns reached right to the top of seventeenth-century society, when in 1688 Mary of Modena was accused of smuggling her son, James Edward Francis Stuart, into the birthing chamber via a warming pan supplied by a complicit midwife.⁴⁹ These trepidations about false claims to maternal (and therefore political) authority were allied with broader social concerns about the secrecy and subversive potential of the birthing chamber. As agents of parish authority and power, through the terms of their oaths, midwives provided an opportunity for the authorities to maintain surveillance over a gendered social space that was not accessible to the usual state mechanisms.

5. Everyday life and the law

Midwives’ oaths did not just dictate the relationship between midwives and the parish authorities, they also reflected the relationship between midwives and the birthing women that they attended. Jonah Miller has shown how, during the central period of the seventeenth century, office-holding was becoming detached from personal status. This process had started with the professionalisation of excisemen at the beginning of the century, whose authority was derived not from their status as householders and respectable men, but from training and the application of impersonal norms.⁵⁰ Midwifery, however, remained embedded in social authority. As such, midwives’ loyalties were divided between their official duties to the parish authorities, and their obligations to their neighbours, whose infants they delivered. Many of the oaths’ clauses speak to the perceived needs of birthing women, reflecting the midwife’s standing within the community, her social authority, and the extent to which everyday life shaped the law.

The first clause of a midwife’s oath sets out her duty to treat birthing women irrespective of their status or ability to pay her fees. For birthing women, this clause ensured that they would be attended throughout their labour and delivery, even if they were destitute. As such, the care of a midwife with some level of experience could be assumed by even the poorest women.⁵¹ This first clause of the early modern midwives’ oath also reflected the interests of the parish authorities. By ensuring that midwives did not refuse to treat poor women or single women, the local authorities ensured that they had a window into every birthing chamber in the parish. In prohibiting midwives from distinguishing between birthing women economically, and in emphasising their duty to attend a woman where called, the oath also

indicates an element of autonomy and patient choice particularly in regions with more than one midwife in reasonably close proximity.

In requiring midwives to be 'diligent and faithful' the oath created an obligation for the midwife to be proficient in her art and this was iterated in item 14's requirement that midwives ensure any deputy that they appoint was 'apt, able, and having sufficient knowledge and experience to exercise the said roome and Office [of midwife]'. Item 4 extended a midwife's duty of care to include the infant within the boundaries of their obstetric expertise. Julia Allison's prosopographical study of sixteenth-century midwives in rural East Anglia has shown that they were skilled at identifying children with low chances of survival and baptising them accordingly.⁵² This emphasis on skill, expertise, and professional judgement runs throughout the remainder of the midwives' oath as a core assumption of 'good' midwifery practice. The oath also recognised the vulnerability of birthing women in its requirement that midwives exercise 'honest behaviour' [item 12] and in demanding that midwives refrain from extracting more money 'than they would otherwise do' from women in labour [item 7]. This clause secures the confidence of the birthing woman and identifies midwives as healthcare professionals. It is an explicit statement of trust.⁵³ In recognising birthing women's vulnerability to exploitation, and in dealing with it explicitly, the oath set midwives apart from the 'Quacks', or unlicensed medical practitioners who became increasingly perceived as problematic by the medical occupations. It is worthy of note that once the episcopal system of licensing midwives broke down in the eighteenth century, midwives were increasingly vulnerable to accusations of quackery.⁵⁴

Item 4 of the oath sets out a midwife's duty to collaborate with her colleagues in order to ensure good outcomes for both birthing women and for the reputation of the occupation. Item 4 requires midwives to recognise their own limitations, and to identify scenarios that require more than one midwife, or a midwife of greater experience and skill. This clause of the midwife's oath is remarkable, however, in that it does not restrict midwives to requesting assistance within the gendered hierarchies of early modern medical practice by demanding that she call a surgeon. The oath instead requires her to seek help from her fellow midwives, reflecting their position in the social hierarchies of their community and their competence. Physicians, surgeons, and apothecaries are entirely absent from the midwives' oath, only 'other Midwives' and expert women in that facultie' though a surgeon would be called when surgical intervention was deemed necessary. Moreover, this need to seek help is not framed by concerns for occupational or professional image.⁵⁵

Midwives were not only required to collaborate with each other in the provision of good care, they were also required to provide for the proper instruction of their deputies. Item 14 demands that midwives undertake not to 'make or assigne any Deputie or Deputies to exercise or occupie under you in your absence the Office or roome of a Midwife, but such as you shall perfectly know to be of right honest and discreet behaviour, as also apt, able, & having sufficient knowledge and experience to exercise the said roome and Office.' This promise to ensure that colleagues are properly trained echoes the formal training mechanisms of surgeons and apothecaries, who commonly undertook apprenticeships both in learning their trade, and in maintaining it. Midwives did not produce any of the formal documentation

associated with apprenticeship such as indentures, yet this clause in the oath supports evidence that midwives did undertake an informal apprenticeship before seeking a licence to practice.⁵⁶

Items 11 and 13 merit special note. Item 11 required midwives to report poor practice amongst their colleagues. Item 13 demanded that midwives report fellow midwives who were practicing without a license to the episcopal authorities. Such a requirement to raise and report concerns to regulators only recently resurfaced as a major concern for current U.K. healthcare policy following the scandals at Mid-Staffordshire Hospital. After decades of argument the Care Act 2014 introduced a statutory duty of candour, and the 2016 Report, *Freedom to Speak Up* imposed duties on current health practitioners resonant of the obligations taken on when an early modern midwife swore her oath.⁵⁷ The practical impact of the midwife's obligation to report were limited by uneven enforcement of episcopal licensing across England during this period. In theory, then, the oaths set and monitored minimum standards of midwifery practice. On the ground, however, there may have been little practical distinction between licensed midwives and their unlicensed counterparts. The oaths nonetheless proffer a model of good practice. Item 11 is remarkable. Its injunction that midwives identify and report practice that they considered to be 'contrary to any of the premises [of the oath] or in any other wise than shall be seemly or convenient' closely resembles the modern ethical requirement to raise concerns about 'wrongdoing, risk, or malpractice' in modern healthcare guidance.⁵⁸ Moreover, if it is accepted that midwives' oaths, even though not universally applied, represent a 'codification' of informal midwifery practice in the early modern period, then this promise not only resembles the revived duty of candour and resonates with current debates about whistle-blowing, it assumes a recognisable standard of practice amongst midwives, against which poor practice could be identified and defined.

These clauses demonstrate the extent to which regulatory law could be influenced by social expectation, even where that social expectation might be in tension with the requirements of the licensing authorities. Bio-ethicist Robert Baker identifies a clear difference in the language used in these clauses of the midwives' oath and the ones that reflect the state's concerns. He describes these patient-focused clauses as being written in the 'person-language of ethics'.⁵⁹ 'Ethical language', Baker suggests, 'relates to people's more mundane ideals of midwives relationship to society, to each other, and to themselves.' For Baker, as a scholar of ethics and the law, the midwives' oath represents a clear code of medical ethics.

6. Early modern midwives' and office-holding

Midwifery was not the only office women could hold in the early modern period, though it is rare to find office-holding women in different capacities in the seventeenth century. Jonah Miller, Roey Sweet and Amanda Capern have shown that women could hold office as sextons, overseers of the poor, and even the surveyor of highways, by virtue of being the head of their households.⁶⁰ Midwifery was, however, the only office that was held exclusively by women, and the only office that was totally exclusionary based upon gender (despite the best efforts of some parish authorities to exclude women from the householder qualification).⁶¹

The midwives' oath was markedly different from the oaths sworn by other medical practitioners in seventeenth-century England. Members of 'The Society and Company of Barbur Chyrurgeons, Wax and Tallowchandlers' in the City of Chester swore 'by Almighty God that you shall be faithfull and true to the same Company & shall be obedient and dutyfull to the Elders of this our Company.' They promised to 'conceale, keep secret and not disclose such counsel as at any time hereafter shall be used and spoken of by or amongst the said company, at any time of our Assembles or meetings.' If members' behaviour 'touching ye said company or any member thereof shall be disorderly, so as the same company or the greater number thereof shall think you either finable or punishable for the same then you shall [be fined or otherwise punished].' Members were required to attend all meetings unless ill and to 'give or yield your best advice and counsel for and concerning the good government and commonwealth of the said company within the said City.' It was also ordered that 'no brother shall disorderly behave himself amongst his said brethren in their meeting house, nor disturb nor interrupt any of the said brethren in telling his tale or matter before the Aldermen or Stewards' nor that any 'brother of the same shall commense any action or suit in law against any of their sayd brother of the company, for any matter, either of debt or account whatsoever.' Surgeons were not to keep more than one shop, nor to accept apprentices without the approval of the Aldermen. Finally, it was ordered 'that no brother of the said Society and company shall dispraise any work done by any of his said brethren of his occupation.' He must 'not to report or say it is worse than if were his own nor to dispraise ye work of what price soevr it be, but to say ye best by yt he can.'⁶² The terms of the surgeon's oath reflect their primary allegiance to their professional organisation and the increasingly dominant fraternal forms of power identified by Jonah Miller in his study of early modern policing.

Given our suggestion that midwives acted as agents of state authority in this period, it might be expected that the midwives' oath resembled those of other parish officials, such as constables. Yet the oaths of constables reflect only their duties to the monarch, and to the Justice of the Peace. Parish constables in Colchester in the second half of the seventeenth century swore to execute all warrants that came into their hands, to ensure that the watches be kept according to statute, and to execute the law for the apprehending of 'Rogues, vagabonds, and sturdy beggars'.⁶³ Despite occupying the space between their community and the parish authorities, much as midwives did, the oaths of parish constables contain no acknowledgement of the needs or expectations of their neighbours. This is unsurprising. The entire role of the parish constable was to uphold and maintain order, as it was defined by the parish authorities. As with the terms of the surgeon's oath, the parish constable's oath reflects their primary allegiance to the authorities that gave them power. Midwives' oaths are far messier, reflecting the competing frameworks within which they operated. Their oaths took account of the needs and expectations of birthing women, the concerns of the licensing authorities, and of good occupational etiquette.

Surprisingly, the oath that most closely resembles that of the midwife in that it sets out competing responsibilities to the regulatory authorities, and to the client, is that of the Attorneys-at-Law. The lawyers' oath, published in the same edition of the *Book of Oaths*, demands that:

You shall doe no falsehood, nor consent to any to be done in the Court, and if you know of any to be done you shall give knowledge thereof unto my Lord Chiefe Justice, or other his Brethren, that it may be reformed; you shall delay no man for lucre or malice; You shall encrease no Fees, but shall be contented with the old Fees accustomed; you shall plead no Forraigne Plea nor suffer no Forraigne Suits unlawfully to hurt any man, but such as shall stand with order of the Law, and your conscience; you shall seale all such Processe as you shall sue out of the Court with the Seale thereof, and so the Kings Majesty, and my Lord Chiefe Justice discharged for the same; yee shall not wittingly nor willingly sue, nor procure to be sued any false Suit, nor give ayde, nor consent to the same, in paine to be expelled from the Court for ever; And furthermore, you shal use your selfe in the Office of an Attorney within the Court according to your Learning and discretion; so helpe you God, &c.⁶⁴

This oath contains many thematic similarities to the midwives' oath not least in its focus on the client, on the clarification of fee structures (including a formal suppression of fees), a form of honesty clause, and citing learning and discretion as the basis for a lawyer's authority. Moreover, the fears of potential clients are visible in this oath, in the prohibition of false law-suits, and on presenting falsehoods in court. Implicit in the clauses of these oaths is the social influence that could be exercised by midwives and by lawyers, embedded as they were in local hierarchies, and mediating between the state and the individual.

The precise textual origins of the midwives' oath are unknown, though they appear to have grown from bishop's visitation enquiries during the sixteenth century.⁶⁵ This is not particularly unusual in early modern promissory oaths whose authority generally comes from 'faith in a pristine point of origination'.⁶⁶ The midwives' oath was part of what Enid Campbell has called a 'new legal regime' of promissory oaths of office during the sixteenth century.⁶⁷ The midwives' oath explicitly designated midwifery as an 'office', indicating the perceived importance of midwives to early modern society. Holders of office in this period had a moral, civic, and legal presence.⁶⁸ They were seen as important in maintaining peace and stability, giving power and authority to an individual who was designated as suitable to the demands of office. Given midwives' potential to disrupt and subvert the patriarchal structures of the early modern parish through their authority in the birthing chamber, and through their status in the local community, it is perhaps unsurprising that the episcopal authorities sought to both harness and contain midwives' power using mechanisms that had already proved successful in the management of civic life.

Offices acquired shape over time in relation to adjacent offices and the demands of both the post and the legitimating authority.⁶⁹ Taking an oath of office, as midwives did, compelled officeholders to reflect upon the obligations of office, and often constituted the only clear statement of duties for an officeholder.⁷⁰ Yet oaths of office not only reflected the imposed demands of the legitimating authority. Oaths' legitimacy came from both the parish or civic elites that imposed them, and what James Lee has called 'craft elites' – the group into which the oath inducted the oath-taker.⁷¹ This is why, Lee suggests, an apprentice's master was present when he took his oath, to attest to his skill and competence.

Midwives did not, however, constitute an organised group in the same way as surgeons.⁷² For midwives, the ‘craft elites’ were the women that they had delivered, and who were required to present testimonials before the bishop attesting to their skill and good character. For example, the nomination for Judith Warmingham submitted to the Bishop of Chester in 1691 read:

We whose names are here under written Inhabitants of the cittie of Chester doe certifie that Judith Warmingham wife of John Warmingham of St Peters Parish in the said city Silk weaver hath delivered us of severall children with great skill and judgement and doe look upon her very expert in the practice of a Midwife.⁷³

This testimonial was signed by six women and two men. Surgeons were also called upon to provide testimonials for midwives wishing to attain a licence. The nomination for Ellen Fletcher in the same year, written by Silvester Richmond of Liverpool reads:

Ellen ye Wife of William Fletcher was bred up under hir mother Jan Hunt of Liverpoole in ye Practice of Midwifry for Several Years and was instructed by hir and since hir Death hath been a practicing ffive or six years with great diligents and sureness and I has been with hir for a time on that occasion and fair observe hir to be prudent in ye manadgment of their couvee.⁷⁴

The midwives’ oath was what Conal Condren has called a ‘proclamatory oath of passage’ comparable to the oath sworn by successful mayoral candidates, for example. Oaths of this nature, Condren shows, announced a change in status that had already taken place.⁷⁵ They simply cemented the transition, in his example from selected mayoral candidate to mayor, but in the context of this paper, from unlicensed midwife to licensed. The provision of patient testimonials as part of the licensing process confirmed that an applicant had already assumed the role of midwife in her local community. The oath codified pre-existing practices, tied a midwife into parish healthcare systems, and crucially for the licensing authority, defined her relationship with the parish authorities as well as her patients.⁷⁶ The midwives’ oath therefore reflected a number of different, and potentially competing, hierarchies within which midwives operated: those of the parish authorities and their concerns about the potentially subversive nature of the birthing chamber; those of society and their expectations of a midwife; and those of the local medical professionals and (for those in larger urban areas) the institutions that provided medical care.

The social, political, and care-work roles of the midwife shaped the contents of midwives’ oaths, reflecting the concerns of the licensing authorities, practitioners, and the women whom midwives attended. These women were involved in the licensing process through the provision of their written and oral testimonies and, as a result, were well informed about what could be expected of their midwife.⁷⁷ When the neighbours of Anne Knutsford in Nantwich, Cheshire, tired of her ‘base and scandalous tongue’ in 1663, they used the terms of her midwifery oath to frame their complaints about her lack of neighbourliness.⁷⁸ Despite the majority

of the deponents in the case acknowledging that Anne was ‘a very good Midwife and one of the best thereabouts’, it was her adherence to the terms of her oath that was used as the legal framework to chastise and restrain her.⁷⁹ Because Anne’s role as midwife was embedded in social, rather than medical hierarchies, her license to practice midwifery could be threatened by her failure to adhere to social expectations. The expectations of midwives as set out in their oaths were not confined to licensed midwives, instead setting a framework for ‘good’ practice that encompassed licensed and unlicensed midwifery practitioners.⁸⁰ Midwives who did not reach these expectations might struggle to find employment, particularly as women with a reputation for skilled practice might travel a significant distance at the request of a woman in labour.⁸¹

7. The midwives’ oath and the history of medical ethics

Early modern midwives’ oaths complicate our understandings of the history of the healthcare professions. Looked at through the lens of modern legal definitions, the midwife’s oath resembles an ethical framework more closely aligned with current medical ethical practices than the oaths of their contemporaries. Robert Baker’s article on the topic concluded that ‘the ethics detailed in the oaths of Anglo-American midwives is more sophisticated, articulate, and comprehensively developed than the ethics of other medical practitioners’.⁸² For historians, though, midwives are generally not seen as part of the medical establishment until at least the latter half of the nineteenth century. To a lawyer and ethicist, the contents of the midwives’ oath is sufficient to think of midwives not just as providers of medical care, but as arbiters of medical morality in a way that remained elusive to their ‘professional’ counterparts for a hundred and fifty years. The clauses in the midwives’ oath that Baker identifies as ‘ethical’ all relate to the social obligations of their role, obligations that were less marked in contemporary expectations of surgeons, physicians and apothecaries. Medical ethics, broadly understood, reflects the ‘right’ actions of a medical practitioner in any given situation.⁸³ They are, therefore, grounded in social and cultural ideas of acceptable medical morality. A code of ethics grounded entirely in medical culture would not necessarily reflect social ethical norms. We suggest that midwives’ unique place, at the centre of the social, religious, regulatory, and medical hierarchies of the seventeenth century, led to the development of a surprisingly modern code of ethics. It is *precisely because* midwives sat outside the medical professions of seventeenth-century England that their oaths appear ethical to modern eyes.

Whilst midwives sat outside the medical hierarchies of the seventeenth century, they should be assigned an important place in the historiography of the professions. Penelope Corfield has suggested the professions represented ‘the power of human knowledge in application to the service of humanity’.⁸⁴ Mystery, and the command of specialised knowledge formed the basis of professional power for Corfield, supplemented by the support of a receptive public in need of a professional’s services. The clauses of the seventeenth century midwives’ oath embody many of these professional attributes. In addition, they speak to an ethos of midwifery as a vocation, something highlighted by Rosemary O’Day as central to early modern professional development.⁸⁵ On a practical level, midwives and medical men occupied a similar

role in the mechanisms of what Harley calls 'legal medicine'. Harley defines medico-legal practice as 'all testimony delivered by midwives and medical practitioners in their professional capacity in cases where their knowledge had some bearing'.⁸⁶ His article lists cases heard in the Chester Diocese where midwives testified to their colleagues' skill and competence, certified the illnesses of the local population before the court, and gave expert evidence, often alongside practitioners of surgery and physic. In 1724, for example, Elizabeth Walker of Radcliffe wrote of one woman suspected of infanticide that she 'wass cartinly brought in bed be fore har time...for ye Child when it was born had neither to nele nor finger nele'.⁸⁷ This expert testimony was grounded in her knowledge of foetal development in the later stages of pregnancy, demonstrating both an awareness of current medical theory, and in the intricacies and demands of the legal system.

Seventeenth-century midwives represent an important point of transition between the ethics of religious morality, and medical morality where the former was in decline, and the latter was not yet developed. Despite lacking the defining features of a profession as they emerged in the nineteenth century, early modern midwives' oaths recalled an older understanding of profession associated with religious conformity, Christian duties of care and neighbourliness, and the responsibilities of public office.⁸⁸ In professing to adhere to their oath, we suggest that midwives acquired an occupational and moral status that gave them the necessary social authority to fulfil their obligations to both birthing women and to the parish authorities, and placed them at the forefront of the development of ethical medical practice.

A key criticism of the early histories of medical ethics, and an important justification for situating the origins of ethical medical practice in the later decades of the nineteenth century, is that earlier codes of ethics dealt with intra-practitioner relationships and the reputation of the profession rather than the interactions between patient and practitioner. The publication of Manchester physician Thomas Percival's book *Medical Ethics* in 1803 is generally seen as the origin of the phrase, and was hugely influential in the development of medical codes of ethics as the century progressed.⁸⁹ Percival's text was grounded in unseemly squabbles that took place in the final decades of the eighteenth-century, rather than in the patient/practitioner relationship.⁹⁰ This led a later editor of Percival's text, Chauncey Leake, to suggest that the term 'medical ethics' in this context was a misnomer.⁹¹ Jeffrey Berlant has suggested that codes of ethics were designed to justify the monopolistic privileges of a particular group.⁹² In stipulating entry requirements, including adherence to an oath or code of ethics, the medical professions could maintain control over the type of individual admitted to the profession and simultaneously emphasise their moral (and often financial) superiority over other practitioners of medicine. This approach, Duncan Wilson has shown, helped doctors to 'consolidate their professional expertise by delineating boundaries, excluding unqualified groups and positioning themselves as the only people capable of providing an essential service'.⁹³ J. Pritchard defined codes of ethics as 'bundles of intentional or behavioural requirements that members of a profession or group must comply with in order to remain part of the group'.⁹⁴ As such, codes of ethics amongst the medical professions can be seen as a method of maintaining the economic and cultural background of a particular social group and of consolidating their control over an area of practice. Yet midwives' oaths, again, differ from this definition. Early modern midwives' payments were individually negotiated and often

depended upon the financial situation of the birthing woman. Midwives' oaths were therefore not about manipulation of market forces, or the maintenance of a financial monopoly. Nor were midwives drawn from a particular social or economic demographic. As such, midwives' oaths were not designed to control or regulate membership of a formal profession.

It has also been suggested that early medical ethics were rooted not in medicine but in social and cultural practices. Mary Fissel has suggested that, at least in the late seventeenth and early eighteenth centuries, 'the behaviour of medical practitioners – surgeons, apothecaries, and even physicians – was governed by general codes of conduct, by the norms and constraints described by "manners" and "courtesy"'.⁹⁵ Codes of ethics, under this interpretation, were only necessary in the eighteenth century as older systems of patronage began to break down. 'By the later part of the eighteenth century', Fissel argues 'medical manners and morals became unglued; no longer were codes of conduct based on courtesy functional.'⁹⁶ Robert Baker develops this idea, suggesting that in Percival's ethic, 'medical practitioners exchange traditional moral autonomy – the right of each practitioner to assess his own actions by his own standards of medical and moral propriety – for collective standards of medical and moral propriety'.⁹⁷ What they gained, Baker suggested, is a collective autonomy against the increasingly dominant arbiters of medical care, the hospital. Yet, midwives' oaths were at their height under this system of patronage, and of manners. Moreover, the ethical promises made by midwives in their oaths set out collective standards of both medical and moral behaviour. Andrew Wear, in contrast, identified two opposing sets of ethics that were influential in the formation of early medical ethics: 'one based on the classical traditions, the other on Christianity.'⁹⁸ Classical traditions were generally the reserve of university-educated physicians. Christian precepts certainly emphasised care of the sick as an important and long-standing value as it did helping ones' neighbour in times of trouble, and these values are evident in midwives' oaths.⁹⁹ Yet, as we have seen, midwives' oaths went beyond simply detailing their Christian duties to help birthing women.

Early modern midwives' oaths set out the relationship between the birthing woman and her midwives, and both identified and formalised collective understandings of 'good' midwifery practice. Midwives' oaths reflect the practical concerns of midwives and the ethical demands of their practice. David Harley has argued that 'to understand the ethical position of early modern medical practitioners, it is necessary to consider the ideals to which they aspired, the difficulties that made them fall short, and the means they employed to castigate one another's shortcomings.'¹⁰⁰ As such, midwives' oaths clearly reflect an agreed framework of 'good' midwifery practice grounded in experience. The nineteenth century might be the seat of ethical medical practice for physicians and surgeons following 'the moral disarray in eighteenth-century British medicine' but for midwives, ethical practice had a place in the early seventeenth century.¹⁰¹

8. Conclusions

The application of socio-legal theories of the constitutive power of law allows historians to think about midwives' oaths from a new perspective. Thinking with, and around, these theories offers historians a new frame of reference for the study of

early modern midwifery, narratives of professionalisation, and the history of medical ethics. If we see the midwives' oath as constitutive and reflective of practice, we can see the expectations of midwives themselves, and of the women that they cared for, as well as those of the authorities that issued the oath. The oath is therefore both reflective and prescriptive. Read as social documents, the midwives' oath offers glimpses of what was important to birthing women in seventeenth-century England, as well as what was important to the parish authorities. The needs and issues of these two groups were sometimes, but not necessarily, at odds.

Thinking about early modern midwives as officeholders allows us to think of them as political agents, empowered (within the confines imposed upon them by a patriarchal society) by the office of midwifery to participate in legal proceedings, and to lay hands on the most intimate areas of the bodies of others. If, as Michael Braddick has argued, the early modern state was formed, rather than built, through the local powers of parish officeholders, then the midwives' oath encourages us to see women as active participants in state formation. The office of midwife embodied both state and social power, and the intersection of these two forms of authority run throughout the midwives' oath. Yet, in allowing us to see the influence of birthing women on the office of midwifery through the terms of the oath, theories of everyday law also allow us to think in greater depth about the way in which women, particularly married women, contributed to the formation of the state in seventeenth-century England. Jonah Miller suggested that 'the minutiae of legal changes ... played a crucial role in shaping the everyday experience of the state in early modern England', but this article suggests that this process was also true in reverse.

Thinking about the midwives' oath as a legal document allows us to explore the extent to which regulation shaped early modern society and midwifery practice, and to understand the agency of society in shaping historical regulation. Moreover, it allows midwives to be thought about in relation to the established medical professions of the period, and also allows us to consider them alongside other rapidly professionalising occupations (including the law). This study emphasises the importance of society in the development of medicine, midwifery, and medical ethics, encouraging lawyers to think about the role of non-formal regulation and its legal function. Despite black-letter legal histories of early modern medicine and the professions having overlooked midwifery as a topic, citing the total lack of laws to analyse until the first Midwives Act of 1902, this article shows that the absence of an act of parliament does not equate to a lack of legal influence or intervention.

As we have seen, scholars of ethics identify a number of ethical features in the midwives' oath often with some surprise as, from an ethicist's perspective, midwives' oaths are remarkably forward-reaching. We argue here that the midwives' oath's grounding in social expectation, and in the needs of the community, allowed an ethical code to develop that responded to the demands and expectations of both the patient and the regulatory authorities. This is very different from the 'ethics' propounded by Thomas Percival and his successors, which were grounded in the development of the medical institution, and in the gradual codification and standardisation of medical practice. Thinking about the midwives' oath as a code of ethical practice therefore has interesting implications for legal scholars. It offers an

historical framework against which lawyers can set the rise of modern ethical practice, and a contextual discussion of state, patient, and profession that may inform future work by framing questions about what ethical practice looks like, and who decides.

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Notes

1 Austin Sarat, *Law in everyday life* (Michigan, 1995), 29.

2 Patricia Ewick, 'Law and everyday life', in Neil J Smelser and Paul B Baltes eds., *International encyclopedia of the social & behavioural sciences*, 2nd edn (London, 2015), 471.

3 Ewick, 'Law and everyday life', 471.

4 3 Henry VIII, c.11; John Raach, 'English medical licensing in the early seventeenth century', *Yale Journal of Biology and Medicine* 16, 4 (1944), 267–88, 271. From 1518 physicians in London were regulated by the London College of Physicians.

5 John R. Guy, 'The episcopal licensing of physicians, surgeons and midwives', *Bulletin of the History of Medicine* 56, 4 (1982), 528–42, 537.

6 Thomas R. Forbes, 'The regulation of English midwives in the sixteenth and seventeenth centuries', *Medical History* 8, 3 (1964), 235–44, 237.

7 For example, Thomas Clayton retired from his Manchester surgical practice and subsequently signed testimonials for at least four midwives between 1722 and 1729. David Harley, 'The scope of legal medicine in Lancashire and Cheshire', in Michael Clark and Catherine Crawford eds., *Legal medicine in history* (Cambridge, 1994), 45–63, 47.

8 Doreen Evenden, *The midwives of seventeenth-century London* (Cambridge, 2000), 36.

9 *Ibid.*, 38.

10 This is not unusual to midwives. The licensing of surgeons and physicians outside London was also not uniformly applied. R. S. Roberts, 'The personnel and practice of medicine in Tudor and Stuart England, part I: the provinces', *Medical History* 6 (1964), 363.

11 Samuel S. Thomas, 'Early modern midwifery: splitting the profession, connecting the history', *Journal of Social History* 43, 1 (2009), 115–38, 117.

12 Evenden, *Midwives*, 17.

13 David Harley, 'Provincial midwives in England: Lancashire and Cheshire 1660–1760', in Hilary Marland ed., *The art of midwifery: early modern midwives in Europe* (London, 1994), 27–48, 29.

14 Julia Allison, *Midwifery from Tudors to the 21st century: history, politics, and safe practice in England* (London, 2020), appendix C, 195–6.

15 Sarah Fox and Margot Brazier, 'The regulation of midwives in England, c.1500–1902', *Medical Law Review* 20, 4 (2020), 308–38, 311.

16 Sarah Fox, "'Contrary to her profession as a midwife": skill, scandal, and the licensing of early modern midwives', paper presented at the Institute for Historical Research, November 2020, publication forthcoming.

17 Mary Fissel describes midwives as the 'shock troops of reform' in allowing the Church and State access to domestic spaces. Mary Fissel, *Vernacular bodies: the politics of reproduction in early modern England* (Oxford, 2004), 28.

18 *The book of oaths and the several forms thereof, both antient and modern, faithfully collected out of sundry authentick books and records, not hereuntofore extant, compiled in one volume* (London, 1649), 284–90.

19 Printed at London for W. Lee, M. Walbancke, D. Pakeman, and G. Bedle (1649); London, printed for H. Twyford, T. Bassett, B. Griffen, C. Harper, T. Sawbridge, S. Keble, G. Collins, J. Place, M. Wotton, and are to be sold in Fleetstreet and Holborn (1698); London, printed for Robert Gosling, at the Mitre and Crown against St Dunstan's Church in Fleetstreet (1715).

20 Forbes, 'Sixteenth and seventeenth centuries', 236.

21 Guy, 'Episcopal licensing', 538.

22 Evenden, *Midwives*, 26.

- 23 Harley, 'The scope of legal medicine', 46.
- 24 Allison, *Midwifery*, 8–10.
- 25 Chester Archives, EDC 5/1688/11, 23 June 1688.
- 26 Katrina Honeyman and Jordan Goodman, 'Women's work, gender conflicts, and labour markets in Europe, 1500–1900', *The Economic History Review* 44, 4 (1991), 608–28, 610.
- 27 Judith M. Bennett, "'History that stands still': women's work in the European past", *Feminist Studies* 14, 2 (1988), 269–83, 278.
- 28 Maria Agren ed., *Making a living, making a difference: gender and work in early modern European society* (Oxford, 2016), 210.
- 29 Mark Hailwood and Brodie Waddell, 'Work and identity in early modern England', *Transactions of the Royal Historical Society* 1 (2023), 145–58; Tawny K. Paul, 'Accounting for men's work: multiple employments and occupational identities in early modern England', *History Workshop Journal* 85 (2018), 26–46, 42.
- 30 As Thomas notes, in early modern census records women are usually recorded as *doing* something (e.g., 'working with cloth') whilst men *are* something (e.g., 'clothier'). Thomas, 'Midwifery and society', 12.
- 31 Michael Braddick, *State formation in early modern England* (Cambridge, 2000), 139.
- 32 Braddick, *State formation*, 139.
- 33 Jonah Miller, *Gender and policing in early modern England* (Cambridge, 2023), 6.
- 34 'Secrets', (j) secret parts, secret members: the external organs of sex', (examples provided from 1577 to 1664), *Oxford English Dictionary* [accessed 28 October 2019, 15:37]. For examples of this use of the phrase, see Jane Sharp, *The compleat midwife's companion: or, the art of midwifery improv'd* (London, 1725), 119. For a discussion of 'the secrets of women' within an early modern medical framework, see Roslyn M. Frank, *The hidden face of a midwifery treatise from seventeenth-century England* (2016) published online at <https://iro.uiowa.edu/esploro/outputs/workingPaper/The-Hidden-Face-of-a-Midwifery/9984105070202771> [accessed 18 August 2021], DOI: 10.17077/pp.005750.
- 35 Cheshire Archives, EDC 5 (1663) 16; for further details of Anne Knutsford case see Karen O'Brien, 'Sexual impropriety, petitioning and the dynamics of ill will in daily urban life', *Urban History* 43, 2 (2016), 177–99.
- 36 Chester Archive Service, EDC 5/1663/16.
- 37 Raymond De Vries, 'Birth and death: social construction at the poles of existence', *Social Forces* 59, 4 (1981), 1074–93.
- 38 Fox and Brazier, 'Regulation of midwives', 317; Forbes, 'Sixteenth and seventeenth century', 236.
- 39 There have been extensive discussions of the links between midwifery and witchcraft. For an overview, see David Harley, 'Historians as demonologists: the myth of the midwife-witch', *Social History of Medicine* 3, 1 (1990), 1–26; Forbes, *The midwife and the witch*; T. Forbes, 'Midwifery and witchcraft', *Journal of the History of Medicine and Allied Sciences* 17, 2 (1962), 264.
- 40 For example, John Marks Moffat, *The Protestant's prayer-book, or, stated and occasional devotions, for families and private persons, and discourses on the gift, grace, and spirit of prayer* (Bristol, 1783), 152.
- 41 For example, Sarah Fiddymont, Natalie J. Goodison, Elma Brenner, Stefania Signorello, Kierri Price and Matthew J. Collins, 'Girdling the loins? Direct evidence of the use of a medieval English parchment birthing girdle from biomolecular analysis', *Royal Society Open Science* 8, 3 (2021), 2–14.
- 42 Fissel', *Vernacular bodies*, 28.
- 43 Naomi Tadmor, 'Where was Mrs Turner? Governance and gender in an eighteenth-century village', in Steve Hindle, Alexandra Walsham and John Walter eds., *Remaking English society: social relations and social change in early modern England* (Woodbridge, 2013), 89–111, 106.
- 44 21 Jack.I, c.27 (1624); Laura Gowing, 'Secret births and infanticide in seventeenth-century England', *Past and Present* 156 (1997), 87–115; Mark Jackson, *New-born child murder: women, illegitimacy, and the courts in eighteenth-century England* (Manchester, 1996); Peter Hoffer and N. E. H. Hull, *Murdering mothers: infanticide in England and New England 1558–1803* (New York, 1981).
- 45 Harley, 'The scope of legal medicine', 45.
- 46 Joanne Bailey, 'Masculinity and fatherhood in England c.1760–1830', in J. Arnold and S. Brady eds., *What is masculinity? Historical dynamics from antiquity to the contemporary world* (London, 2014), 167–86; Tim Reinke-Williams, 'Manhood and masculinity in early modern England', *History Compass* 12, 9 (2014), 685–93, 686.
- 47 Bernard Capp, *When gossips meet: family and neighbourhood in early modern England* (Oxford, 2003); Laura Gowing, 'Women, status, and the popular culture of dishonour', *Transactions of the Royal Historical Society* 6, 6 (1996), 225–34.

- 48 Sarah M. Butler, 'More than mothers: juries of matrons and pleas of the belly in Medieval England', *Law and History Review* 37 (2019), 1–35; Deirdre M. Dwyer, 'Expert evidence in the English civil courts, 1500–1800', *The Journal of Legal History* 28 (2007), 93–101.
- 49 John McTague, 'Anti-Catholicism, incorrigibility, and credulity in the warming pan scandal of 1668–9', *Journal for Eighteenth-Century Studies* 36 (2013), 433–48.
- 50 Miller, *Gender and policing*, 9.
- 51 Angela Muir, 'Midwifery and maternity care for single mothers in eighteenth-century Wales', *Social History of Medicine* 33, 2 (2020), 394–416, 403.
- 52 Julia Allison, 'Midwives of sixteenth-century rural East Anglia', *Rural History* 27 (2016), 1–2; Allison, *Midwifery*, 24.
- 53 Pritchard, 'Codes of ethics', 529.
- 54 Fox and Brazier, 'Regulation of midwives', 337.
- 55 Percival, *Medical ethics*, 31.
- 56 Frances Badger, 'Illuminating nineteenth-century urban midwifery: the register of a Coventry Midwife', *Women's History Review* 23 (2014), 683–705, 683.
- 57 Indeed duty of candour was not required of UK healthcare workers until 2014, when section 81 of the Care Act 2014 introduced the statutory duty of candour in modern law.
- 58 NHS England, *Freedom to speak up in primary care: guidance to primary care providers on supporting whistleblowers in the NHS* (2017). <https://www.england.nhs.uk/wp-content/uploads/2016/11/whistleblowing-guidance.pdf>
- 59 Baker, 'Midwives oaths', 33.
- 60 Miller, *Gender and policing*, 23; Rosemary Sweet, 'Women and civic life in eighteenth-century England', in Rosemary Sweet and Penelope Lane eds., *Women and urban life in eighteenth-century England: 'on the town'* (Aldershot, 2003); Amanda L. Capern, *The historical study of women: England 1500–1700* (Basingstoke, 2008), 150–1.
- 61 Miller, *Gender and policing*, 25.
- 62 Cheshire archives, ZG 2/1 Barber Surgeons Company Book 1692–1791.
- 63 W. Gurney Benham, *The oath book; or red parchment book of Colchester* (Colchester, 1907), 264.
- 64 *The book of oaths*, 29.
- 65 Fissel, *Vernacular bodies*, 42–3.
- 66 Conal Condren, *Argument and authority in early modern England: the presupposition of oaths and offices* (Cambridge, 2006), 30.
- 67 Enid Campbell, 'Oaths and affirmations of public office under English Law: an historical retrospect', *Journal of Legal History* 21, 3 (2000), 1–32, 2.
- 68 Jonah Miller, 'The touch of the state: stop and search in England, c.1660–1750', *History Workshop Journal* 87, 1 (2019), 52–71, 53.
- 69 Condren, *Argument and authority*, 29.
- 70 Campbell, 'Oaths and affirmations', 1; James Lee, "'Ye shall disturbe noe mans right": oath-taking and oath-breaking in late medieval and early modern Bristol', *Urban History* 34, 1 (2007), 27–38, 30.
- 71 Lee, 'Oath-taking and oath-breaking', 31.
- 72 Harley, 'The scope of legal medicine', 46.
- 73 Chester Archive Service, EDC 5/1691/31, 5 May 1691.
- 74 Chester Archive Service, EDC 5/1691/30, 18 May 1691.
- 75 Condren, *Argument and authority*, 238.
- 76 For a discussion of the parish providing an organised and institutionally-based healthcare system in the early modern period, see Deborah E Harkness, 'A view from the streets: women and medical work in Elizabethan London', *Bulletin of the History of Medicine* 81, 1 (2008), 52–85, 64.
- 77 Fox, 'Contrary to her profession', forthcoming.
- 78 O'Brien, 'Sexual impropriety, petitioning'; Chester Archive Service, EDC 5/1663/16.
- 79 Deposition of Elizabeth Church, Cheshire Archive Service, EDC 5/1663/16.
- 80 Fox and Brazier, 'Regulation of midwives', 311.
- 81 Allison, *Midwifery*, 27.
- 82 Robert Baker, 'Midwives oaths of fidelity and diligence', in Robert Baker ed., *Before bioethics: a history of American medical ethics from the colonial period to the bioethics revolution* (Oxford, 2013), 19–35, 35.

- 83 For a detailed discussion of modern ethics see Margaret Brazier and Emma Cave, *Medicine, patients and the law*, XI edition (Manchester, 2016), chapter 3, 63–84.
- 84 Penelope J. Corfield, *Power and the professions in Britain 1700–1850* (London, 1995), 35.
- 85 Rosemary O'Day, *The professions in early modern England, 1450–1800* (Harlow, 2000), 42.
- 86 Harley, 'The scope of legal medicine', 45.
- 87 'was certainly brought to bed before her time...for the Child when it was born had neither toe nail nor finger nail'. Chester Archive Service, EDC 6/1/7.
- 88 John C. Burnham, 'How the concept of profession evolved in the work of historians of medicine', *Bulletin on the History of Medicine* 70, 1 (1996), 1–24, 2.
- 89 Robert Baker, 'Deciphering Percival's code', in Robert Baker, Dorothy Porter and Roy Porter eds., *The codification of medical morality: historical and philosophical studies of the formalisation of Western medical morality in the eighteenth and nineteenth centuries [volume one: medical ethics and etiquette in the eighteenth century]* (London, 1993), 179–212.
- 90 Percival, *Medical ethics*, 2.
- 91 Chauncey D. Leake ed., *Percival's medical ethics* (Baltimore, 1927).
- 92 Jeffrey Berlant, *Profession and monopoly: a study of medicine in the United States and Great Britain* (London, 1975).
- 93 Duncan Wilson, *The making of British bio-ethics* (Manchester, 2015), 24.
- 94 J. Pritchard, 'Codes of ethics', *Encyclopaedia of Applied Ethics*, 2nd edn, vol. I (Elsevier, 2012), 527–33, 527.
- 95 Mary E. Fissel, 'Innocent and honorable bribes: medical manners in eighteenth-century Britain', in Robert Baker, Dorothy Porter and Roy Porter eds., *The codification of medical morality* (London, 1993), 19–45.
- 96 Fissel, 'Innocent and honorable bribes', 32.
- 97 Baker, Porter and Porter, *Codification of medical morality*, 'Introduction', 9.
- 98 Andrew Wear, 'Medical ethics in early modern England', in Andrew Wear, Johanna Geyer-Kordesch and Roger French eds., *Doctors and ethics: the earlier historical setting of professional ethics* (Amsterdam: Rodopi, 1993), 98–130, 99.
- 99 Wear, 'Medical ethics', 116; Sarah Fox, *Giving birth in eighteenth-century England* (London, 2022).
- 100 David Harley, 'Ethics and dispute behaviour in the career of Henry Bracken of Lancaster: surgeon, physician, and man-midwife', in Robert Baker, Dorothy Porter and Roy Porter eds., *The codification of medical morality* (London, 1993), 47–71, 47.
- 101 Robert Baker, 'The eighteenth-century philosophical background', in Robert Baker, Dorothy Porter and Roy Porter eds., *The codification of medical morality* (London, 1993), 93–8, 93.

French Abstract

Notre article combine approche historique et approche juridique de la société anglaise à l'âge moderne, cherchant ce que chaque point de vue peut offrir à l'autre. Il repose sur l'étude d'une série de serments prononcés par des sages-femmes et cherche dans quelle mesure le droit pouvait façonner non seulement la vie quotidienne mais la société elle-même, et vice versa. Cette démarche nous mène à situer les sages-femmes de cette période à la croisée de nombre d'institutions du XVIII^e siècle, importantes et concurrentes, en particulier l'État, l'Église, la société et le secteur professionnel. Nous soutenons qu'une telle approche juridico-historique des pratiques des sages-femmes du temps impose de reconsidérer l'historiographie de l'éthique médicale et, plus largement, celle des activités professionnelles. En conséquence, les sages-femmes apparaissent comme titulaires d'une fonction formellement régulée et agents d'un secteur émergent de l'État moderne. Cela encourage à repenser la nature de la pratique éthique et la réglementation professionnelle dans leur contexte social, culturel et politique de l'époque.

German Abstract

Dieser Beitrag nähert sich der vergangenen Gesellschaft aus historischer und rechtlicher Perspektive und fragt, was sie einander zu bieten haben. In Form einer Fallstudie über frühneuzeitliche Hebammeneide untersucht er, inwieweit das Recht das Alltagsleben und die Gesellschaft prägt und umgekehrt, was uns erlaubt, frühneuzeitliche Hebammen im Schnittpunkt einer Reihe wichtiger und konkurrierender Institutionen des 17. Jahrhunderts zu verorten, darunter: Staat, Kirche, Gesellschaft und Beruf. Wir behaupten, dass eine historisch-rechtliche Herangehensweise an die Praktiken von Hebammen im 17. Jahrhundert es erforderlich macht, die Historiographie zur medizinischen Ethik und zu den Berufen im weiteren Sinne einer grundlegenden Neubewertung zu unterziehen. Danach stellen sich Hebammen als Träger offizieller Ämter und als Agenten des entstehenden frühneuzeitlichen Staates dar, was zum Nachdenken über das Wesen ethischer Praxis und beruflicher Regulierung innerhalb ihres sozialen, kulturellen und politischen Kontextes anregt.