

## **On criminal abortion in America / by Horatio R. Storer.**

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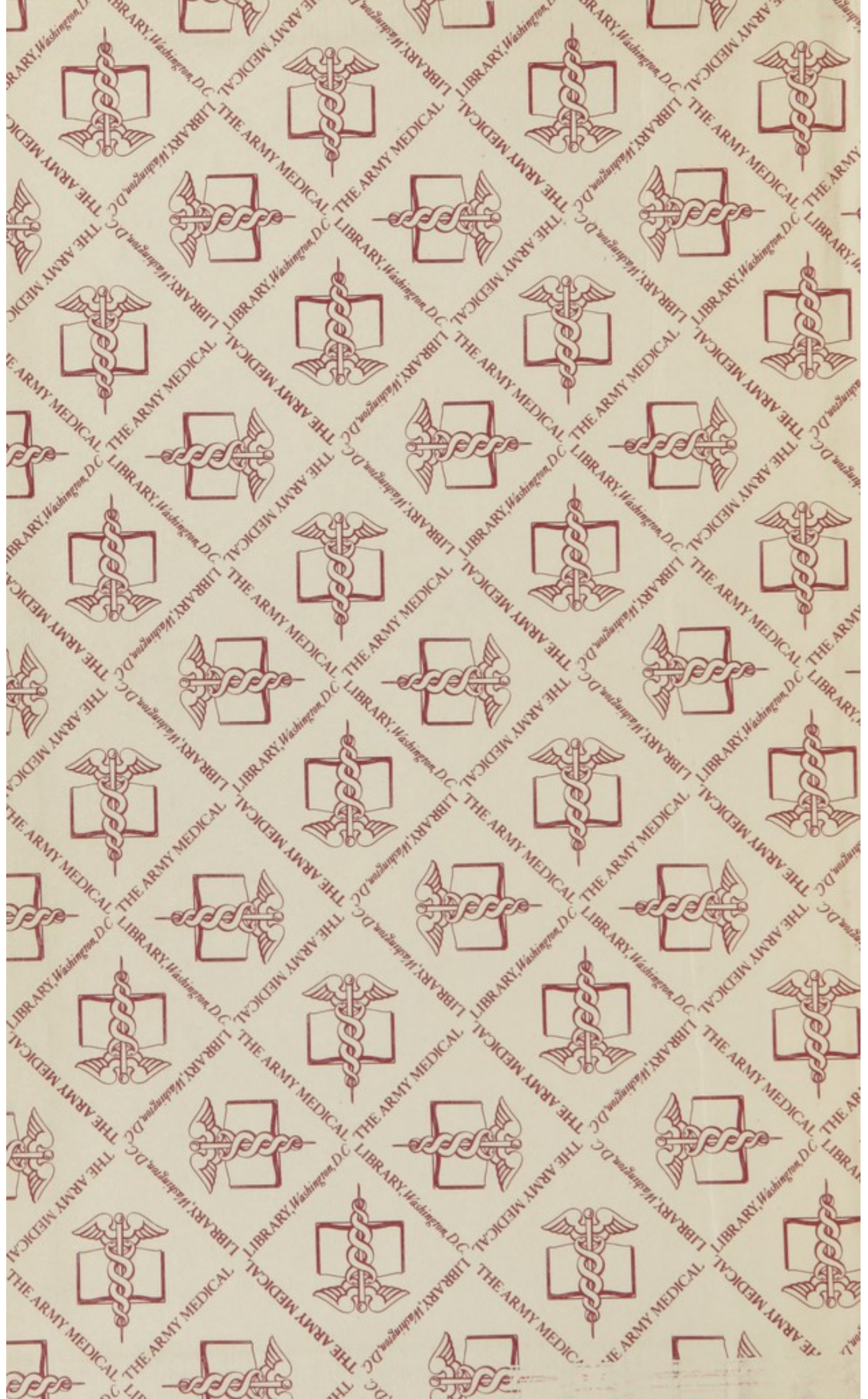
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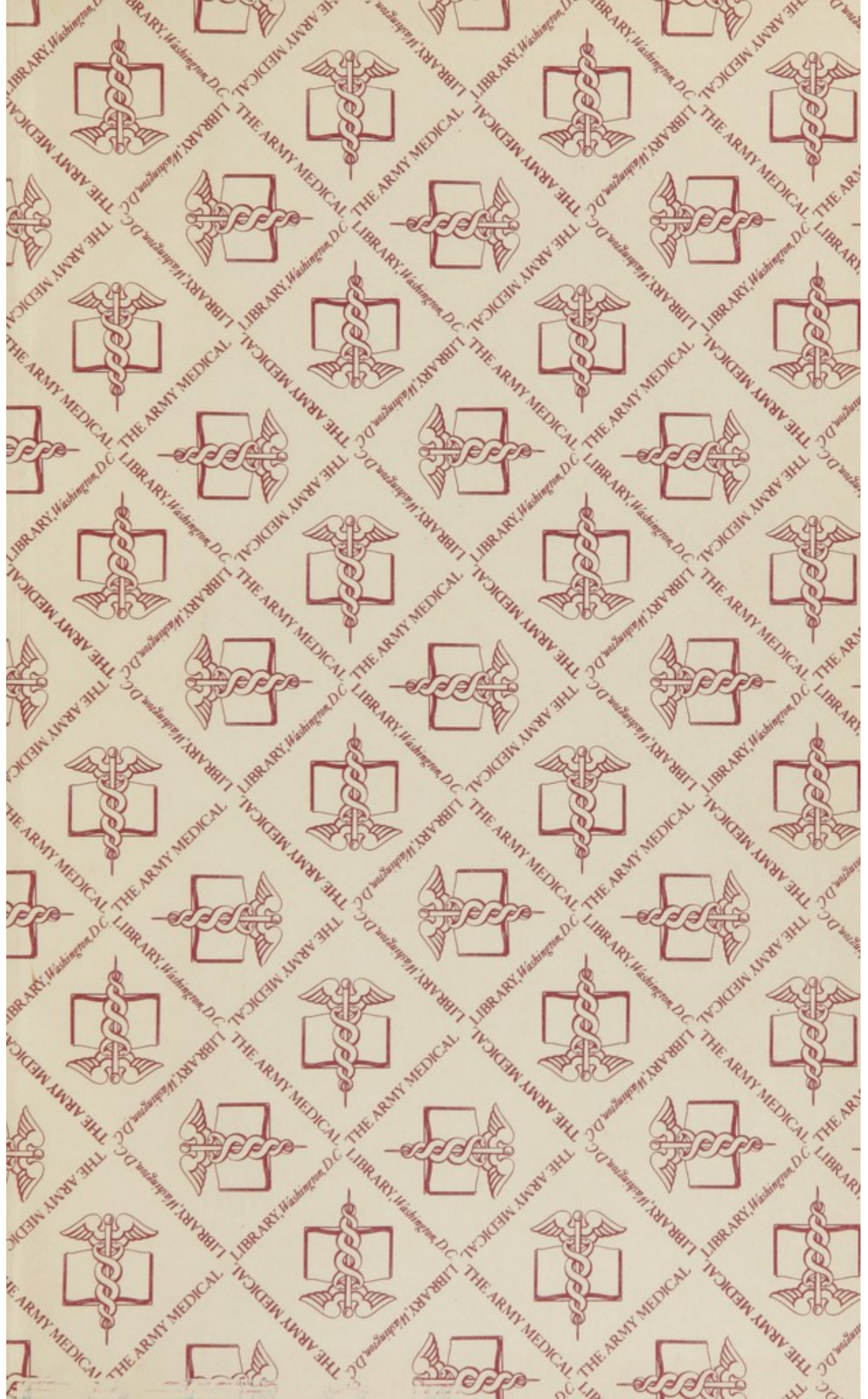
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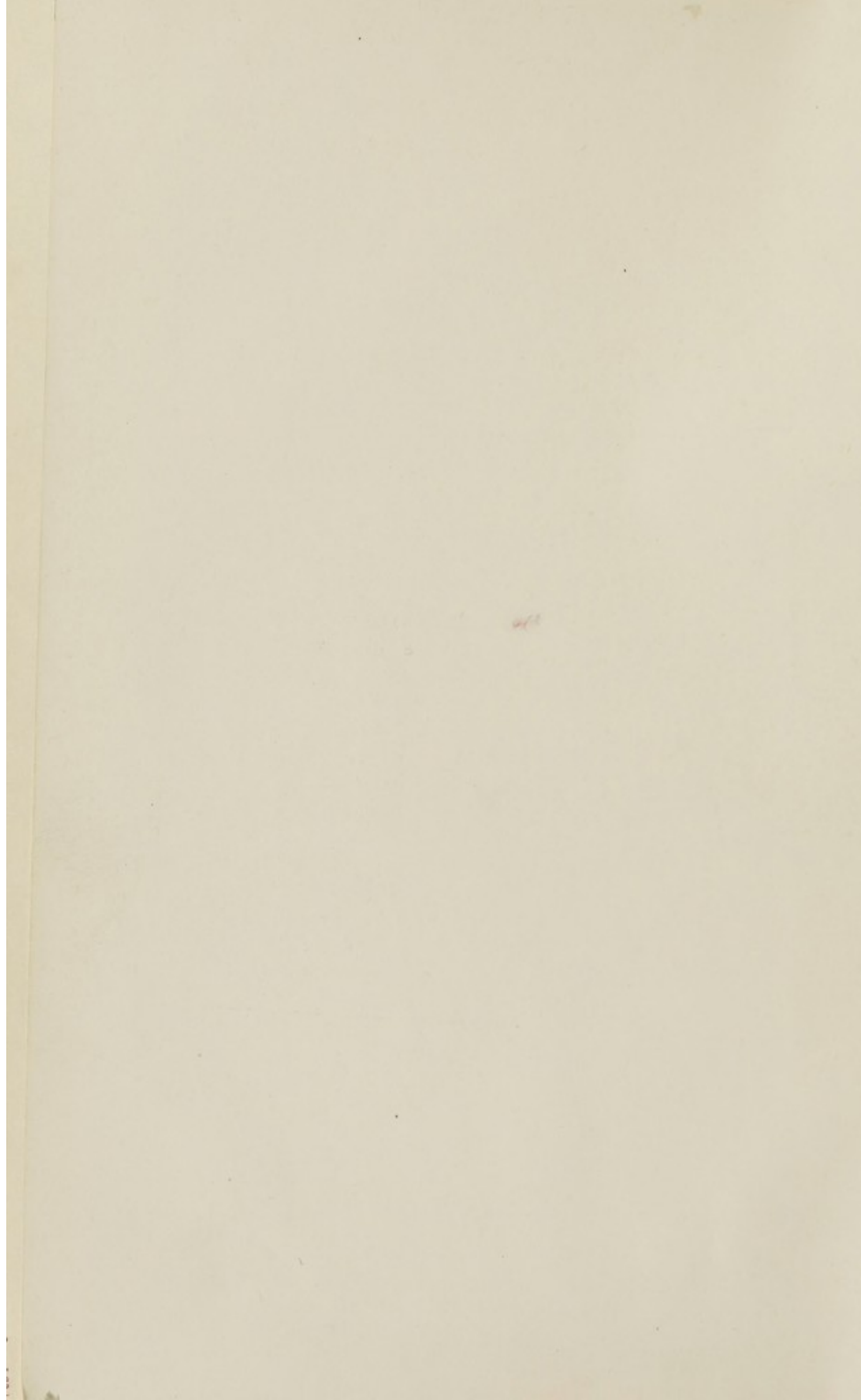














ON

*J. Mc. Sab.*

# CRIMINAL ABORTION

## IN AMERICA.

BY

HORATIO R. STORER, M.D.,  
OF BOSTON.

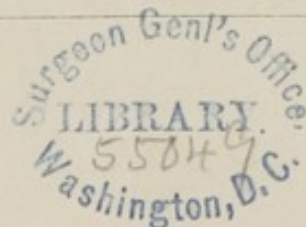
MEMBER OF THE AMERICAN MEDICAL ASSOCIATION.

"And let the legislator and moralist look to it; for as sure as there is in any nation a hidden tampering with infant life, whether frequent or occasional, systematic or accidental, so sure will the chastisement of the Almighty fall on such a nation."—GRANVILLE, *on Sudden Death*.

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[From the North American Medico-Chirurgical Review, January to November, 1859.]

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PHYSICIAN, ATTORNEY, JUROR, JUDGE,—AND PARENT,—

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CONTRIBUTIONS  
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OBSTETRIC JURISPRUDENCE.

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NO. I.  
CRIMINAL ABORTION.

*By the Common Law and by many of our State Codes, foetal life, per se, is almost wholly ignored and its destruction unpunished; abortion in every case being considered an offence mainly against the mother, and as such, unless fatal to her, a mere misdemeanor, or wholly disregarded.*

*By the Moral Law, THE WILFUL KILLING OF A HUMAN BEING AT ANY STAGE OF ITS EXISTENCE IS MURDER.*

In undertaking the discussion at length of this subject, three preliminary facts must be assumed:—

*First.*—That if abortion be ever a crime, it is, of necessity, even in isolated cases, one of no small interest to moralist, jurist, and physician; and that when general and common, this interest is extended to the whole community and fearfully enhanced.

*Secondly.*—That if the latter assumption be true, both in premise and conclusion, neglected as the crime has been by most ethical writers and political economists, hastily passed over by medical jurists,\* and confess-

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\* So far as the writer is aware, there exists, in this or any other language, no paper upon the subject at all commensurate with its importance. The chapters devoted to it in medical text-books, though some of them admirable so far as they go, especially that of Beck, are defective and often erroneous; while but little information of any value can be found elsewhere. In the French periodicals have appeared articles on special points hereafter referred to; in Great Britain able arguments regarding the commencement of foetal life have been made by Radford, (1848;) and in this country, with remarks on the frequency of the crime, by Hodge, of Phila-



edly everywhere the great opprobrium of the law, often indeed by taunt that of medicine, either it cannot in the nature of things be suppressed, as by these facts implied, or its suppression has not been properly attempted. Discarding the former of these alternatives as alike unworthy of belief and proved false by facts hereafter to be shown, it will appear,

*Thirdly.*—That the discussion now broached is neither supererogatory nor out of place; further, that it is absolutely and necessarily demanded.

Moreover, in order that the importance and various bearings of the subject may be better appreciated, and that the writer's position and aims may be more fairly understood, it must be borne in mind that there exist to this discussion certain positive and apparent objections, which have, in a measure, given rise to much of the silence and omission alluded to above, and are, in the main, as follows:—

1. The natural dislike of any physician to enter upon a subject on some points of which it is probable that a portion of the profession is at variance with him, either from disbelief in the alleged increase of criminal abortion, unnoticed for reasons shown hereafter, or from a blind reliance on Providence of itself to abate the evil.

2. His fear, lest by any possible chance, by showing the frequency of the crime and its means, he may unhappily cause its still further increase.

3. The reluctance on the part of many of the profession to attack a powerful and acknowledged moneyed interest;

4. And to tell their patients, more commonly than is yet general, most unwelcome truth; thus not merely condemning, but, to their own consciences at least, criminating them;

5. And individually to risk losing practice, if thought more scrupulous than others;

6. And to be brought into more frequent contact with the law, even though for ends of justice;

7. And to exercise greater care and discretion in diagnosis and treatment, lest themselves be brought to answer for malpractice, or worse;

8. And publicly to discuss matters supposed to be generally unknown, and thus seem to throw open professional secrets to the world.

And, finally, grave doubts lest the statements made, though simple and true, should yet appear so astounding as to shock belief, or so degrading as to tend to lessen all faith in natural affection and general morality.

But these objections, so far at least as regards the profession, are un-

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delphia, (1839 and 1854,) and by the present Professor of Obstetrics in Harvard University, (1855.) To the latter, his father, and to the journalists (Drs. Morland and Minot, of Boston,) by whom the effort then made was so warmly and eloquently seconded, the writer acknowledges his indebtedness for the thought of the present undertaking.

doubtedly but of limited existence; and, on the other hand, as more than counterbalancing them all, are the following arguments:—

That medical men are the physical guardians of women and their offspring; from their position and peculiar knowledge necessitated in all obstetric matters to regulate public sentiment and to govern the tribunals of justice.

That the discussion by them of this crime may very probably be the means, in great measure, of ultimately restraining or suppressing its perpetration.

That such will undoubtedly tend to save much health to the community and many human lives.

And, that, were there no other reason, it is clearly a duty.

I shall accordingly proceed to prove, so far as possible, the truth of every premise as yet stated, and to show the real nature and frequency of the crime: its causes; its victims; its perpetrators and its innocent abettors; its means and its proofs; its excuses, the deficiencies and errors of existing laws, and the various other obstacles to conviction; and, above all, so far as the present series of papers is concerned, the duty of the profession toward its general suppression.

#### I. IS ABORTION EVER A CRIME?

That this could have been doubted, least of all by mothers, however ignorant or degraded, would at first sight appear improbable. The sense of the public, however, its practice, its laws, being each proved to the contrary by the stubborn evidence of facts, the necessity of our preliminary inquiry will be made manifest.

To postpone, for the present, all other considerations, we will regard abortion in the abstract. It may be defined, best perhaps, as the violent and premature expulsion of the product of conception, independently of its age, viability, and normal formation. These characteristics are eliminated as having judicially and actually nothing to do with the essential nature of abortion, whereas in infanticide they are each elements of great importance; a difference that will hereafter be seen.

We further, in the present investigation, set aside all cases where abortion is the result of accident, or from natural causes, or justified by the rules of medicine, whether to save the mother or her child. We shall have occasion, in the subsequent course of our inquiries, to discuss this latter question somewhat fully, and to set forth unpleasant truths. We now confine ourselves exclusively to those instances where the attempt at premature expulsion of the product of conception is artificially induced and intentional, and where, so far as can be judged, it is not necessitated and would not otherwise have occurred.



In the first place, the laws do not recognize that unnecessary abortion, *per se*, is a crime.

This act, when unnecessarily done, must be for one of two reasons: either to prevent the product of conception from receiving life, which subsequent evidence will show cannot be the case, or, if living, to destroy it.

We have said that the Common Law and many of our American statutes lose sight of this fundamental idea. Though based upon the first of the above alternatives,—the erroneous one, as regards the fact of their existence,—they are so worded as almost wholly to ignore foetal life, to refuse it protection, to insure their own evasion, and by their inherent contradictions to extend the very crime they were framed to prevent.

They recognize, for the most part, no offence against the foetus; we have just shown that such, and such alone, is always intended. They punish an attempt, which does not exist, upon the well-being or life of the mother; the intent being seldom or never to destroy the mother. She is herself, in almost every case, a party to the action performed; an accessory or the principal. To constitute a crime, a malicious or wicked intent is supposed to exist; we have thrown aside, as does the law, every case occurring from accident or from justifiable cause. The intent, if existing, as of course must be always the case, is against, and only against, the product of conception.

Again, the punishment meted by the law proves the truth of these propositions. Unless the woman die in consequence of the offence, it is declared, in every stage of pregnancy, a mere misdemeanor, as in Massachusetts; or else, while called such, or by omission justified or openly allowed in the early months when the foetus is without other safeguard, the law pronounces abortion a felony and increases its penalties in more advanced pregnancy, after quickening has rendered it infinitely more certain that the foetus will remain undisturbed, and has thus in the great majority of cases prevented the crime.

On the other hand, granting for the moment that the erroneous assumptions of the law were correct, and that the attempt were upon the life of the mother, how inconsistent to punish murder, attempted or committed, if by injury to the throat or heart, capitally, and if by injury to the womb, by temporary imprisonment; especially where this latter case always necessitates the slaughter of a second human victim.

Or, granting that the attempt were only upon the mother's health or temporary welfare, how absurd to punish the offence in early pregnancy, where her risks are greatest, by a trifling penalty or not at all, and in more advanced pregnancy, where these risks are daily lessened, with increased severity.

And, finally, if the fœtus were, as has been sometimes supposed, merely *pars viscerum matris*, its removal would be like that of a limb, or of any other portion of the body, whose loss is not absolutely attended with that of life ; if made with the mother's consent, it would be unpunishable by law ; if against her will, it would be already amenable, like other maim or mutilation, to existing statutes. In the one case, laws against abortion were needless ; in the other, unjustifiable.

In a word, then, in the sight of the common law, and, in most cases of the statutory law, also, the crime of abortion, properly considered, does not exist ; the law discussing and punishing a wholly supposititious offence, which not only does not exist, but the very idea of whose existence is simply absurd.

We turn now to public opinion. It, too, both in theory and in practice, fails to recognize the crime. Its practical denial of the true character of the offence will be shown in the course of our remarks on its frequency. Its theoretical denial we here consider, as proved in three ways—by implication, by collateral testimony, and by direct.

First, the maxims of the law are based on past or present public opinion. If merely on past, and this has totally changed, the law in matters of such importance is compelled to change also. The fact that the laws on this subject remain unaltered, if it be granted, as will be proved, that they are erroneous, furnishes us at the outset, and so far, with evidence that public opinion was formerly wrong, and that it so continues.

The frequency of the offence, and the character and standing of the mothers upon whose persons it is practised, accessories as we have seen, or principals, to it, furnish similar and more cogent testimony regarding the theory upon which it is founded. We shall soon perceive how extensive and high reaching is the frequency ; we must therefore conclude that the public do not know, or knowing deny, the criminal character of the action performed.

Again, the direct testimony of the parties themselves is often available. It is undoubtedly a common experience, as has certainly been that of the writer, for a physician to be assured by his patients, often no doubt falsely, but frequently with sincerity, that their abortions have been induced in utter ignorance of the commission of wrong ; in belief that the contents of the womb, so long as manifesting no perceptible sign of life, were but lifeless and inert matter ; in other words, that being, previously to quickening, a mere ovarian excretion, they might be thrown off and expelled from the system as coolly and as guiltlessly as those from the bladder and rectum.

It having now been shown, directly and by temporary assumption, that



the law and public sentiment, both by its theory and its practice, alike deny to unjustifiable abortion the imputation of crime, it remains for us to discuss this question abstractly, and to prove not merely that they are wrong, but that the offence is one of the deepest guilt, a crime SECOND TO NONE.

Ignorance of the law is held no excuse. The plea of ignorance of guilt could hardly better avail where its existence is implied by common sense, by analogy, and by all natural instinct, binding even on brutes. Were this guilt, however, clearly shown, and its knowledge, supposed wanting, to be spread broadcast by the press, the all-powerful arbiter of public opinion, the last and strongest prop of the crime were gone.

It has been shown, by setting aside all accidental cases, those naturally occurring and those necessarily, and in the absence of reasonable evidence to the contrary, that all other abortions must be intentional, that they must be occasioned by the "malice aforethought" of the law. It has also been shown that in these cases, except it exist as an additional element, the malicious intention is not against the life or person of the mother, but that in every instance it is against the product of her womb. Hence, the whole question of the criminality of the offence turns on this one fact, the real nature of the fœtus in utero. If the fœtus be a lifeless excretion, however soon it might have received life, the offence is comparatively as *nothing*; if the fœtus be already, and from the very outset, a human being, alive, however early its stage of development, and existing independently of its mother, though drawing its sustenance from her, the offence becomes, in every stage of pregnancy, MURDER.

"Every act of procuring abortion," rules Judge King, of Philadelphia,\* contrary to the usual interpretation of the law, "is murder, whether the person perpetrating such act intended to kill the woman, or merely feloniously to destroy the fruit of her womb."

Common sense, we have said, would lead us to the conclusion that the fœtus is from the very outset a living and distinct being. It is alike absurd to suppose identity of bodies and independence of life, or independence of bodies and identity of life; the mother and the child within her, in abstract existence, must be entirely identical from conception to birth, or entirely distinct. Allowing, then, as must be done, that the ovum does not originate in the uterus; that for a time, however slight, during its passage through the Fallopian tube, its connection with the mother is wholly broken; that its subsequent history is one merely of development, its attachment merely for nutrition and shelter, it is not rational to suppose that its total independence, thus once established, be-

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\* As quoted by Hodge. Introductory Lecture, p. 15.



comes again merged into total identity, however temporary ; or that life, depending not on nine months' growth, nor on birth, because confessedly existing long before the latter period,—since quickening at least, a time varying within wide limits,—dates from any other epoch than conception ; while it is as irrational to think that the influence of the father, mental and moral as well as physical, so often and so plainly manifested, can be exercised by any possibility upon the child at any other moment than that original and only one of impregnation itself.

Another argument is furnished us, similar, but differing. The *foetus*, previous to quickening, as after it, must exist in one of two states, either death or life. The former cannot take place, nor can it ever exist, except as a finality. If its signs do not at once manifest themselves, as is generally the case, and the *foetus* be retained in utero, it must either become mummified or disintegrated ; it can never again become vivified. If, therefore, death has not taken place, and we can conceive no other state of the *foetus* save one, that, namely life, must exist from the beginning.

These reasonings are strengthened by the evidence of analogy. The utter loss of direct influence by the female bird upon its offspring from the time the egg has left her, and the marked effect, originally, of the male ; the independence in body, in movement, and in life, of young marsupial mammals, almost from the very moment of their conception, identical analogically with the intra-uterine state of other embryos,—nourishment by teat merely replacing that by placenta at an earlier period ; the same in birds, shown by movements in their egg on cold immersion before the end of incubation ; the permanence of low vitality, or of impaired or distorted nervous force, arising from early arrest or error of development, and necessarily contemporaneous with it, are all instances in point.

Brute instincts are often thought wholly supplanted by human reason. That this is not so is proved by what obtains in the absence of reason, whether from the outset or subsequently occurring. Idiots and lunatics alike show the actual identity in this respect of man and the brute, however instinct, in the former, may normally be tempered by conscience and reason. Whatever ideas on the subject of abortion the human mind may have forced itself to entertain, let the slightest proof concerning the existence of *foetal* life be alleged, and maternal instinct at once makes itself known : the parent, as after its birth, would often even perish to preserve her child. This is not conscience, which is stirred only by an afterthought, but instinct.

Thus far, incidental proof concerning the commencement of *foetal* life, and so the guilt of unjustifiable abortion. More decisive evidence is at hand.

That the movements of the *foetus*, subsequent to quickening, whatever

the actual nature of that first sensation may be, declare the existence of intra-uterine life, is allowed by the world; by none more than by mothers themselves, whose statistics prove that after the perception of these movements criminal abortions are comparatively rare.

But quickening,—a period usually occurring from the one hundred and fifteenth to the one hundred and thirtieth day after conception, but varying within still more appreciable limits in different women, and in the same women in different pregnancies, from variations in the amount of liquor amnii, the early strength of the foetus, and other causes, and also, if at all, owing in its first sensation to rising of the womb from the pelvis, probably occurring a little earlier with boys than with girls, from their relative difference in size,\*—is often absent, even throughout pregnancy; and foetal movements are sometimes appreciable to the attendant when not to the mother, or indeed to the mother alone.

Further, in premature births, where quickening has not occurred, or before its usual period, by the movements of the foetus, its earlier independent and vital existence is sometimes reduced to a matter of ocular demonstration; while to the ear, in very many instances, as early and as conclusive evidence is afforded by the sounds these movements give rise to.†

Quickening is therefore as unlikely a period for the commencement of foetal life as those others set by Hippocrates and his successors, varying from the third day after conception, to that of the Stoics, namely birth, and as false as them all.

We need not, with Dubois‡ and some earlier writers,§ from the manifest relation of means to the end, consider that the movements of the foetus in utero, and its consequent attitude and position, are signs of an already developed and decided sentience and will, nor is it requisite to suppose them the effect of an almost rational instinct. But that they are wholly independent of the will and the consciousness of the mother, and yet by no means characteristic of organic life, whether hers or its own,—which latter

\* Hippocrates states that this is a fact, and that he had found the difference of a whole month, which he attributes to the "greater strength" of the male.—(*On the Nature of the Child*, Sect. 11.) I am unaware that this point has been investigated by any modern writer.

† "These sounds may sometimes be distinguished *several weeks* before the mother becomes conscious of the motions of the child."—NÆGELE; *Treatise on Obstetric Auscultation*, p. 50.

‡ *Memoire sur la cause des Présentations de la Tête, &c.*—*Mém. de l'Acad. Roy. de Méd.* tome ii.

§ A. PARÉ; English Trans., p. 899. HUGH CHAMBERLEN's Trans. of Mauriceau on *Diseases of Women with Child*, p. 147, Note. ENNEMOSER; *Historisch-physiologische Untersuchungen über den Ursprung und das Wesen der menschlichen Seele*; Bonn, 1824. CABANIS; *Rapports du Physique et du moral de l'Homme*, tome ii. p. 431.



is also by abundant evidence proved independently to exist,—but decidedly animal in their character; that they are not explainable by gravity, despite all the arguments alleged, latest by Matthews Duncan,\* nor on any other supposition save that of a special and independent excito-motory system, distinct from that of the mother,† brings us directly down to this—the existence of as distinct and independent a nervous centre, self-existing, self-acting, living.

We set aside all the speculations of metaphysicians regarding moral accountability of the foetus, the “potential man,” and its “inanimate vitalities,” as useless as they are bewildering. If there be life, then also the existence, however undeveloped, of an intellectual, moral, and spiritual nature, the inalienable attribute of humanity, is implied.

If we have proved the existence of foetal life before quickening has taken place or can take place, and by all analogy and a close and conclusive process of induction, its commencement at the very beginning, at conception itself, we are compelled to believe unjustifiable abortion always a crime.

And now words fail. Of the mother, by consent or by her own hand, imbrued with her infant's blood; of the equally guilty father, who counsels or allows the crime; of the wretches who by their wholesale murders far out-Herod Burke and Hare; of the public sentiment which palliates, pardons, and would even praise this so common violation of all law, human and divine, of all instinct, of all reason, all pity, all mercy, all love, we leave those to speak who can.

We have next to prove—

## II. ITS FREQUENCY, AND THE CAUSES THEREOF.

Though we cannot at once, and in exact figures, show the yearly amount of criminal abortion in this country, statistics on the subject being necessarily imperfect or wanting, we may yet arrive at an approximate result. This is done by an easy and reliable process of induction, the several factors of which, each of itself rendering probable the conclusion, tend, when combined, to make it almost absolutely certain.

We are to consider, in this connection, the evidence afforded by—

- I.—The comparative increase of population.
- II.—The published records of still-births.
- III.—The number of arrests, or trials for abortion.
- IV.—The published number of immediate maternal deaths.

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\* *Ed. Med. and Surg. Journ.*, Jan. 1855, p. 50.

† *SIMPSON, Obstetric Works*, vol. ii. p. 88.



V.—The pecuniary success of abortionists, and abortion-producing nostrums.

VI.—The comparative size of families in present and past times.

VII.—The experience of physicians—direct from applications for abortion and actual cases, and indirect from their results.

Several of these points are as yet almost wholly uninvestigated. They are stated, therefore, with care, as bearing decidedly on the question at issue, and as tending to provoke still further research.

To go into an elaborate comparison of our national and state censuses with themselves, past and present, with each other, and with those of similar communities abroad, involving, as it would do, intricate calculations regarding the effect of emigration from state to state, and from nation to nation, the increase of urban population, and the frequent decrease of rural, is not our present intention, nor is it necessary. By considering this point in connection with that immediately succeeding it, with which it is intimately related, its bearing and importance will at once be seen.

Statistics in this country are as yet so imperfect, that we are necessitated to a process of deduction. If it can be shown that a state of things prevails elsewhere to a certain extent, explainable only on one supposition, and that the same state of things prevails in this country to a greater extent, all other causes, save the one referred to, being in great measure absent, little doubt can be entertained of the part this plays; but if it can, in addition, be proved that this cause must necessarily be stronger with us than elsewhere, then its existence becomes morally certain. Accordingly, if we find that in another country living births are steadily lessening in proportion alike to the population and to its increase, that natural or preventive causes are insufficient to account for this, while the proportion of still-births and of known abortions is constantly increasing, and these last bear an evident yet increasing ratio to the still-births; that in this country the decrease of living births, and the increase of still-births, are in much greater ratio to the population, and the proportion of premature births is also increasing; that these relations are constant and yearly more marked, we are justified in supposing that abortions are at least as frequent with us, and probably more so.

In many countries of Europe, it has been ascertained that the "fecundity" of the population, or the rate of its annual increase, is rapidly diminishing.\*

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\* Many of the statistics now presented we have also embodied in a paper upon the decrease of the rate of increase of population now obtaining in Europe and America, read before the American Academy of Arts and Sciences, December 14th, 1858, as a contribution to the Science of Political Economy.



In Sweden, it has lessened by one-ninth in 61 years. In Prussia, by a third in 132 years. In Denmark, by a quarter in 82 years. In England, by two-sevenths in a century. In Russia, by an eighth in 28 years. In Spain, by a sixth in 30 years. In Germany, by a thirteenth in 17 years. In France, by a third in 71 years.\*

Or, in other words:

In Sweden it has lessened by a fifth; in Prussia, by a fourth; in Denmark and England, by a third; and in Russia, Spain, Germany, and France by a half, in a single century.

For the sake of convenience, larger bodies of statistics existing concerning it, and from the fact that it represents the extreme of the alleged decrease, we take France for our comparisons.

In France at large, according to the official returns as analyzed by Legoyt, the increase of the population which, from 1801 to 1806, was at the rate of 1.28 per cent. annually, from 1806 to 1846 had fallen to about .5 per cent.† The exact ratio of decrease after this point is better shown by the figures themselves. The increase from 1841 to 1846 was 1,200,000; from 1846 to 1851, 380,000; from 1851 to 1856, 256,000.

In England, during this latter period, with a population of but one-half the size, the returns of the Registrar-General show a relative increase nine times greater.‡ In thirty-seven years, from 1817 to 1854, the mean annual increase in France was not more than 155,929, yet in five years, from 1846 to 1851, it had fallen to 76,000 yearly, and from 1851 to 1856, to 51,200, and this with a population ranging from twenty-nine to thirty-four millions.

A comparison of these facts, with those obtaining in other European States, will make the above still more evident. We now quote from Rau.§

	Rate of Increase. Per Cent.		Rate of Increase. Per Cent.
Hungary, according to Rohrer	2.40	Saxony, from 1815 to 1830	1.15
England, from 1811 to 1821	1.78	Baden (Heunisch,) from 1820 to	
“ from 1821 to 1831	1.60	1830	1.13
Prussia, from 1816 to 1827	1.54	Bavaria, from 1814 to 1828	1.08
“ from 1820 to 1830	1.37	Naples, from 1814 to 1824	0.83
“ from 1821 to 1831	1.27	France (Mathieu,) from 1817 to	
Austria, (Rohrer)	1.30	1827	0.63
Scotland, from 1821 to 1831	1.30	France, more recently, (De Jonnés)	0.55
Netherlands, from 1821 to 1828	1.28		

\* MOREAU DE JONNÉS, *Eléments de Statistique*, 1856, p. 202.

† *Journal des Economistes*, March and May, 1847.

‡ *Edinburgh Review*, Jan. 1857, p. 342. *Med. Times and Gazette*, May, 1857, p. 462.

§ *Lehrbuch der Politischen Oekonomie*.

A similar and corroborative table, containing additional matter, is given by Quetelet;\* its differences from the preceding are owing to its representing a series of different years.

	Rate of Increase. Per Cent.		Rate of Increase. Per Cent.
Ireland . . . . .	2.45	Austria . . . . .	1.30
Hungary . . . . .	2.40	Bavaria . . . . .	1.08
Spain . . . . .	1.66	Netherlands . . . . .	0.94
England . . . . .	1.65	Naples . . . . .	0.83
Rhenish Prussia . . . . .	1.33	France . . . . .	0.63

And more recently, Legoyt brings up these results to the close of 1846.†  
As shown by the census, the rate of increase was, in

	Per Cent.		Per Cent.
Great Britain, exclusive of		Sardinia . . . . .	1.08
Ireland . . . . .	1.95	Holland . . . . .	0.90
Prussia . . . . .	1.84	Austria . . . . .	0.85
Saxony . . . . .	1.45	Sweden . . . . .	0.83
Norway . . . . .	1.36	France . . . . .	0.68

Or, as shown by the annual excess of births over deaths, and therefore more reliable—

	Per Cent.		Per Cent.
Norway . . . . .	1.30	Austria . . . . .	0.90
Prussia . . . . .	1.18	Saxony . . . . .	0.90
Sweden . . . . .	1.14	Hanover . . . . .	0.85
Holland . . . . .	1.03	Belgium . . . . .	0.76
Wurtemberg . . . . .	1.00	Bavaria . . . . .	0.71
Great Britain, exclusive of Ire-		Russia . . . . .	0.61
land . . . . .	1.00	France . . . . .	0.50
Denmark . . . . .	0.95		

In four departments of France, among which are two of the most thriving of Normandy, the deaths actually exceed the births.‡

From the above facts, it would naturally be supposed that the percentage of births to the whole population must be smaller than in other European countries, and from the lessened annual rate of increase of the population, that the proportionate number of births must be decreasing in similar ratio. This is found, indeed, to be the case.

From large statistics furnished by De Jonnés, we have compiled the following table of the comparative ratios of births to the population in the principal countries of Europe:—

\* Sur l'Homme et la Developpement de ses Facultés, tome i. ch. 7.

† Journal des Economistes, May, 1847.

‡ MILL, Principles of Political Economy, i. p. 343.



	Ratio.		Ratio.
Venice and Dependencies,		Sweden, 1825 . . . . .	1 to 28
1827 . . . . .	1 to 23	Holland, 1832 . . . . .	"
Tuscany, 1834 . . . . .	"	Austria, 1829 . . . . .	"
Lombardy, 1828 . . . . .	1 to 24	Belgium, 1836 . . . . .	"
Russia, 1835 . . . . .	1 to 25	Bavaria, 1825 . . . . .	"
Wurtemberg, 1821 to 1827. .	"	Two Sicilies, 1831 . . . . .	"
Prussia, 1836 . . . . .	"	Sweden and Norway, 1828 .	1 to 30
Mecklenburg, 1826 . . . . .	1 to 26	Denmark, 1833 . . . . .	"
Sardinia, 1820 . . . . .	"	Roman States, 1836 . . . . .	"
Naples and Dependencies,		Turkey, 1835 . . . . .	"
1830 . . . . .	"	Hanover, 1835 . . . . .	1 to 31
Greece, 1828 . . . . .	"	Sicily, 1832 . . . . .	"
Poland, 1830 . . . . .	1 to 27	Austria, 1828 to 1830 . . .	1 to 32
Ireland, 1821 to 1831 . . .	"	Great Britain, 1821 to 1831	"
Germany, 1828 . . . . .	"	Scotland, 1821 to 1831 . . .	1 to 34
Switzerland, 1828 . . . . .	"	England, 1821 to 1831 . . .	1 to 35
Spain, 1826 . . . . .	"	Norway, 1832 . . . . .	"
Portugal, 1815 to 1819. . .	1 to 27.5	France, 1771 to 1851 . . . .	1 to 25 to 1 to 37

In a total population, at different periods, of 232,673,000, there were 8,733,000 births; whence an average on the grand scale of one birth to every 26.6 individuals.

In France, however, the ratio has been steadily lessening, as seen by the following table:—

	Ratio of births.		Ratio of births.
1771 to 1775 . . . . .	1 to 25	1836 to 1840 . . . . .	1 to 34
1801 to 1810 . . . . .	1 to 30	1841 to 1845 . . . . .	1 to 35
1811 to 1825 . . . . .	1 to 32	1846 to 1850 . . . . .	1 to 37
1826 to 1836 . . . . .	1 to 33		

The position of France, as compared with the rest of Europe, in respect to the ratio of births to the population at different periods, is made still more manifest by another table:—

Annual ratio of births.	
1 to 23	Venetian Provinces, 1827; Tuscany, 1834.
1 to 23.5	Kingdom of Naples, 1822 to 1824.
1 to 24	Tuscany, 1818; Sicily, 1824; Lombardy, 1827 to 1828; Russia, 1831.
1 to 24.5	Prussia, 1825 to 1826.
1 to 25	France, 1781; Austria, 1827; Russia, 1835; Prussia, 1836.
1 to 26	Sardinia, 1820; Hanover, Wurtemberg and Mecklenburg, 1826; Greece, 1828; Naples, 1830.
1 to 27	Spain, 1826; Germany and Switzerland, 1828; Poland, 1830; Ireland, 1831.
1 to 27.5	Portugal, 1815 to 1819.

- 1 to 28 Holland, 1813 to 1824; Bavaria and Sweden, 1825; Austria, 1829; Belgium, 1836.  
 1 to 29 Canton Lucerne, 1810; Holland, 1832.  
 1 to 29·8 France, 1801.  
 1 to 30 Sweden and Norway, 1828; Belgium, 1832; Denmark, 1833; Turkey, 1835; States of the Church, 1836.  
 1 to 31 Sicily, 1832; Hanover, 1835.  
 1 to 31·4 France, 1811.  
 1 to 31·6 France, 1821.  
 1 to 32 Austria, 1830; Great Britain and Switzerland, 1831.  
 1 to 33 France, 1828 to 1831.  
 1 to 34 Norway and Holstein, 1826; Scotland, 1831; France, 1834 to 1841.  
 1 to 35 Denmark, 1810; England, 1831; Norway, 1832.  
 1 to 37 France, 1851.

In Paris, strange to say, the decrease in the ratio of births to the population, though decided and steady, has not, in actual proportion, been as great as in the empire at large, showing that the cause, whatever we find it to be, is not one depending on the influence of a metropolis alone for its existence.

From 1817 to 1831 there averaged, in Paris, one birth to 26·87 inhabitants; but from 1846 to 1851, one to 31·98.\*

Again, as might have been expected, we find that the proportion of still-births, in which we must include abortions, as has hitherto been done, however improperly, in all extensive statistics, is enormous, and is steadily increasing. To show this the more plainly, we first present a table of the ratio of still-births to the living births in the various countries of Europe.†

Geneva,‡ 1824 to 1833 . . . . . 1 to 17	Prague, 1820 . . . . . 1 to 30
Berlin Hospitals, 1758 to 1774 . . . . . 1 to 18	London Hospitals, 1749 to 1781 . . . . . 1 to 31
Paris Maternité,§ 1816 to 1835 . . . . . 1 to 20	Vienna, 1823 . . . . . 1 to 32
Sweden, 1821 to 1825 . . . . . 1 to 23·5	Austria, 1828 . . . . . 1 to 49
Denmark, 1825 to 1834 . . . . . 1 to 24	France at large, 1853 . . . . . 1 to 24
Belgium,   1841 to 1843 . . . . . 1 to 24·2	Department of Seine . . . . . 1 to 15
Prussia,¶ 1820 to 1834 . . . . . 1 to 29	Paris,** 1836 to 1844 . . . . . 1 to 14·3
Iceland, 1817 to 1828 . . . . . 1 to 30	“ 1845 to 1853†† . . . . . 1 to 13·8

\* HUSSON, *Les Consummations de Paris*, 1856. † Compiled from DE JONNÉS.

‡ 10,925 births; 646 still-births.

§ Births, 52,538; still-births, 2624.

|| Compiled from QUETELET, *Theory of Probabilities*, p. 152; 406,073 living births; 16,767 still-births.

¶ Births, 7,593,017; still-births, 257,068. 1839-41, 1 to 26; ELLIOTT, *Hunt's Merchants' Magazine*, July, 1856.

\*\* 2080 still-births.

†† 2349 still-births.



The proportion of still-births in the rural districts of France is governed by the same laws as in the metropolis.

In 363 provincial towns the ratio was, from

1836 to 1845 . . . . 1 to 19·55 | 1846 to 1850 . . . . 1 to 18·8

While districts more thinly populated gave, from

1841 to 1845 . . . . 1 to 29 | 1846 to 1850 . . . . 1 to 27\*

In Belgium, during a similar period, the ratio was much the same.†

1841 to 1843, in towns . 1 to 16·1 | 1841 to 1843, in country . 1 to 29·4

The apparent discrepancy between city and country, noticed as equally obtaining in Belgium and France, is chiefly owing to greater negligence of the country officials in registering the still-births, and to the fact, as we have seen in Paris, that the ratio of births to the population is greater in the city than in the country at large.

Finally, while the proportion of still-births to the whole number is greatly increasing in Paris, so is the number of known abortions.

We omit, for the present, the evidence afforded by arrests and trials, which we might here have turned to account. At the Morgue, which represents but a very small fraction of the foetal mortality of Paris, and in this matter almost only crime, there were deposited during the eighteen years preceding 1855, a total of 1115 foetuses,‡ of which 423 were at the full term, and 692 were less than nine months; and of these last, 519, or five-sixths, were not over six months, a large proportion of them showing decided marks of criminal abortion.

Again, of the 692 foetuses of less than nine months, deposited at the Morgue during these eighteen years, 295 were between 1836 to 1845, an average, at that time, of 32·7 yearly; and from 1846 to 1855 there were 397, an average of 44·1. During the means of these periods the births in France were as follows§:—In 1841, 1,005,203, and in 1851, 1,037,040, from which it is evident that there was deposited at the Morgue, in 1841, one infant, dead from abortion, to every 30,700 births; and in 1851, one to every 23,500. The increased ratio is seen to be striking; it will hereafter become apparent that the increase is far greater in reality.

We turn now to our own country, to which the City of New York holds much the same relation, as respects public opinion no less than in other matters, that Paris holds to France.

Since 1805, when returns were first made to the Registry of New York, the number, proportionate as well as actual, of foetal deaths, has steadily and rapidly increased. With a population at that time (1805) of 76,770, the number of still and premature births was 47; in 1849, with a popula-

\* DE JONNÉS, loc. cit., p. 239.

† QUETELET, loc. cit., p. 152.

‡ Register of the Morgue.

§ DE JONNÉS, loc. cit., p. 193.



tion estimated at 450,000, the number had swelled to 1320.\* Thus, while the population had increased only *six* times since 1805, the annual number of still and premature births had multiplied over *twenty-seven* times.

The following table shows the rapidity of this increase :—The ratio of foetal deaths to the population, was in

1805 . . . . .	1 to 1633·40	1830 . . . . .	1 to 597·60
1810 . . . . .	1 to 1025·24	1835 . . . . .	1 to 569·88
1815 . . . . .	1 to 986·46	1840 . . . . .	1 to 516·02
1820 . . . . .	1 to 654·52	1845 . . . . .	1 to 384·68
1825 . . . . .	1 to 680·68	1849 . . . . .	1 to 340·90

In the three years preceding 1849, there were registered in New York 400 premature births, and 3139 children still-born; a total of 3539, representing at that time a yearly average of some 1200 foetal deaths. While it will be shown hereafter that a large proportion of the reported premature births must always be from criminal causes, and that though almost all the still-births at the full time, even from infanticide, are necessarily registered, but a small proportion of the abortions and miscarriages occurring are ever reported to the proper authorities, it will immediately be made apparent that at the present moment the abortion statistics of New York are far above those of 1849.

In the three years preceding 1857, there were registered in New York 1196 premature, and 4735 still-births,† a total of 5931, representing a yearly average of some 2000 foetal deaths; showing that in the short space of seven years, the number of foetal deaths in New York, already enormous, had very nearly doubled.

Again, in 1856, the total number of births at the full time in New York, was 17,755; of these, 16,199 were living;‡ proving that of children at the full time alone, setting aside the great number of viable children born prematurely, and the innumerable earlier abortions not recorded, one in every 11·4 is born dead.

From foreign statistics on a large scale, it is found that the proportion of still-births, even allowing a wide margin for criminal causes, does not, in those countries, drop below 1 in 15, and this in France, ranging from that number up to 1 in 30 or 40 of the whole number of births reported. We have already given a table upon this point.

In Geneva, out of 10,925 births occurring from 1824 to 1833, 1221 of them being *illegitimate*, and therefore to be supposed liable to a large percentage of deaths from criminal causes, there were only 646 foetal deaths; a proportion of 1 in 17.

\* Report of City Inspector of New York for 1849.

† City Inspector's Report for 1856.

‡ Ibid.

In Belgium there were 29,574 *illegitimate* births from 1841 to 1843, and of these, 1766 were born still;\* 1 in 16·8.

In New York, from 1854 to 1857, there were 48,323 births, and 5931 still-births, at the full time and prematurely; or in other words, 1 to every 8·1 was born dead.

The ratio of still-births in New York, including, as we have seen, abortions, is steadily increasing, as seen by the following table,† in which we have compared the still-births, supposable perhaps of accidental value, with the general mortality, whose value is at least as accidental, if not more so. The evidence, like that already furnished, is astounding.

	Total mortality.	Still-births.	Ratio.
1804 to 1809 . . . . .	13,128	349	1 to 37·6
1809 to 1815 . . . . .	14,011	533	1 to 26·3
1815 to 1825 . . . . .	34,798	1,818	1 to 19·1
1825 to 1835 . . . . .	59,347	3,744	1 to 15·8
1835 to 1855 . . . . .	289,786	21,702	1 to 13·3
1856‡ . . . . .	21,658	1,943	1 to 11·1

The frequency of abortions and premature births reported from the practice of physicians, and thus to a certain extent, but not entirely, likely to be of natural or accidental origin, is as follows:—

In 41,699 cases registered by Collins, Beatty, La Chapelle, Churchill, and others,§ there were 530 abortions and miscarriages. Here all the abortions were known; their proportion was 1 in 78·5.

In New York, from 1854 to 1857, there were 48,323 births at the full time reported, and 1196 premature. Here all the abortions were not known, probably but a very small fraction of them; the proportion was 1 in 40·4.

Finally, we compare the recorded premature still-births of New York, with those still at the full time.

In the seventeen years from 1838 to 1855,|| there were reported 17,237 still-births at the full time, and 2710 still prematurely; the last bearing the proportion of 1 to 6·3.

In the nine years, from 1838 to 1847, omitting 1842 for reasons stated below, there were 632 premature still-births, and 6445 still at the full time; a yearly average of 1 in 10·2.

\* Compiled from QUETELET, loc. cit., p. 152.

† Compiled from City Inspector's Report for 1855.

‡ Ibid. for 1856.

§ CLAY, *Obstetric Cyclopedia*, p. 21.

|| Separate records of the premature births in New York were not made before this period. They were not rendered in 1842; I have therefore omitted in the calculation the still-births of the same year. For a series of the official reports, I am indebted to the present City Inspector, Mr. Geo. W. Morton.



In the eight years, from 1848 to 1855, there were 2078 premature still-births, and 10,792 still at the full time; an average of 1 in 5.

While in 1856 there were 387 still prematurely, and 1556 at the full time; or 1 in 4.02.

From these figures there can be drawn but one conclusion, that criminal abortion prevails to an enormous extent in New York, and that it is steadily and rapidly increasing. "We cannot refer," was well said by a former inspector of that city,\* "such a hecatomb of human offspring to natural causes." We shall now endeavor to prove this point by other reasoning.

That our deductions concerning the population and births of France are perfectly legitimate, is admitted beforehand by the leading political economists of the day; ignorant as they were in its various relations of much of the evidence now brought forward, and of the conclusion to which the whole matter, directly and with almost mathematical exactness, is proved to tend.

"In France," remarks De Jonnés,† "the fecundity of the people is restrained within the strictest limits."

"The rate of increase of the French population," says Mill, "is the slowest in Europe;‡ the number of births not increasing at all, while the proportion of births to the population is considerably diminishing."§

We have seen, moreover, that in France the actual ratio of living births is constantly and rapidly diminishing, while the still-births, actual and proportional, are as fast increasing; that the premature births progress in similar ratio, and by deduction and actual statistics, the criminal abortions; and that these facts obtain not merely in the metropolis, but throughout the country.

What are the causes of these remarkable facts, need it now be asked? Let all allowances be made for certain conjugal habits extensively existing among the French, and by no means rarely imitated in this country, but the proportionate decrease of living births is too enormous, the actual and proportionate increase of premature and still-births is too frightful to be wholly explained thus, or as West,|| Husson,¶ and De Jonnés\*\* have thought, to be attributed to a mere progressive lack of fecundity. Reason and the evidence alleged compel us to believe that in great measure they are owing to criminal abortion.

Political economists allow the facts in France to be as we have stated. Their interpretation of the causes, unwilling as they would be to confess its ultimate bearing, we now compel to serve as evidence.

\* Report of 1849. † Loc. cit., p. 195. ‡ Loc. cit., i. p. 344. § Ibid., p. 343.

|| Med. Times and Gazette, June 1856, p. 611.

¶ Les Consummations de Paris.

\*\* Loc. cit.



"They depend," according to one writer,\* "either on physical agents, especially climate, or on the degree of civilization of a people, their domestic and social habits." "In France the climate is favorable to an increase of population, and this obstacle, this restraint, is found in its advanced civilization."†

"This diminution of births," says Legoyt,‡ "in the presence of a constant increase of the general population and of marriages, can be attributed to nothing else than wise and increased foresight on the part of the parent."

"The French peasant is no simple countryman, no downright 'Paysan du Danube;' both in fact and in fiction he is now 'le rusé paysan.' That is the stage which he has reached in the progressive development which *the constitution of things has imposed on human intelligence and human emancipation.*"§

"These facts are only to be accounted for in two ways. Either the whole number of births which nature admits of, and which happen in some circumstances, do not take place, or if they do, a large proportion of those who are born, die. The retardation of increase results either from mortality or prudence; from Mr. Malthus's positive, or from his preventive check; and one or the other of these must and does exist, and very powerfully too, in all old societies. Wherever population is not kept down by the prudence of individuals or of the State, it is kept down by starvation or disease."||

But on the other hand, it has been forgotten that the alternative supposed does not exist in the case we have instanced. Marriages in France, unlike some other continental States, are continually increasing, and starvation and disease are yearly being shorn of their power. The authors quoted are therefore forced to a single position; that the lessening of births can only be owing to "prudence" on the part of the community.

Moreover, it is allowed by Mill and by Malthus himself,¶ that so much of the decrease as cannot thus be explained, must be attributed to influences generally prevalent in Europe in earlier ages, and in Asia to the present time. "Throughout Europe these causes have much diminished, but they have nowhere ceased to exist."\*\* Several of them have been named by the authority now quoted. Another, and greater than them all, he leaves unspoken; we are compelled to supply for him the omission.

The practice of destroying the foetus in utero, to say nothing of infanticide, history declares to have obtained among all the earlier nations of the world, the Jews alone excepted, and to a very great extent. Aristotle

\* DE JONNÉS, loc. cit., p. 194. † Ibid., p. 195. ‡ Journal des Economistes, 1847.

§ MILL, loc. cit., i. p. 336. The italics are my own. I shall hereafter refer back to this passage.

|| Ibid., i. p. 417.

¶ Essay on Population.

\*\* MILL, loc. cit., i. p. 417.



defends it,\* and Plato.† It is mentioned by Juvenal,‡ Ovid,§ Seneca, and Cicero, and is denounced by the earlier Christians.¶ It was common in Europe through the middle ages, and still prevails among the Mohammedans,¶ Chinese,\*\* Japanese,†† Hindoos,‡‡ and most of the nations of Africa and Polynesia,§§ to such an extent, that we may well doubt whether more have ever perished in those countries by plague, by famine, and the sword.

It is evident, therefore, that the actual and proportionate increase of still-births, and, by induction, setting aside all probable cases of infanticide, of abortion, and the comparative increase of a population reciprocally influence and govern each other so completely, that from the one it may in any given case be almost foreseen what the other must prove.

It is impossible that the results quoted from the Registry of New York, any more than those of France, even if so far, can in any great measure be owing to natural causes alone. They are wholly inexplicable on any principles, "which do not recognize an amount of guilt at which humanity shudders." In comparing that city with Paris, certain allowances must indeed be made; abroad, for the effects of wars and conscription, of despotism, and of migration outward; at home, for the effects of governmental laxity, and of migration inward. In both cities the amount of prostitution, an element not to be lost sight of, must be nearly the same; and in both, under the steady progress of science, medical and hygienic, the ratio of foetal mortality, unless induced by criminal causes, may year by year be supposed to have been steadily diminished.

We have seen that in New York, in the absence of all influences that tend to keep down population in foreign countries, old and crowded, and under the yoke of despotism, the effects, attributable elsewhere to these causes, exist, and to a greater degree than in any other country;

That the ratio of foetal deaths to the population had swelled from 1 in 1633, in 1805, to 1 in 340, in 1849; while in France, at a later period, 1851, they were only about 1 in 1000;

That the actual number of foetal deaths in seven years, from 1850 to 1857, had very nearly doubled;

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\* Travels of Anacharsis, v. p. 270. † Ibid., iv. p. 342. ‡ Satires, vi., v. 592.

§ Amor., lib. 2.: Heroïdes, epist. 2. ¶ REEVE's Apologies.

¶ BLAQUIERE, Letters from the Med., pp. 90, 184; SLADE, Records of Travels, ii. p. 162.

\*\* BARROW, Travels in China, p. 113; DE PAUW, Philosoph. Dissert; MEDHURST, China, &c., p. 45; SMITH, Exploratory Visit, &c., i. p. 53.

†† GOLOWNIN, Memoirs of a Captivity, iii. p. 222.

‡‡ MOOR, Hindoo Infanticide, p. 63; BUCHANAN, Christian Researches in Asia, p. 49; WARD, View of the History, &c., of the Hindoos, p. 393.

§§ For a long list of authorities on these points, see BECK, ii. p. 389, et seq.



That the foetal deaths, as compared with the total of births, elsewhere in cases of illegitimacy, where the results are the very worst, and where crime is confessed to have produced them, being 1 in 16·8,\* had here, legitimate and natural, reached the frightful ratio of 1 in 8·1;

That the foetal deaths, as compared with the total mortality, had increased from 1 in 37, in 1805, to 1 in 13, in 1855;

That the reported early abortions, of which the greater number of course escape registry, bear the ratio to the living births of 1 in 40·4, while elsewhere they are only 1 in 78·5;

And finally, that early abortions, bearing the proportion to the still-births at the full time of 1 in 10·2, in 1846, had increased to 1 in 4·02, in 1856.

It must be borne in mind that these statistics are positive, proving the existence of a certain number of pregnancies abruptly terminated. They cannot therefore be controverted by any argument regarding means for the prevention of pregnancy, no matter to what extent these may be used. Nor should it be forgotten that for every registered premature birth or abortion, innumerable ones occur that are never recorded.

Almost doubling therefore, as does New York, the worst of those fearful ratios of foetal mortality existing in Europe, it is not strange that our metropolis has been held up, even by a Parisian, to the execration of the world. "On le voit (l'avortement)" says Tardieu, "en Amérique, dans une grande cité comme New York, constituer une industrie véritable et non poursuivie."

In this description of New York, we have that of the country.† The relative annual increase of the population existing throughout America, depending as this does chiefly on immigration, must not mislead us. The ratio of foetal death in the metropolis surpasses what has ever been dreamed to obtain even in old countries, where innumerable more legitimate causes for it might be thought to exist. At Boston, which for morals is allowed to compare favorably with any city of its size in the Union, "undoubtedly more than a hundred still-births yearly escape being recorded, a large proportion of which, no doubt, result from criminal abortion."‡ And our

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\* Belgium.

† Local exceptions to this general rule will of course be found to exist, as is always the case with laws based on mere statistics, especially, as here, where reports to the registry are liable, for evident reasons, to be withheld. Thus it appears from Dr. Jewell's collections (this Journal, March, 1857, p. 277,) that the proportion of still-births in Philadelphia was, in 1856, only 1 in 913 to the total population, and 1 in 20·1 to the general mortality, against which evidence must be placed that which we subsequently furnish from Prof. Hodge.

‡ MSS. Letter from City Registrar, March 26, 1857



public prints, far and wide, even in the smaller towns and villages, constantly chronicle deaths from the commission of the crime.

In the State of Massachusetts at large, it has been found of late years that "the increase of the population, or the excess of the births over the deaths, has been *wholly* of those of *recent foreign origin*;"\* this in 1850. In 1853 "it is evident that the births within the Commonwealth, with the usual increase, have resulted in favor of foreign parents in an increased ratio."† In other words, it is found that in so far as depends upon the American and native element, and in the absence of the existing immigration from abroad, the population of Massachusetts is stationary or decreasing.‡

"This result will doubtless surprise many, who will hardly think it possible. Is it general, or is it accidental? If it be general, how has it happened? What causes have been in operation to produce it? How is it to be accounted for?"§ These questions have hitherto been unanswered. We shall find, however, their solution only too easy.

Amid such general thrift and wealth, there has been every reason for the native, like the foreign population, to increase. The preventive check of the economists, though undoubtedly present, can have played but an inferior part, as we shall prove. Emigration westward, the only apparent positive check, though extensive, cannot wholly account for the result.

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\* CHICKERING, Comparative View of the Population of Boston, 1850. City Document, No. 60, p. 44.

† Twelfth Registration Report to the Legislature of Massachusetts, 1853, p. 116. The truth of this statement has been corroborated by Dr. Curtis, in his Report on the Census of Boston in 1855. City Document, 1856, p. 22. Also, Fifteenth State Registration Report, 1856, p. 179.

‡ "Had the rate of the annual increase of the numbers living under the age of five (3.13 per cent.) resulted entirely from the increase of births in a permanent population, the number of births of 1855 (in the districts where the ratio of the registered deaths to the population was greater than one to sixty-three, 166 of the 331 towns) would have been 24,457, instead of 23,481, the number registered. On the other hand, had the increase resulted wholly from migration, (the annual number of births in the permanent population being constant,) the number of births would have been only 22,956. The number of births registered is somewhat nearer the latter than the former of these two values.

"Assuming the correctness of the births, deaths, and population, in the selected districts, it appears that 35 per cent. of the increase of the population under the age of five was due to births in the permanent portion of the population, and 65 per cent. due to the movement of the migratory portion; also, that 38 per cent. of the increase of population at all ages was due to excess of births over deaths, leaving 62 per cent. to be accounted for by excess of immigration over emigration."—ELLIOTT, The Laws of Human Mortality in Massachusetts; Proceedings of Am. Assoc. for Adv. of Science, Montreal, 1857, p. 57.

§ CHICKERING, loc. cit., p. 49.



But statistics exist by whose light, if acknowledged, we may read this important problem.\*

In 1850, the ratio of births to the population in Massachusetts, foreign and American combined, was 1 in 36,<sup>†</sup> and in 1855, 1 in 34;<sup>‡</sup> a ratio much smaller than that obtaining in most countries of Europe, and about equaling that of France, which, in 1850, was 1 in 37.

In 1855, the ratio of still-births, at the full time and premature, as compared with the living births, was 1 to 15.5.§ In France it is 1 to 24; in Austria, 1 to 49.

In 1851, the ratio of foetal deaths to the general mortality, was 1 to 13.3;|| in 1855, 1 to 10.4.¶ In New York City, in 1856, it was 1 to 11. In any city we should expect to find the proportion much greater than in a State at large; we here find it less.

The ratio of premature births to those at the full time, during the period from 1850 to 1856, was 1 to 26.1.\*\* In New York, in 1857, it was 1 to 40, and in good medical practice it is found, as we have seen, to be 1 in 78.

In comparing the recorded abortions and premature births in the City of New York, with the still-births there occurring at the full time, we found that the former had varied from 1 in 10, in 1838, to 1 in 4, in 1856.

In the State of Massachusetts it appears, that during the fourteen years and eight months preceding 1855, there were recorded 4570 still-births, and 11,716 premature births and abortions,<sup>††</sup> the ratio being 1 abortion to .3 still-birth; or, in other words, it would appear from the statistics quoted, that the comparative frequency of abortions in Massachusetts is *thirteen* times as great as in the worst statistics of the City of New York. We are willing, however, we rejoice, to modify this statement, as in the earliest of the years quoted, returns from the City of Boston seem to have

\* The tables now presented, we have compiled from the fifteen published Registration Reports of the State of Massachusetts. Advance sheets of the Sixteenth Report have kindly been furnished me while this article is passing through the press, by the compiler, Dr. Josiah Curtis, of Boston. The premature births for 1856 and 1857 are not given in the reports for those years, so that I cannot extend my calculations beyond 1855. Deductions from the still-births at the full time, which are alone given in the years referred to, are of course useless for the present inquiry.

† Births, 27,664; population, 994,665.

‡ Births, 32,845; population, 1,132,369.

§ Total births at full time, 32,845; living births at full time, 32,120. Foetal deaths, 2064; still, at full time, 725; premature, 1339.

|| Total deaths, including 1462 foetal, 19,461.

¶ Total deaths, including 2064 foetal, 21,523.

\*\* Births at full time, 154,245; premature, 5899.

†† Fourteenth Registration Report, 1855.



been imperfect or wanting,—and to confine our calculations to a more recent period.

From 1850 to 1855, the registration being much more accurate than before, and its results compiled with the greatest care, three years of the five by a noted statistician, Dr. Shurtleff, there were recorded in Massachusetts, 2976 still-births, and 5899 premature births and abortions,\* the ratio being 1 abortion to 5 still-birth; in other words, the frequency of abortions as compared with still-births at the full time, seems at least eight times as great in Massachusetts as in the worst statistics of the City of New York.†

It must not be forgotten that while nearly every still-birth at the full time is necessarily recorded, there must be but very few registrations of the premature births and abortions actually occurring; that though the contrary seems here the case, such occurrences are generally, as they would be supposed, far more frequent in crowded cities than in country districts, or in a State at large; and that however great may be the influence of the prevention of pregnancy in repressing a population, these constitute proofs of pregnancies actually occurring, and frequently criminally terminated.

Few persons could have believed possible the existence of such frightful statistics, the result toward which they must be confessed inevitably to tend, or the dread cause from which they spring. Either these statistics must be thrown aside as utterly erroneous and worthless, or they must be accepted with their conclusions. We would gladly do the former, but they present too many constant quantities, in other respects,‡ for this to be allowed. Our own calculations have been made with care, and we have presented the elements on which they rest. In asserting the results, at once so awful and astounding, we desire to fix upon them the attention and scrutiny of the world.

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\* Fourteenth Registration Report, 1855.

† In the above remarks we must not be misunderstood. We believe Massachusetts no worse with regard to abortion than many other portions of the country, but that its registration is conducted with greater care. From the statistics given it may easily be surmised what the amount of this crime *must be elsewhere*. It is necessarily of infinitely more common occurrence than infanticide, the murder of children after birth, for proof of the frequency of which, at the present moment, in Great Britain, we refer to Dr. Burke Ryan's Fothergillian Essay on the subject in the London Sanitary Review for last July, and to the London Lancet of corresponding date.

‡ As, for instance, in the regularly progressive series of deaths and births, as compared with the population; constant also as compared with each other:—Population of Massachusetts: by census of 1850, 994,665; 1855, 1,132,369. Deaths: 1851, 18,934; 1852, 18,482; 1853, 20,301; 1854, 21,414; 1855, 20,798. Births: 1851, 28,681; 1852, 29,802; 1853, 30,920; 1854, 31,997; 1855, 32,845.

We have seen that the increase of the population of Massachusetts by living births, is almost exclusively among its resident foreigners, Catholics, the rules of whose church will hereafter be shown to exercise an important influence in preventing the destruction of fœtal life. The conclusion cannot therefore well be avoided, that in these facts there exists the evident relation here intimated, of effects to cause.

With some certainty, then, even though statistics are as yet so imperfect, can we assert this conclusion, that frightful as is the extent to which the crime of abortion is perpetrated abroad, there is reason to believe that it prevails to an equal, if not even greater extent at home.

The frequency of arrests or trials for abortion afford, save indirectly, no criterion of the actual frequency of the crime. Our laws on this subject are at present so easily evaded, that officers of justice find it useless to trouble themselves with its prosecution; it is indeed "*non poursuivie*." During the eight years from 1849 to 1858, no report for 1853 being rendered by the Attorney-General, there were 32 trials for abortion in Massachusetts; and in these there was not a single conviction.\* An estimate that for every arrest for this crime, a thousand instances of its commission escape the vigilance or at least the hand of the law, would probably be within the truth. That such is the fact, is shown by the statistics of France, where, from 1846 to 1850, out of 188 cases that came to the knowledge of the police, for lack of decisive evidence, only 22 went to trial,† or about one-ninth of those legally investigated. From 1826 to 1853, there were in France 183 trials for abortion. At the above ratio this will give about 1700 cases judicially examined, a yearly average throughout the empire of between 50 and 60. Comparing this fact with the statistics of the Morgue already given, and with those of the actual decrease of the rate of increase of the population in Paris and in New York, and the increase of premature births, our statement of its frequency will not seem exaggerated.

The number and success of professed abortionists is notorious. If arrested, they are always ready with bribes or abundant bail. Hardly a newspaper throughout the land that does not contain their open and pointed advertisements, or a drug-store whose shelves are not crowded with their nostrums, publicly and unblushingly displayed: the supply of an article presupposes its demand. From these facts we may fairly estimate the extent of their nefarious traffic.

That families are seldom now found of the size formerly common, is also

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\* Reports of Attorney-General of Massachusetts, from 1849 to 1858. State Documents.

† *Comptes Rendus Annuels de la Justice Criminelle.*



a matter of general remark. It were foolish to attempt to explain this by supposing that the present is an age of more moderate desire, or less unbridled lust; there is too much collateral proof against any such plea. Nor is it reasonable to think that women are generally becoming less productive of offspring than formerly, from any natural cause; or that the mass of our population, whatever the exceptions, are already so far advanced in knowledge, physiological or mechanical, or in practice, as in most cases to be able to regulate impregnation at will. The number of pregnancies must be nearly as abundant as ever; who can doubt what becomes of the offspring? We deny, simply and decidedly, the statement of some writers, that of every seven pregnancies, at least one always *naturally* terminates in abortion; this is uncorroborated by any reliable evidence, and is without doubt untrue.

Of the experience of physicians, there can be but one opinion. If each man of the profession were honestly to investigate this matter, and as honestly to avow the result, the mass of evidence would be overwhelming. This statement is in nowise invalidated by the experience alleged by many, especially among older practitioners; their evidence, based chiefly on lack of inquisition, or on the acknowledged less prevalence of the crime in former years, is merely negative, and as such only to be valued.

"We blush," says Prof. Hodge, "while we acknowledge the fact, that in this city, (Philadelphia,) where literature, science, morality, and Christianity are supposed to have so much influence; where all the domestic and social virtues are reported as being in full and delightful exercise, even here" it prevails.\*

Dr. Blatchford, of Troy, N. Y., writes me thus: "A crime which forty years ago, when I was a young practitioner, was of rare and secret occurrence, has become frequent and bold." But why multiply instances of what must be the almost universal experience?

Applications for abortion are in many neighborhoods of constant occurrence, by no means among the poorer classes alone; and few women, unless also convinced by their physician of the enormity and guilt of that they intend, are deterred by his refusal from going elsewhere for aid, or from inducing abortion upon themselves.

But far greater proof than this we all possess, or can, if we desire. In but few of the abortions criminally induced is an application ever made to the physician in regular standing. He is oftener called upon after the crime has already been committed, to treat its acute and immediate effects. If he choose to take for granted in every case, that it has occurred from a perfectly natural cause, even where attending circumstances clearly point

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\* Introductory Lecture, 1854, p. 17.

to the contrary, or to ask no questions, or to shut his eyes and his ears to evident and patent facts, he can of course do so, and perhaps persuade himself that the crime is rare; but if he reflect that upon himself more than on clergyman or legislator, often rests the standard of public morals, and act accordingly, he may arrive at a different result.

But this is not only the fact in acute cases of abortion. The same statement holds true, perhaps even to a greater extent, with regard to chronic obstetric disease. It is now acknowledged that much of this is really the consequence of past difficult or abnormal labors; that the more complicated or improperly interfered with the labor has been, the more certain are unfortunate sequelæ; and that the earlier in pregnancy its occurrence, the greater, as a general rule, the danger, not merely to the mother's life, but to her subsequent health. In the treatment of these results, even more marked perhaps at a late period than earlier, the dependence of effect on cause, and their evident connection, can often be learned by a faithful inquirer, and in no small proportion of cases does the history go back without turn or the shadow of a doubt, to an induction of criminal abortion.

As a mere matter of individual experience, and from a practice by no means exceptional, the writer some time since reported no less than fifteen such cases as occurring to himself within hardly six months; and of these, all without exception were married and respectable women,\* many of them of wealth and high social standing; and subsequently he was able, in consultation, to point out similar cases in the practice of gentlemen who, at that time, had denied the legitimacy of his conclusions. This experience must be a common one, only some lack the courage, as others lack the will, to investigate the matter; should they do so, they can come but to one result.

The frequency of maternal deaths, confessedly from criminal abortion, as gathered from published statements and mortuary reports, is also an item of importance in our summary of evidence. It is probable that in but few of the fatal cases really occurring, is foul play ever thought of, especially if the standing of the victim, and her previous history, have been such as to prevent or disarm suspicion; and on the other hand, while immediate death is undoubtedly a frequent result of induced abortion, it is, in proportion to the cases of its later occurrence, or of confirmed and chronic ill health, comparatively rare. From which it must be granted, that for every case thus made known, very many others must necessarily exist.

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\* Report to Suffolk Dist. Med. Society, May, 1857; New York Med. Gazette, July, 1857, p. 390; N. H. Journal of Medicine, July, 1857, p. 211.



We are compelled, from the preceding considerations, to acknowledge not merely that criminal abortion is of alarming frequency among us, but that its frequency is rapidly increasing; this having been made apparent by each link in the chain of evidence that has been presented. Every effort that might possibly check this flood of guilt will, if delayed, have so much the more to accomplish. The crime is fast becoming, if it has not already become, an established custom, less honored in the breach than in the observance.

What are the causes of this general turpitude?

They also may be classified—

- I.—The low *morale* of the community as regards the guilt of the crime.
- II.—The ease with which its character, in individual cases, may be concealed.
- III.—The unwillingness of its victims to give testimony that would also criminate themselves.
- IV.—The possibility of their inducing abortion upon themselves without aid.
- V.—The ease with which the laws, as at present standing, may be evaded.
- VI.—The lack or inefficacy of judicial preventives; such as statutes for registration, and those against concealment of birth and secret burials.
- VII.—The prevalent ignorance of the true principles of its jurisprudence in both government officials and medical witnesses.
- VIII.—Social extravagance and dissipation.
- IX.—The doctrines of political economists.
- X.—The fear of child-bed.

That public opinion should at present attach so little importance to the value of foetal life, has already been shown to be owing in great measure to ignorance respecting its actual existence in the earlier months of pregnancy. Two other, and no less general, physiological errors prevail, extensively inculcated by popular authors and lecturers for their own sinister purposes.

One of these is the doctrine that it is detrimental to a woman's health to bear children beyond a certain number, or oftener than at certain stated periods, and that any number of abortions are not merely excusable, as preventives, but advisable; it being entirely forgotten that the frequency of connection may be kept within bounds, and the times of its occurrence regulated, by those who are not willing to hazard its consequences; that if women will, to escape trouble or for fashion's sake, forego the duty and

privilege of nursing, a law entailed upon them by nature, and seldom neglected without disastrous results to their own constitutions, they must expect more frequent impregnation; that the habit of aborting is generally attended with the habit of more readily conceiving; and that abortions, accidental, and still more if induced, are generally attended by the loss of subsequent health, if not of life.

This error is one which would justify abortion as necessary for the mother's own good; a selfish plea. The other is based on a more generous motive. It is that the fewer one's children, the more healthy they are likely to be, and the more worth to society. It is, however, equally fallacious with the first, and is without foundation in fact. The Spartans and Romans, so confidently appealed to, gave birth probably to as many weakly children as do our own women; that they destroyed many for this reason in infancy, is notorious. The brawny Highlanders are not the only offspring of their parents; the others cannot endure the national processes of hardening by exposure and diet, and so die young from natural causes. But were this theory true even so far as it goes, the world, our own country, could ill spare its frailer children, who oftenest, perhaps, represent its intellect and its genius.

In asserting that the doctrines of the leading political economists for the last half century are accountable for much of the prevalence and increase of the crime, ignorant or careless as these writers all seem of the dire means that would be resorted to for the attainment of their ends, I have in no way exaggerated. Malthus remarks in his well-known *Essay on Population*, that "in the average state of a well-peopled territory, there cannot well be a worse sign than a large proportion of births, nor can there well be a better sign than a small proportion;"\* and he endorses the assertion of Hume, subsequently proved false by Sadler,† that the permission of child-murder, by removing the fear of too numerous a family in case of marriage, tends to encourage this step, and thereby the increase of population; "the powerful yearnings of nature preventing parents from resorting to so cruel an expedient, except in extreme cases."‡

Sismond§ and a host of others might also be quoted, but a few extracts from a later writer, standard in this country at present, and taught in our universities, till very lately in that at Cambridge, for instance, will suffice.

"We greatly deprecate," says Mill, "an increase of population, as rapid as the increase of production and accumulation."||

\* Loc. cit., p. 313.

† The Law of Population, 1830.

‡ HUME, *Essays*, vol. i. No. xi., p. 431.

§ *Etudes sur l'Economie Politique; Nouveaux Principes d'Economie Politique.*

|| Loc. cit., ii. p. 253.



"There is room in the world, no doubt, and even in old countries, for an immense increase of population. But although it may be innocuous, I confess I see very little reason for desiring it."

"I sincerely hope, for the sake of posterity, that they will be content to be stationary long before necessity compels them to it."\*

"If the opinion were once generally established among the laboring class, that their welfare required a due regulation of the numbers of their families, only those would exempt themselves from it who were in the habit of making light of social obligations generally."† "The principles contended for include not only the laboring classes, but all persons, except the few who being able to give their offspring the means of independent support during the whole of life, do not leave them to swell the competition for employment."‡

"When persons are once married, the idea never seems to enter any one's mind, that having or not having a family, or the number of which it shall consist, is at all amenable to their own control. One would imagine that it was really, as the common phrases have it, God's will and not their own, which decided the number of their offspring."§

"In a place where there is no room left for new establishments," says Sismondi, entirely ignoring the escapes offered by emigration and the increased importation of food, "if a man has eight children, he should believe that unless six of them die in infancy, these, and three of his own contemporaries of each sex, will be compelled to abstain from marriage in consequence of his own imprudence."||

The direct result of remarks like these last, so pointed and plainly to be understood, is seen in the statistics I have so largely given. Would mankind, in following such advice, merely resort to greater abstinence before their means allow the expense of children, and to greater prudence after that period, no fault could be found; but when we discover criminal abortion thus justified and almost legitimated, we may well oppose to such doctrine the words of the indeed admirable Percival, "To extinguish the first spark of life is a crime of the same nature, both against our Maker and society, as to destroy an infant, a child, or a man."¶

Fear of child-bed, in patients pregnant for the first time, or who had suffered or risked much in previous labors, might formerly have been allowed some weight in excuse, but none at all in these days of anæsthesia. It has been urged, and not so absurdly as would at first sight appear, that

\* Ibid., i. p. 451. An opinion to the same effect, italicized, has already been quoted.

† Ibid., ii. pp. 316, 317.

‡ Ibid., i. p. 447.

§ Ibid., i. p. 452, foot-note.

|| Nouveaux Principes, &c., liv. vii. ch. 5.

¶ Medical Ethics, p. 79.

the present possibilities of painless and so much safer delivery, by changing thus completely the primal curse, from anguish to a state frequently of positive pleasure, remove a drawback of actual advantage, and by offering too many inducements for pregnancy, tend to keep women in that state the greater part of their menstrual lives.

The consideration in detail of the various other causes to which I have alluded as accounting for the prevalence of abortion, together with that of the many special reasons offered in individual cases by way of excuse, I postpone for the present; merely premising that where ignorance is so evidently and so extensively its foundation, those who, possessing, yet withhold the knowledge which by any chance or in any way would tend to prevent it, themselves become, directly, and in a moral sense, responsibly accountable for the crime.

### III. ITS VICTIMS.

WE have hitherto discussed abortion in the abstract, as a crime, and in its relations to the community at large. We have seen its heinous nature, and its awful extent.\*

The division of the subject now to be examined naturally presents itself under a fourfold aspect, numerical, relational, social, and medical; representing respectively the multitude of the victims of abortion, their character as parent and child, their standing in the community, and the degree, whether unto death or otherwise, of their suffering.

So far as statistics will at present allow, the numerical relations of the victims of abortion have already been fully discussed, the yearly thousands of foetal and the frequent maternal deaths; one sacrifice at least, that of the child, being implied in every case.

Various incidental questions suggest themselves in this connection, curious, and by some, though erroneously, thought to be of judicial im-

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\* Since our last article, the report of the Committee appointed in 1858 to investigate the Health Department of the City of New York has appeared, and we find that our statements regarding the frequency of the crime in the metropolis are fully corroborated. Not merely are additional official statistics on this point given (pp. 182, 183), but valuable testimony from Drs. Griscom (pp. 25, 30), McNulty (p. 55), Francis (p. 64), and Bulkley (p. 133). Dr. Reese's paper on Infant Mortality, republished by the Committee (pp. 90-100), from the Transactions of the American Medical Association for 1857, also contains incidental reference to the frequency of abortion, and for its direct and earnest dealing with the subject deserves unqualified commendation.

In this connection we would call attention to the evidence of the extent of the crime in Boston, afforded since our own remarks upon that point were in type, by Dr. Walter Channing. (Boston Med. and Surg. Journal, March 17, 1859.)



portance. Two of them will be here adverted to; they are the age of the mother and that of the fœtus.

It was formerly supposed, as in infanticide, that criminal abortion was seldom resorted to save for the concealment of shame; and as seductions, confessedly frequent in comparison with adultery, are most common in youth, it was laid down as probable that wilful abortions are most frequent between the years corresponding, from sixteen to twenty-five. Subsequent experience, however, has disproved this conclusion, and it is evident that the only real limit to its later occurrence is the menstrual climacteric. In many instances of marriage, abortions are resorted to at once, in others after the family has reached a certain point, and are thence regularly continued.

The age of the fœtus is of much more interest; not, as will ultimately appear, for the same reason as in cases of infanticide, but as proving to a certain extent one of the facts we have already considered, the error prevalent regarding the commencement of fœtal life.

It was Orfila's opinion that criminal abortion was most frequent in the two first months of pregnancy. This would naturally have been supposed the case, as then some doubt might always obtain regarding its existence, and the excuse that the measures resorted to were for the purpose of preventing ill effect from an abnormal menstrual suppression would be more available. Devergie, on the other hand, was inclined to put the limits of greatest frequency at from three months to four and a half; while Briand and Chaudé thought the crime more common in the third month than the fifth, and in this last month much more frequent than even in the first or second. Tardieu also came to a similar conclusion.\* He ascertained, that of 34 cases investigated by himself, 25 were in from the third to the sixth month, most in the third; 5 in the first two months; 4 in the seventh and eighth; or that the cases in the third month, or shortly after, were five times as numerous as at either an earlier or a later period, and nearly three times as numerous as in both combined.

Upon examining the Register of the Morgue, we find its statistics strikingly corroborative of these deductions. We have already seen that from 1837-54 there had been deposited at the Morgue 692 fœtuses of less than nine months. Of these,

23	were from the first to the second month;
79	“ “ second to the third;
108	“ “ third to the fourth;
158	“ “ fourth to the fifth;

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\* *Annales d'Hygiène Publique*, 1856, p. 122.

150	were from the fifth to the sixth ;
97	“ “ sixth to the seventh ;
48	“ “ seventh to the eighth ;
29	“ “ eighth to the ninth.

It has been stated that 519, or five-sixths of them all, were not over six months, and it now appears that on a scale twenty times larger than that given by Tardieu from his own experience, nearly two-thirds of the foetal deaths induced by abortion were in from the third to the sixth month of pregnancy ; the three periods included giving a much larger proportion than any others, and the two last of them being almost identical. The extreme paucity shown by the above table in the first and ninth months, and the decrease in the seventh and eighth from those preceding, are worthy of remark. It is probable that the sudden increase may be attributed to mental reaction after the first shock occasioned by the absolute certainty of pregnancy is past ; and the subsequent decrease to the fact that in many attempted criminal abortions during the later months children are born alive, the mother's courage then proving insufficient for infanticide and its greater and more probable punishment.

The truth seems to be that while frequently the crime is committed in the very earliest period of pregnancy, in the belief that possibly all alarm may be false, in most cases the woman waits a month or two to be sure that she really is pregnant. After the sixth month the comparative rarity of the crime is undoubtedly owing to the fact that foetal life is then rendered certain by the perceived movements of the child, the more strongly as pregnancy advances.

It was formerly thought that the induction of criminal abortion was confined to the unmarried alone ; there exists, however, abundant proof to the contrary. Had such been the fact it would be reasonable to suppose that with the increase of marriages, the number of premature and still-births would have lessened. In proportion, however, as the number of marriages has increased, so has the number of foetal deaths, and in similar ratio the number of living births has declined ; proving, as Husson was compelled to acknowledge of Paris, “a decrease in the fecundity of legitimate unions,”\* explainable in nowise but by a criminal cause. Direct statistics on this point are still wanting, and must come, almost entirely, from medical men. The writer's published experience has been already referred to ; subsequent practice has only confirmed it.

Again, the victims of abortion are not confined to the inhabitants of cities. Of the prosecutions in France during 1851-53, it appears that but little more than a tenth of the whole number occurred in the Depart-

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\* Les Consummations, etc.



ment of Seine.\* But we have already furnished much stronger evidence on this point.

Finally, though the excessive extravagance of the day, entailing as it does to so many an annual expenditure incommensurate with their income, is accountable in no small degree for the crime, yet it cannot always be alleged. There is too much reason to believe that with our communities it is as with others. In France it appears that the poor and uneducated have on the whole the largest families, contrary in some respects to established hygienic rules; while, on the other hand, the rich are inclined as far as possible to restrict the number of their children, often indeed stipulating beforehand, at marriage or previously, that such shall be few or none.†

But not only must we believe that this crime prevails in our midst to an almost incredible extent among the wealthy and educated and married; we are compelled to admit that Christianity itself, or at least Protestantism, has failed to check the increase of criminal abortion. It is not astonishing to find that the crime was known in ancient times, as shown by evidence previously given, nor that it exists at the present day among savage tribes, excused by ignorance and superstition; but that Christian communities should especially be found to tolerate and to practice it, does almost exceed belief.

In the previous remarks, the French have been compared with our own people, not merely because of their published statistics, but because from their loose morals and habits of life they might be thought to represent the extreme to which the crime would be likely to obtain among civilized nations. We have shown reason to suppose that we equal them in guilt, if we do not exceed them. Now it must be borne in mind that the French are Catholic; that the rules of that church do not, as has been generally supposed, permit abortion in the earlier months,‡ but that they rigidly exercise over foetal life throughout pregnancy the most absolute guard and supervision;§ instances of this in cases where craniotomy is supposed to be indicated, are familiar to every practitioner. The church, here omnipo-

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\* Comptes Rendus Annuels, etc.

† MAYER, Des Rapports Conjugaux, considérés sous le triple point de vue de la population, de la santé et de la morale publique. Paris, 1857.

‡ CANGIAMILA, Embryologia Sacra, p. 15.

§ In verification of this statement I am enabled to quote from the last authorized edition of the Canon Laws of the Church of Rome. "Omnes, qui abortûs seu foetus immaturi, tam animati quam inanimati, formati vel informis, ejectionem procuraverint, poenas propositas et inflictas tam divino quam humano jure, ac tam per canonicas sanctiones et apostolicas constitutiones quam civilia jura adversus veros homicidas incurrere, hâc nostrâ perpetuo valiturâ constitutione statuimus et ordinamus." REIFFENSTUELL, Jus Canonicum Universum, tome iii. Paris, 1854.

tent against the physician, and desiring that every created human being should receive the benefit of baptism, demands that foetal death must have taken place previously to the operation proposed. It does not seek for the signs of foetal life, but takes this for granted, and requires that its absence must be proved before allowing the removal of the child, even though this is necessary to save the mother's life.

The rule runs thus: "*Sedulam operam dent sacerdotes, ut quantum poterunt, impediunt nefandum illud scelus quo adhibitis chirurgicis instrumentis infans in utero interficitur. Omnis fœtus quocumque tempore gestationis editus baptizetur, vel absolute, si constet de vitâ; vel sub conditione, nisi evidenter pateat eum vitâ carere.*"\*

In cases where instrumental delivery is absolutely necessary, the ceremony of baptism as ordinarily administered is of course impossible. But as this is deemed so important by the Catholic Church,† even to the sacrifice of the mother, any means of overcoming this obstacle, fatal to countless maternal lives, should be accounted, if found practicable, of the utmost importance. For this purpose, therefore, I do not hesitate to recommend intra-uterine baptism, the consecrated element being carried to the child, if too high to be reached by the hand, by a sponge and staff, or if necessary, by a syringe, as was long ago sanctioned by the theologists of the Sorbonne;‡ in the absence of a clergyman, if the case is urgent, the rite

\* *Decreta Synodi plenariæ Episcoporum Hiberniæ, apud Thurles habitæ anno 1850. Art. de Baptismo, p. 20.*

† *Dublin Review, April, 1858, p. 100.*

‡ *DEVENTER, 1734, p. 366; STERNE, Tristram Shandy, p. 54; Med. Times and Gazette, Aug., 1858, p. 196.* Though the fact of this decision has been doubted, it is nevertheless strictly true. Through the kindness of Bishop Fitzpatrick I have been favored with a copy of BARRY'S *Medico-Christian Embryology*, as presenting upon this point the authorized and generally received doctrine of the Catholic Church. I quote the following from the chapter "*On Baptism in Impracticable and Difficult Labors:*"

"In case of impacted head and at all times that one is obliged to apply the forceps, whether at one of the straits or in the pelvic excavation, it becomes necessary to baptize the child on the part which presents at the uterine orifice after the rupture of the bag containing the waters.

"In order to baptize the child, a syringe charged with natural water may be used. If this be not at hand, a person may use a sponge, or a linen or cotton rag, wetted with water, which is to be carried to the child by the fingers, a pair of forceps, or any other suitable contrivance, and then squeezed or pressed on the surface of the part presenting." (*Loc. cit., p. 45.*)

"Any person, whether man, woman or child, may baptize an infant when in danger of death." (*Ibid., p. 76.*)

If the facts now stated should be generally known and acted upon by the profession, hundreds of lives, infant and maternal, would annually be saved.



accounted so sacred being performed by the physician in attendance rather than to allow the death of the mother. I know that many of the profession, from fear of ridicule or dislike to sanction what they do not believe in, would shrink from such a duty. Is it not, however, due to humanity in every way to prevent this frequent murder? for such, by our apathy and neglect, the mother's death in these cases becomes. Can we, as Christians, refuse *any* aid? I am not ashamed to acknowledge that for myself, though no Catholic, I have performed this intra-uterine baptism, where delivery without mutilation was impossible. I could neither conscientiously assert the child's death, nor allow the mother to linger till it should occur, while the friends, in the absence of a priest, whose presence it was impossible to procure for many hours, would not permit the operation. Remonstrance was useless; had I refused I should have been morally responsible for the almost inevitable death of the woman; it was, therefore, simply my duty.

I shall now quote from an admirable letter I have lately received from the Catholic Bishop of Boston. The extracts are couched in so forcible language, and their spirit is so thoroughly Christian, that I need not apologize for their length, or that they recapitulate arguments I have already advanced.

"The doctrine of the Catholic Church," remarks Bishop Fitzpatrick, "her canons, her pontifical constitutions, her theologians without exception, teach, and constantly have taught, that the destruction of the human fœtus in the womb of the mother, *at any period from the first instant of conception*, is a heinous crime, equal, at least, in guilt to that of murder. We find it distinctly condemned as such even as far back as the time of Tertullian, (at the end of the second century,) who calls it *festinatio homicidii*, a hastening of murder. The Pope, Sixtus the Fifth, in a bull published in 1588, subjects those guilty of the crime to all the penalties, civil and ecclesiastical, inflicted on murderers. It is denounced and reprobated in many other canons of the church.

"The reason of this doctrine (apart from the authority of the church) must, it seems to me, appear evident upon a little reflection. The very instant conception has taken place, there lies the vital germ of a man. True, it is hidden in the darkness of the womb, and it is helpless; but it has sacred rights, founded in God's law, so much the more to be respected because it is helpless. It may be already a living man, for neither mothers nor physicians can tell when life is infused; they can only tell when its presence is manifested, and there is a wide difference between these two things. At any rate, it is from the first moment potentially and *in radice* a man, with a body and a soul destined most surely by the will of the Creator and by his law, to be developed into the fullness of human exist-

ence. No one can prevent that development without resisting and annulling one of the most sacred and important laws established by the Divine Author of the universe, and he is a criminal, a murderer, who deals an exterminating blow to that incipient man, and drives back into nothingness a being to whom God designed to give a living body and an immortal soul.

"From this it follows that the young woman whose virtue has proved an insufficient guardian to her honor, when she seeks by abortion to save in the eyes of man that honor she has forfeited, incurs the additional and deeper guilt of murder in the eyes of God, the judge of the living and the dead. Who can express what follows with regard to those women, who, finding themselves lawfully mothers, prefer to devastate with poison or with steel their wombs, rather than bear the discomforts attached to the privilege of maternity, rather than forego the gaities of a winter's balls, parties, and plays, or the pleasures of a summer's trips and amusements?

"But abortion," the Bishop continues, "besides being a direct crime against a positive law of God, is also an indirect crime against society. Admit its practice, and you throw open a way for the most unbridled licentiousness, you make woman a mere instrument for beastly lust. Every woman is somebody's mother or daughter or sister or wife; or she bears all these relations at once. Whatever protection, therefore, we would claim for a woman because she stands in any of these relations to us, we should also extend to all women, because they bear some one of all these relations to others. Most assuredly, then, we should remove none of the safeguards that protect female virtue. But if we take away the responsibility of maternity, we destroy one of its strongest bulwarks.

"It affords me pleasure," he concludes, "to learn that the American Medical Association has turned its attention to the prevention of criminal abortion, a sin so directly opposed to the first laws of nature, and to the designs of God, our Creator, that it cannot fail to draw down a curse upon the land where it is generally practiced."\*

Such being the doctrine of the Catholic Church, and statistics nevertheless proving that its so stringent statutes against the destruction of foetal life, enforced alike by denouncement and excommunication, are constantly broken in Catholic France, it is more than probable, from the existence of this fact, in addition to all the various causes of the crime we have seen equally prevailing there and in this country, that the actual number of abortions is much greater with ourselves; at least with the

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\* MS. Letter, dated Nov. 14th, 1858.



American and native portion of our population. We have indeed shown that this is really the case in Massachusetts.\*

Viewing this subject in a medical light, we find that death, however frequent, is by no means the most common or the worst result of the attempts at criminal abortion. This statement applies not to the mother alone, but, in a degree, to the child.

We shall perceive that many of the measures resorted to are by no means certain of success, often indeed decidedly inefficacious in causing the immediate expulsion of the fœtus from the womb; though almost always producing more or less severe local or general injury to the mother, and often, directly or by sympathy, to the child.

The membranes or placenta may be but partially detached, and the ovum may be retained. This does not necessarily occasion degeneration, as into a mole or hydatids, or entire arrest of development. The latter may be partial, as under many forms, from some cause or another, does constantly occur; if from an unsuccessful attempt at abortion, would this be confessed, or indeed always suggest itself to the mother's own mind? Fractures of the fœtal limbs prior to birth are often reported, unattributable in any way to the funis, which may amputate indeed, but seldom break a limb. A fall, or a blow, is recollected; perhaps it was accidental, perhaps not, for resort to these for criminal purposes is very common. In precisely the same manner may injury be occasioned to the nervous system of the fœtus, as in a hydrocephalic case long under the writer's own observation, where the cause and effect were plainly evident. Intra-uterine convulsions have been reported; as induced by external violence they are probably not uncommon, and the disease thus begun may eventuate in epilepsy, paralysis, or idiocy.

To the mother there may happen correspondingly frequent and serious results. Not alone death, immediate or subsequent, may occur, from metritis, hemorrhage, peritonitic or phlebitic inflammation, from almost every cause possibly attending not merely labor at the full period, comparatively safe, but miscarriage,—increased and multiplied by ignorance, by wounds and violence; but if life still remain, it is too often rendered worse than death.

The results of abortion from natural causes, as obstetric disease, sepa-

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\* It is not of course intended to imply that Protestantism, as such, in any way encourages, or indeed permits, the practice of inducing abortion; its tenets are uncompromisingly hostile to all crime. So great, however, is the popular ignorance regarding this offence, that an abstract morality is here comparatively powerless; and there can be no doubt that the Romish ordinance, flanked on the one hand by the confessional, and by denouncement and excommunication on the other, has saved to the world thousands of infant lives.

rate or in common, of mother, foetus or membranes, or from a morbid habit consequent on its repetition, are much worse than those following the average of labors at the full period. If the abortion be from accident, from external violence, mental shock, great constitutional disturbance from disease or poison, or even necessarily induced by the skilful physician in early pregnancy, the risks are worse. But if, taking into account the patient's constitution, her previous health and the period of gestation, the abortion has been criminal, these risks are infinitely increased.\* Those who escape them are few.

In thirty-four cases of criminal abortion reported by Tardieu, where the history was known, twenty-two were followed, as a consequence, by death, and only twelve were not. In fifteen cases necessarily induced by physicians, not one was fatal.†

It is a mistake to suppose, with Devergie, that death must be immediate, and owing only to the causes just mentioned. The rapidity of death, even where directly the consequence, greatly varies; though generally taking place almost at once if there be hemorrhage, it may be delayed even for hours where there has been great laceration of the uterus, its surrounding tissues, and even of the intestines;‡ if metro-peritonitis ensue, the patient may survive for from one to four days, even indeed to seven and ten. But there are other fatal cases, where on autopsy there is revealed no appreciable lesion; death, the penalty of unwarrantably interfering with nature, being occasioned by syncope, by excess of pain, or by moral shock from the thought of the crime.§

That abortions, even when criminally induced, may sometimes be safely borne by the system, is of little avail to disprove the evidence of numberless cases to the contrary. We have instanced death. Pelvic cellulitis, on the other hand; fistulæ, vesical, uterine, or between the organs alluded to; adhesions of the os or vagina, rendering liable subsequent rupture of the womb, during labor or from retained menses, or, in the latter case, discharge of the secretion through a Fallopian tube and consequent peritonitis; diseases and degenerations, inflammatory or malignant, of both uterus and ovary; of this long and fearful list, each, too frequently incurable, may be the direct and evident consequence, to one patient or another, of an intentional and unjustifiable abortion.

We have seen that in some instances the thought of the crime, coming upon the mind at a time when the physical system is weak and prostrated,

\* PASSOT, Des dangers de l'avortement provoqué dans un but criminel; Gazette Méd. de Lyon, 1853.

† Ann. d'Hygiène, 1856, p. 147.

‡ DUBOIS and DEVERGIE, *ibid.*, tome xix. p. 425; tome xxxix. p. 157.

§ *Ibid.*



is sufficient to occasion death. The same tremendous idea, so laden with the consciousness of guilt against God, humanity, and even mere natural instinct, is undoubtedly able, where not affecting life, to produce insanity. This it may do either by its first and sudden occurrence to the mind; or, subsequently, by those long and unavailing regrets, that remorse, if conscience exist, is sure to bring. Were we wrong in considering death the preferable alternative?

#### IV. ITS PROOFS.

It is by no means an easy thing in all cases to obtain evidence that an abortion has occurred; still more difficult, that it has been intentionally induced. As most laws read, it is necessary at the outset to prove the existence of pregnancy; as many still stand, it must be shown that the woman has quickened. These requisitions are unwise and unjust, and under them, if insisted on by adroit counsel, it is almost useless to pursue prosecution. In the earlier months, before quickening has occurred or the foetal pulsations have become evident to the ear, it is impossible, as I have elsewhere insisted,\* ever to be sure of the existence of pregnancy, and yet attempts at its termination are then in no degree less criminal. The only infallible sign of pregnancy is the sound of the foetal heart, not always to be detected, even by the double stethoscope.

Putting aside, therefore, the question of the existence of pregnancy and of foetal life, as taken for granted on the one hand by the attempt at their termination, and as proved on the other by this result, it is found that the evidence of abortion classifies itself into proofs of its occurrence, of its commission, of the criminal intent, and of the identity of the party accused.

##### 1. *The Occurrence.*

The abortion may perhaps be known to have taken place by confession or witness; in either case requiring no further demonstration. Instances are not rare, however, where suspicion merely may exist, and the fact must be proved by collateral testimony; and this in two cases, where the woman is still alive, and where she is dead.

The general history of the case, even if pregnancy and delivery be equally denied, may throw some light on its true nature. This as given, no matter how affected by the evidence of interested or implicated witnesses, may be probable or improbable; as in an instance related by

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\* Review of MONTGOMERY'S Signs of Pregnancy; The North American Medico-Chirurgical Review, March, 1857, p. 249.

Burns,\* where her sudden lessening in bulk was ascribed by a patient to a night's profuse sweating, of course an impossible result. But, on the other hand, care is necessary lest from its rarity of occurrence or its improbability, the reality should be disbelieved. Cases are on record where innocent women, suffering from retention of menses or from ovarian disease, and suddenly relieved by a critical and spontaneous discharge, have on suspicion of abortion lost character and even their lives. If the statements contradict each other, this fact of itself may reveal the truth.

There are at times difficulties in proving delivery at the full period of pregnancy, as is well known. The earlier in gestation, if the patient survive, the more these difficulties are enhanced. The occurrence of normal labor cannot be discovered with any certainty by a personal examination after eight days have elapsed,† those of an early abortion not even after only one or two.‡ The signs of delivery that are well marked at the full period, the general symptoms then obtaining, the size of the uterus, ascertained by the hand and sound, lacerations of the perineum and cervix, the lochia, the state of the breasts, abdomen, vagina, and vulva, all of little value except in conjunction with each other, are proportionately less defined as we go back, until near the commencement of pregnancy it becomes impossible to distinguish the abortion from severe hemorrhage or from menorrhagia, unless by detecting the impregnated ovum.

If the patient is dead, and too long time have not elapsed since the supposed occurrence, decision is often more easy; many facts in the case being generally known, and concealment being less possible. If the ovum, but partially detached, be still retained, the fact is self-evident; if it has been discharged, and concealed or lost, there will still be present the recent corpus luteum and other well-known signs, in proportion to the period of the pregnancy. Allowance, in this latter respect, must be made for the possibility of partial uterine contraction after death, as is sometimes known to occur at the full period;§ the writer has seen it to a marked degree some time previous to the expiration of pregnancy, at a Cæsarean section after death from laryngitis, occurring in the Edinburgh Maternity Hospital.

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\* Principles of Midwifery, p. 547.

† BAUDELOCQUE, tome i. p. 115; FODERE, ii. p. 17; MARC, Dict. de Méd., i. p. 228; MONTGOMERY, Signs of Pregnancy, p. 578; DEVERGIE, Méd. Légale, i. p. 244.

‡ RYAN, p. 267; TARDIEU, loc. cit.

§ CLARKE, Trans. of Soc. for Impr. of Med.-Chir. Knowledge, iii. p. 290; BAUDELOCQUE, i. p. 123, note; LEROUX, Traité des Pertes, Obs. xiii. p. 25 MONTGOMERY, loc. cit., p. 618.



2. *The Commission.*

Allowing the fact of the occurrence of an abortion to be proved or granted, it becomes necessary to discover its cause, whether accidental, natural, or intentional. Of this it will be found that the proofs are both positive and negative; drawn from the history of the case and from personal examination of the patient and the fœtus. The value of each of these elements is increased in proportion as it is compared with the other; but "this I wish most especially to have noted, that WHEREVER THERE IS A MISCARRIAGE, THERE IS ALWAYS PRESENT SOME ACTUAL, PERCEPTIBLE, AND OFTEN TANGIBLE CAUSE."\*

The story of the patient may be to one effect, and that of other parties involved, to a very different one; if the first is corroborated by the second, it may again, as has already been remarked, present or not the likelihood of truth. If the habit of aborting at a certain period has existed, which of course cannot be alleged in a first pregnancy, if the patient has had sudden fright or grief, or is known to have been accidentally injured, the chances are to be considered in her favor, in the absence of proof to the contrary. The converse of this statement, however, must not be considered as always and necessarily true. Women have time and again suffered shipwreck, undergone torture, been thrown from a height, and otherwise severely injured, and yet have escaped miscarriage; while, on the other hand, they may repeatedly have aborted before, and yet passing safely their usually critical point, may without trouble go on to the full period. In still other cases there may exist local disease, pelvic or uterine, which, if left alone, would of itself occasion miscarriage.

The character of the abortion is not without its value, whether occurring suddenly and without apparent cause, or preceded by maternal disease or the signs of foetal death.

Examination of the mother, though proof that she has herself been injured is not necessary to establish the crime, may reveal local wounds and mutilations; or their absence, which, however, by no means goes to prove that violence may not have been inflicted; and, on the other hand, as in a case lately reported by the writer to the Boston Society for Medical Observation, traces of former violence in instrumental or other labors may remain, and to such an extent as to give to the touch every character of a recent and criminal interference.† The fœtus may show

\* GARDNER, of New York, note to TYLER SMITH's Lectures on Obstetrics, p. 203.

† Am. Journ. of the Med. Sciences, April, 1859. In the instance referred to, the cervix had been deeply and extensively lacerated, forceps having been used in four previous labors; while depressions existing between the old cicatrices and half filled

pre-existing and natural disease sufficient to account for the effect apparent, or may present the signs of direct and intentional interference. Recent scars of venesection on the arms and feet, and of leech-bites, especially on the upper and inner parts of the thighs, are suspicious in a patient who has aborted, unless they were evidently required by the state of her previous health. If signs of irritant injections into the vagina are present, they are ground for more than suspicion.

The instrument, where used, with which the operation has been performed, may sometimes be identified; though this is almost impossible unless by confession or direct testimony. The weapons resorted to by the unprofessional are various; knitting kneedles, pen handles, skewers, goose quills, pieces of whale-bone, and even curtain rods, are among the number. The finger alone, except where the uterus is prolapsed or can be depressed, and the os is very soft and patulous, is seldom if ever sufficient for the deed. If a physician be accused, it is important to notice with what instrument the crime is said to have been performed, if before witnesses, and whether it was introduced openly or under pretence of a digital examination.

The sensations of the patient at the time, are also in different cases unlike each other. In some instances nothing unusual is observed, in others a prick or probing, but in most an acute and tearing uterine pain, often followed by syncope or an hysterical attack. Slight but immediate hemorrhage generally occurs, save in professional cases, increased by compelled exercise, prolonged baths or ergot.

The time ensuing before the expulsion of the fœtus is an element not to be lost sight of. In 34 cases reported by Orfila, the minimum observed was  $13\frac{1}{2}$  hours, the maximum 6 days; in 36 cases by Tardieu, the minimum was 5 hours, the maximum 11 days. Of these last cases, however, 29 were within 4 days.

It cannot be alleged in excuse that the sex of the child, so fatal in advanced pregnancy, has any influence in producing early abortion. In 293 premature still-births reported by Collins,\* 146 were male and 147 female, bearing the proportion of 100 to 100. Nor can the plea of Drs. Gordon Smith, Good, Paris, and Copeland, that as a fœtus born before the seventh month has a slender chance of surviving, its murder should be viewed with leniency,† be allowed. Such arguments, that the perils and

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and ragged with clots, were decidedly suggestive of punctured wounds. The true nature of the case was rendered evident by its past history, and corroborated by the fact that the patient was a Catholic; the latter being a point to which I am inclined to attach much importance, for reasons already given.

\* Practical Treatise, p. 275.

† RYAN, Med. Jurisprudence, p. 282.



dangers to which the fœtus is naturally subjected should lessen the criminality of attempts at its destruction, are without foundation, and when advanced by physicians are utterly unworthy the profession.

### 3. *The Intent.*

We shall hereafter discuss the perpetrators of the crime, and the emergencies which can alone justify the induction of premature labor or obstetric abortion. We shall see that by none save medical men can such necessity ever be known; it is, therefore, apparent that the intent may frequently be judged from the relation of the parties implicated, and the excuses offered by them. It will also often appear from the other circumstances of the case. That the child was likely to be born a bastard, and to be chargeable to the reputed father, would be evidence to that effect; and proof of the clandestine manner in which the drugs were procured or administered would tend the same way.\*

On the part of the mother, bastardy also, the having denied the existence of pregnancy, concealed its expelled product, expressed an intention or desire to abort, made a known application for this purpose, visited a notorious abortionist, taken alleged specifics, or given similar advice to a friend, are all presumptive evidence; as are also the having neglected to send for aid when needed, or refused to take precautions or remedies when prescribed. In like manner, evidence of criminal intent would seem apparent, if drugs generally supposed abortive had been advised or given to a pregnant woman, or violence of any kind usually productive of the effect in question, even to tooth-drawing, had been hastily or unnecessarily used.

Here, as in many other cases where no malice is expressed or openly indicated, the law will imply it; if, for instance, a man wilfully poisons another, in such a deliberate act the law presumes malice, though no particular enmity can be proved.† Malice is not confined in its legal definition to ill-will toward one or more individual persons, but is intended to denote an action flowing from any wicked or corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty and fatally bent on mischief; and, therefore, it is implied from any deliberate or cruel act against another.‡ The rule is, that the implication of malice arises in every such case, and all the circumstances of accident,

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\* ROSCOE, Law of Evidence, 242.

† ARCHBOLD, Crim. Pleading, 491; 1 HALE, 455.

‡ DAVIS, Crim. Justice, 482.

necessity, or infirmity are to be satisfactorily established by the party charged, unless they arise out of the evidence and attending circumstances; if they do not, there is nothing to rebut the natural presumption of malice. This rule is founded on the plain and obvious principle that a person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and that he must intend all the natural, probable, and usual consequences of his own act.\*

The standing in society of the accused, unless notoriously bad, should of course be allowed to weigh but little; the less the likelihood of the crime, the greater, from example and previous education, its guilt.

If violent purging or vomiting have been resorted to without any apparent reason, or to a greater extent than ordinarily prescribed or required; or if leeches have been applied to the thighs, to the number of an hundred or more, as instanced by Tardieu, or the like, there is certainly ground for strong suspicion. And here it is that the criminal liability of careless or ignorant physicians becomes evident. In cases such as we have referred to, it would be very difficult for a successful defence to be offered, providing the pregnancy had been suspected by those not implicated, were the statutes on abortion properly drawn and enforced.

It has been ruled, and very justly, that attempts at the crime, though unsuccessful; or effective, yet the ovum retained as mole, hydatids, skeleton, mummy, or putrilage; and whether the woman be pregnant or not, and if pregnant, whether the child be alive, dead, or abnormally developed or degenerated, should be amenable as though fully consummated.† We have seen the frequent difficulty in proving foetal life; the attempt at its destruction shows the belief in its existence, and the intent. The proofs will here of course be of a different nature. The signs of delivery will be absent, and all evidence from the product of conception, unless the mother's death ensue; in which event, as in the other fatal cases we have considered, and on the principle just laid down, procedure might be had on the charge either of abortion or homicide; but it must not be forgotten, as we early pointed out, that immediate death from the shock may occur, and no lesion of any kind be found. The patient or parties interested are proved by the attempt to have supposed pregnancy existing, and to have behaved as though this were the fact.

The age of the patient is not of consequence; nor is that of the foetus, save as corresponding with the alleged period of pregnancy, in case any doubt exist as to its own identity or that of the mother, and as bearing on the statement we have already attempted to prove, that criminal abortion

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\* DAVIS, *Crim. Justice*, 483.

† *Reg. v. Haynes*; *Reg. v. Goodall*; *Rex v. Phillips*.



is comparatively rare after the period of quickening, and, therefore, on the probability of intent. The number of the pregnancy is also wholly immaterial, different as are the causes alleged for its criminal induction, and equally liable in youth and age, as women seem to be, to accident or placental disease. Whitehead and West are of opinion that abortion naturally resulting is most common after the sixth pregnancy,\* but the point needs further investigation.

Among the proofs of intent must be included, as we have seen, the excuses offered by the accused or suspected party, and the means resorted to for consummation. These we now proceed to examine.

It will be evident that the plea of necessity can be made by none but a medical man. We shall show that the cases where abortion is legitimated by the rules of science are extremely few, and that for safety's sake their applicability should in no instance be allowed to rest upon a single opinion.† For all others beside the physician there can be no allowable excuse except, in the mother's case, insanity; which, however common in the true puerperal state, and often no doubt then showing itself by infanticide, has in early pregnancy, and to any extent, still to be observed. Other pleas as offered by the mother, ignorance of pregnancy or of foetal life, duress, personal health or that of her family, accident, carelessness, fear of child-bed, malpractice on part of the attendant, we have already considered at sufficient length. It is sometimes effected in hatred of the husband or in jealousy, sometimes for concealment of shame; excuses of little more value than those of extravagance or fashion. Constitutional predisposition can hardly be asserted, unless the miscarriage have been preceded by others; very many ineffectual attempts are on record, although the existence of such predisposition was evident. It will often be alleged that the measures instituted were to prevent instead of to effect the miscarriage, and that this has resulted in consequence merely of an excess of good-will; the sophistry is generally apparent.

The means resorted to are for two purposes: on the one hand, to prepare the patient for the abortion and preliminarily to lessen her danger, or to conceal the character of those, on the other hand, which really occasion it, and for this end used prior or subsequently to them. We may yet take occasion to consider these several agents in some detail; it remains only to remark that their use in any given case must be compared with what was then actually needed, or would have been required had the abortion been justifiable and necessary.

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\* *Med. Times and Gazette*, Jan., 1856, p. 611.

† "This operation must not on any account be undertaken without the sanction, and in the presence, of another practitioner."—CLAY, *Hand-book of Obstetric Surgery*, p. 13.

Certain drugs, ergot and savin for instance, the class of so-called abortives, popularly considered specific, are always suggestive of evil intent. They would not be used, were abortion necessary, by a well-informed practitioner, caring for the life of the parent or fœtus. The same is true, though of course to a more limited extent, of all over-drugging, over-manipulation, or over-exertion by a pregnant woman, by whomsoever advised or performed. In every instance it is necessary to compare the cause alleged with the effects observed, and to judge of it from these. Where direct operative manœuvres are suspected or charged, the processes or instruments, the results, immediate and consecutive as well as remote, the period elapsing before their occurrence, must all be taken into careful consideration.

But, on the other hand, it is immaterial what was the agent, and whether or not it would produce abortion, if it was believed capable of this effect, and employed or administered with that intent. If the person charged knew that the woman was with child, and the probable effect of the agent administered, this is good presumptive evidence that the intent was to produce the miscarriage, and where the effect of abortion is actually thus produced, it will materially aid the presumption of such intent.\*

It was stated early in this inquiry that a difference existed between the methods of investigation, as regards the examination of the fœtus, proper in abortion and infanticide. The reason of this has been pointed out by Tardieu.† In the latter case, the whole matter turning upon the questions whether the child was born living or dead, and in which of these states it was injured, it becomes necessary to prove one or the other of the alternatives, but in abortion they are intrinsically of no importance whatever. The only points then to be decided are, was the birth premature, and if so, was it intentional, and if so, was it absolutely essential and to save either maternal or fœtal life. Except as bearing on these questions, therefore, it is of no consequence whether wounds were inflicted, whether the lungs had been inflated, whether the fœtus was viable, or even whether it was ever discovered.

In their place, however, these points are each important, but only as bearing on the main facts to be determined. In a case, for instance, as that related by Ollivier d'Angers, where the fœtus, though very immature, lives several hours after its expulsion, this fact alone will preclude the idea of a slow and progressively acting cause like most forms of abortive disease, and will point to some direct interference, by means suddenly terminating the pregnancy without injuring the fœtus.

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\* 1 GABBETT, Cr. Law, 523.

† Loc. cit.



And so in other cases, especially of sudden maternal death, it is of importance to ascertain as nearly as possible the period at which death of the fœtus took place. If the two were coincident, the deduction might be other than if the latter were proved to have preceded the former by several days. The differences observed between putrefaction and decomposition *in utero* and in the open air must not be lost sight of. In the one case, according to Orfila, Devergie and Martin, Moreau, P. Dubois, Danyau, Cazeaux, Tardieu, and my own experience, a uniform and characteristic reddish-brown hue obtains in proportion to the time of retention after death, varied perhaps by the action of the amniotic fluid;\* the fœtus wrinkles, dries, and becomes mummified, unless in earliest pregnancy, when it generally resolves itself into a gelatinous mass.

If the cervix, the portion of the uterus most frequently wounded, is found punctured or lacerated, while the ovum is still retained, there is reason for suspicion; if the membranes are torn and extensively detached, while the cervix is but little dilated, such is increased; and it is made almost a certainty, if with the latter condition, nothing remain of the ovum in the uterine cavity but lacerated fragments. Here the abortion would probably not merely have been intentionally induced, but by the direct introduction and agency of instruments.

Wounds of the fœtus are much rarer than those of the mother, and are usually simple pricks of the skin marked by blackish coagula or extravasations; which, if upon the skull and unless care be used, are liable to be simulated by clots casually adhering to the hair or scalp. If the wound be deeper, its course may be traced by dissection. Its situation varies; Devergie thinking it always on the back and buttocks, while Tardieu, with some warmth, would restrict its location to the top of the cranium. This difference is easily explained by variations in the time of pregnancy, and in consequence partly, as may also depend on its life or death, in the presentation of the child. The rarity of their occurrence, though denied by Taylor† and other medical jurists, might, however, be expected, and is readily accounted for; the instruments used by ignorant persons seldom entering the os, however severely wounding the cervix, and where they do enter, usually only piercing the membranes; against which, except toward the end of pregnancy, in a deficiency of liquor amnii, or in labor, the fœtus can hardly be said to forcibly press.

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\* CHEVALIER and DEVERGIE, *Ann. d'Hyg.*, 1856, p. 157.

† *Med. Jurisp.*; Griffith's ed., p. 472, Hartshorne's ed., p. 378.

#### 4. *The Identity of the Party Accused.*

Most of the points here involved having already been incidentally considered, we will not repeat them. The circumstances and history of the case, the relative correspondence of different testimony, the allegations of the accused, will all bear directly upon the question at issue.

In trials for abortion, of all others, the medical witness and the advocate should bear in mind their liability to error; the juror and the judge the fact that innocent persons are at times wrongly accused, often by the true criminals themselves.

In defence, it must either be pleaded that the alleged abortion did not occur, that it was accidental or natural, that it was necessitated, or that it was induced by another than the individual charged.

The first of these pleas is seldom offered except in the earliest months of pregnancy, and would be invalid if an attempt at the abortion could be proved. In default of this, however, where the ovum has been lost, or has passed unnoticed, the fact that the sanguineous effusion was hemorrhagic and attended with clots, would, in the absence of any uterine disease sufficient to account for this, be so far presumptive evidence; to be corroborated or not by the history of the case. Moles and hydatids are now generally allowed to be mere transformations of the product of conception; their premature discharge, therefore, equally an abortion.

In answer to the second plea, the importance of several points must be borne in mind. It has been well put by Tardieu that it is wrong to commence, as advised by most authorities on the subject, by enumerating all the natural and accidental causes liable to have produced the abortion. On the contrary, the signs and proofs of criminal violence should first be sought, and these compared with the allegations of witnesses and the possibility of a natural or accidental origin. The traces of falls, contusions, and wounds must be found, not believed on mere allegation; coincidences must be guarded against, equally with untruth.

We have already laid down rules here available; that the state of the foetus often affords proof of the cause of its expulsion, this being slow and natural, and depending on disease and predisposition, or not; that in flagrant malpractice, the use of alleged specifics, or of measures likely to produce direct miscarriage, or otherwise absolutely counter-indicated by the general health and constitution of the patient, a contradiction exists to the plea offered, in itself strong presumptive evidence of criminal intent; and that in certain cases this evidence becomes positive, as where, for instance, a sponge found or proved to have been inserted into the os



uteri as a dilating tent, is alleged to have been intended as a mere pessary and placed in the vagina.

If the accused be a physician, presumed as he should be, acquainted with the great principles of practice, his only plea can be, where the means used were unjustifiable and proved such, and where the pregnancy was known to others, that he was ignorant of its existence. Liable as the profession are at any time to this charge, and easy as it is in almost every case, especially of instrumental procedure, for us to take such preliminary measures as would be likely to settle the question of the existence of pregnancy, or to request the presence of a witness to our act, it is unjust to ourselves and to each other to omit these precautions.

But if, on the other hand, the charge be utterly unfounded, it is probable, as I have already remarked, that contradictions in the testimony or the alleged facts could always be shown to exist, and the perjury thus exposed. It would be self-evident, were the accused proved to have been first consulted after the abortion had terminated, though not if it had only commenced.

#### V. ITS PERPETRATORS.

It is interesting, and at the same time of judicial importance to ascertain, so far as possible, the standing and character of the perpetrators of this crime.

In the first place, French statistics on the large scale show that the number of criminals, principals and accomplices, in that country at least, is in large excess to the instances of the crime, there having been in 183 trials, from 1826 to 1853, not merely 417 parties accused, but 213 convicted; and that in 75 per cent. of the prosecutions and convictions occurring, where the abortion is not induced by the mother herself, the offenders are women.\* With us the same statement is, without doubt, equally true.

The part played by the mother, herself so often a victim, is almost always that of a principal, yet as laws now stand, she can scarcely ever be reached. The cases where she is under duress, by threat of other personal violence from her husband or seducer, and thus compelled to submit to abortion, or where the act is performed by his direction but without her knowledge, are so rare, that in a general statement they may be assumed not to exist. If the mother does not herself induce the abortion, she seeks it, or aids it, or consents to it, and is, therefore, whether ever seeming justified or not, fully accountable as a principal. We have already seen the position these mothers hold in the community, high as

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\* TARDIEU, *loc. cit.*, 1856, p. 124.

well as low, rich as well as poor, intelligent and educated as well as ignorant, professedly religious as well as of easy belief, not single alone, but married.

We turn now to their partners in guilt, more criminal than themselves; for whatever excuse the latter may suppose themselves to possess, the former can have none.

The accomplices in criminal abortion are of several classes, distinguishable in some respects from each other, especially by the relative frequency with which their part is played. They are :

Of women, I.—Friends and acquaintance.

II.—Nurses.

III.—Midwives and female physicians.

Of men, IV.—Husbands.

V.—Quacks and professed abortionists.

VI.—Druggists.

VII.—And worst of all, though fortunately extremely rare, physicians in regular standing.

In many cases, such at least is judged by the writer from his own observation, the abortion is not merely advised, but induced by some female *friend*, especially by one who has herself undergone, in her own person, the crime; perhaps without appreciable evil result,—but this is not necessarily the case, for even where such result is present and plainly in consequence, its connection with the true cause is frequently unsuspected or disbelieved.

It has been said that misery loves companionship; this is nowhere more manifest than in the histories of criminal abortion. In more than one instance, from my own experience, has a lady of acknowledged respectability, who had herself suffered abortion, induced it upon several of her friends, thus perhaps endeavoring to persuade an uneasy conscience that by making an act common, it becomes right. Such ladies boast to each other of the impunity with which they have aborted, as they do of their expenditures, of their dress, of their success in society. There is a fashion in this, as in all other female customs, good and bad. The wretch whose account with the Almighty is heaviest with guilt, too often becomes a heroine. So true is the case, that the woman who dares at the present day publicly or privately to acknowledge it the holiest duty of her sex to bring forth living children, “that first, highest, and in earlier times almost universal lot,”\* is worthy, and should receive, the highest admiration and praise.

The ease with which an accomplice is procured, provided the idea originates with the victim herself, and is not suggested by another, is found

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\* A Woman's Thoughts about Women. By the author of “John Halifax, Gentleman.” 1858, p. 14.



among *nurses* to be greatly increased. We separate them as a class from midwives and female physicians, with whom, though in this country not generally acknowledged or thought identical, they not unfrequently aim to be confounded. They are usually, and rightly, thought more familiar with the laws of health and disease, than the generality of their sex; they are, if doing their duty in his sight, seen to be treated with respect by the physician; they are commonly of mature age, supposed discreet, wise, and to keep their own counsel; they have had opportunities of gaining the confidence of the mother; many of them have themselves borne families. They are therefore approached with less hesitation, and are not always found proof against an offered fee.

What we have said of nurses applies with increased pertinency to *female physicians* and *midwives*. These make it their claim, in rivalry of the male physician, that their schools and their practice are, like his, founded on those abroad, especially of Paris. Tardieu shows, in a total of 32 cases occurring in that city and collected by himself, that in 21—no less than 66 per cent., or two-thirds of the whole number reported—the crime was perpetrated by midwives.\* This class frequently cause abortion openly and without disguise. They claim a right to use instruments, and to decide on the necessity and consequent justifiability of any operation they may perform. Where they establish private hospitals, professedly for lying-in women or not, their chances, previously great, of committing this crime and infanticide with impunity, become more than doubled. It has been found necessary in France for the police to exercise rigid surveillance over these establishments. In one instance, occurring at Grenoble, it was proved that within three years there had happened in the house thirty-one still-births at the full time, or deaths just after birth, and that the abortions and miscarriages had been almost innumerable.† In another case, to conceal the evidence of these truly *corpora delicti*, and to evade the law against secret burials, the midwife had established an understanding and a current account with an undertaker, who was accustomed to smuggle her fœtuses into his coffins, by the side of the corpses confided to him for burial. In still other cases, the victims are kept on hand, preserved in jars; private collections vieing in extent with those of legalized obstetric museums.

By these remarks we would not be supposed endeavoring to excite prejudice against female physicians and midwives, as such, or advocating their suppression. We are now merely considering this crime of abortion, in relation to which they are peculiarly and unfortunately situated. At present everything favors their committing the crime; their relations to

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\* Loc. cit.

† Ibid.



women at large, their immunities in practice, the profit of this trade, the difficulty, especially from the fact that they are women, of insuring their conviction. Let better laws be enforced, and let public opinion be enlightened concerning the guilt of abortion, and the influence for evil of this class of offenders will in great measure be done away with.

Of male abortionists we have less to say. Their number is fewer abroad, bearing the proportion, as we have seen, of but one to every four, and their liability of being applied to, or consulted, is slight in comparison.

*Husbands*, though generally knowing to the offence of their wives, and often counselling it, probably but seldom attempt its commission themselves; yet instances of this do undoubtedly occur. In but a sixteenth of the cases reported by Tardieu, was any compulsory violence exerted over women by their husbands.

*Druggists* and *professed abortionists* are accountable for the greater number of the cases of the crime attributable to men. The latter class, though proportionally rare, yet abound in every city, and take all means of making themselves known. A knowledge of their alleged specifics, against the use of which, "at certain times," the public are "earnestly cautioned," etc. etc., is brought home to all our women, no matter how purely minded, and despite every care to the contrary, through the medium of the daily press; few papers, however professedly respectable or religious, proving able to refuse the bribe.

Druggists, as a class, are little more than the confessed agents of these villains. Even should they not directly recommend their nostrums, as, however, is frequently the case, they almost universally keep them on sale, labelled to catch the eye, and placarded on their walls. Like the publishers and vendors of obscene literature, they conceive they are not to blame for supplying a public demand, however much they themselves may have done toward its creation.

And in this connection we must again allude to the guilt of the public press, which has proved itself so constantly and so dangerously an accessory to the crime. It would be thought that in Massachusetts, for instance, a statute like the following might do something to check this license :\*

"Every person who shall knowingly advertise, print, publish, distribute, or circulate, or knowingly cause to be advertised, printed, published, distributed, or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement, or reference, containing words or language, giving or conveying any notice, hint, or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop,

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\* MASS. LAWS OF 1847, chap. 83.



or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, directions, information, or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished," etc. etc.\*

The above statute, however, such is the public sentiment on this point, is not enforced, or is daily evaded. The press, if it choose, may almost annihilate the crime; it now openly encourages it.

It has been often alleged, and oftener supposed, that *physicians in good standing* not unfrequently and without lawful justification, induce criminal abortion. This statement, whatever exceptional cases may exist, is wickedly false. The pledge against abortion, to the observance of which Hippocrates compelled his followers by oath,† has ever been considered binding, even more strongly of late centuries. The crime is recognized as such in almost every code of medical ethics; its known commission has always been followed by ignominious expulsion from medical fellowships and fraternity. If this direct penalty be at any time escaped, it is only through lack of decisive proof, bare suspicion even of the crime insuring an actual sundering of all existing professional friendships and ties; a loss that subsequent proof of innocence could hardly restore. Such is the unanimous feeling of the profession; to its credit be it said, that with but a single exception,‡ and this to his eternal disgrace, its writers are all agreed, abstractly considering the subject, on the sanctity of foetal life. The instances where physicians in good standing are guilty of the crime, are of rare occurrence; the error that has prevailed on this point, originating from the self-assumed titles of notorious quacks and knaves. But no condemnation can be too strong for the physician who has thus forgotten his honor; who has used to destroy life, that sacred knowledge by which he was pledged to preserve it.

The criminal abuses likely to arise from the procurement of justifiable abortion by medical men, are so numerous, their own liability to be thought by the public criminally careless of foetal life, or skeptical concerning its existence, is so great, that the subject is worthy special consideration. This I shall now devote to it.

\* "By imprisonment in the State prison, house of correction, or common jail, not more than three years, or by fine not exceeding one thousand dollars."

† Opera omnia. Ed. 1655, i., p. 643.

‡ JÖRG of Leipsic, who speaks of the human foetus as "only a higher species of intestinal worm, not endowed with a human soul, nor entitled to human attributes."

## VI. ITS INNOCENT ABETTORS.

WE have referred to an apparent disregard of foetal life, obtaining in the medical profession, as a prominent cause of the prevalence of criminal abortion. We now proceed to show that the opinion is not unfounded.

Premature labor, or obstetric abortion, may be justifiably induced by the physician for one of two reasons; either to save the life of the mother or that of her child. In each case it must be, absolutely and only, to save a life.

Performed for the child's sake, it is evident that the operation can be only available during the last three months of pregnancy, for then only can the foetus with any degree of probability be considered viable. We grant that there are a few cases on record where, born during the sixth month and even in the fifth, the child has survived; but it is equally certain, despite the popular notion concerning the mortality of eighth-month children, that the later the operation can be safely delayed, the better the chance for the infant's life.

The rules for the induction of premature labor must, of course, vary for different cases. In this early stage of the inquiry, it is perhaps impossible to state them precisely, but they may still be approximately arrived at.

1. The operation, performed for the child's sake, is but seldom required; and in general,
- (2.) only after the commencement of the seventh month of pregnancy.
3. It must be clearly indicated; and
- (4.) must be delayed as long as is consistent with the child's safety.
5. Its means must be those which are most efficient, and safest for the child.

We have already stated that the induction of abortion before the seventh month, undertaken for the child's sake, must be generally useless; and therefore, as attended with some degree of danger to the mother, generally unjustifiable. As the profession are nearly united on this point, its further discussion is here unnecessary.

We have asserted that the cases where prematurely induced labor is required for the child, are comparatively rare. We now add that while in some respects they are more frequent, in others they are less so than is generally supposed. To necessitate it, there must be disease or deformity on the part of the mother, or disease on the part of the foetus or its appendages.

It is most frequently performed to avoid the alternative of craniotomy, the necessity of which, unless extreme, can manifestly only be known with



certainty, before the expiration of pregnancy, from the experience of past labors. But here too much caution cannot be exercised; the rules of the books and of accepted authorities are not to be blindly followed.

Craniotomy at the full time is still too frequently performed:

Where it has been suggested by the character of a previous labor, children are often, or might be, born living;

Where it seems indicated by direct exploration, as ruled even by recent writers, children are sometimes, or might be, born living;

Where it was formerly thought absolutely essential, the progress of obstetric science has now rendered it often unnecessary.

It is proper that we consider these points, for they bear directly on the question at issue concerning criminal abortion.

It is known that the sex of children exercises an appreciable influence upon the result of labors at the full time, as regards the possibility of their passing alive, unaided or at all, through the pelvis, and as regards the length of the labor, which also progressively endangers the life of the mother and their own; the average female fœtus, in cases at all difficult, having the advantage over the male by its inferiority in size, especially important in the cranial diameters. It is unnecessary for us to do more than refer to the facts by which these assumptions are proved.\* Where, therefore, craniotomy has been found necessary in a former labor, the child then being male, in another labor a female fœtus may often pass uninjured. However this argument may be lessened in value by the impossibility of previously ascertaining the sex, it is strengthened in the doctrine of chances, by the number of the labor and the sex of the former children; and by the fact that first labors are generally most difficult, whatever the sex of the child.

Furthermore, cases will suggest themselves to most practitioners of experience, in which from difference in the character of the labor or without apparent reason, children are born living at the full time, males, of large size, and presenting by the vertex, where craniotomy had previously, perhaps repeatedly, been performed. An instance of this has occurred to the writer, where the patient had been advised to early abortions from alleged physical incapacity of ever bearing living children; he delivered her, without difficulty, of a large-sized and living boy, at the full time.

Again, it may happen that in labor at the full period, craniotomy may seem decidedly indicated and advisable, but for one reason or another may not be performed, and yet the child, unaided, be born living. The writer's experience furnishes him with two illustrations of this class: one of them occurred in 1851, the patient his own, Drs. S. sen., and C., in

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\* SIMPSON, *Obst. Works*, i. pp. 352, 404.



consultation; the other was seen at Edinburgh, in 1854, in the practice of his friend, Dr. G. W. In both cases, permission was refused to operative procedures, the patients being Catholic, and the physicians unable conscientiously to pronounce the fœtus already dead, while the possibility of intra-uterine baptism was not recollected; in both instances the children were born living, and without instrumental aid.

In other cases, where from deformity previously diagnosticated, craniotomy is pronounced necessary if the patient should go her full time, she may do so, the labor be unassisted, and the child yet escape with its life. I instance a remarkable case for some time under my own charge at the Boston Lying-in Hospital, delivered by one of my colleagues, Dr. Dupee, and subsequently reported by Dr. Read.\* The pelvis was here equably contracted, and to a great degree, but from some difference of opinion, partly as regarded the justifiability of premature labor as compared with craniotomy, the patient was allowed to go her full time. Both mother and child did well.

Finally, by turning, the use of the long forceps and of anæsthesia, children are now constantly saved, where formerly craniotomy and their consequent destruction would have been absolutely indicated. These processes, with the introduction of each of which as an alternative a single name is imperishably connected, are now successfully employed by very many of the profession;† they have each of them saved to the writer the disagreeable necessity of fœtal destruction. Where, however, one life is thus preserved, there are still multitudes unnecessarily, and, therefore, unjustifiably, sacrificed.

The comparative frequency of craniotomy in the different countries of Europe is in this connection worth noticing.

The operation is performed, in

Germany . . . . .	once in every 1944 labors;
Paris . . . . .	" " 1628 labors;
France, at large . . . . .	" " 1200 labors;
Vienna . . . . .	" " 688 labors;
England . . . . .	" " 220 labors;
Ireland, formerly . . . . .	" " 128 labors;‡
" at present, Dublin Hospital, 1854, " " "	105·7 labors.§

\* Boston Med. and Surg. Journal, January, 1857, p. 462.

† The immorality of craniotomy, where delivery can be effected by any other method, is gradually becoming acknowledged in Great Britain. A late discussion on this subject, at the Obstetric Society of London, is reported in the Medical Times and Gazette for February, 1859.

‡ CLAY, *Obstetric Surgery*, p. 68.

§ SINCLAIR and JOHNSTON, *Practical Midwifery*, 1858. 130 cases of craniotomy in 13,748 labors.



The remarkable difference between the practice on the continent and in England, so suggestive to us in this country, is undoubtedly owing to the fact that in Catholic States greater value is attached to the life of the child than "in Protestant States, as Britain, where the child is always sacrificed to save the mother."\* The immense excess of embryotomy cases in Catholic Dublin furnishes no exception to this rule, drawn as they are from hospital practice under Protestant control.

So far proof by deduction. In many cases involving the question of craniotomy, that operation is not required; in some of them, not even the induction of premature labor.

Two classes of cases remain, each affording more direct evidence; those where craniotomy being absolutely indicated if the patient were allowed to go her full time, that operation is, and those where it is not performed.

Craniotomy, being necessarily fatal to the fœtus, is indicated only to save the mother's life; to be avoided when any other alternative giving the fœtus a chance of life, and not more than equally hazardous to the mother, can be resorted to. Especially is this the case when it is compared with the induction of premature labor, attended as is the latter, despite a certain amount of danger of its own, with great probability of saving the child, and with decidedly lessened risk to the mother; for craniotomy not merely requires the use of murderous instruments, dangerous to all tissues they may approach or be in contact with, but the operation is usually, though often very improperly, delayed till late in labor, and therefore till the mother's chances of recovery have been proportionally lessened. Premature labor, on the other hand, though of course involving some risk to the child, is not necessarily fatal to it; nor is it usually so, when properly performed. That there is a choice in this respect between the means employed, will hereafter be shown.

Craniotomy, when absolutely indicated at the close of pregnancy, must be for one of two reasons: that the fœtus cannot pass through the pelvis at the full time alive, though it may do so un mutilated, the operation being performed to save the mother the greater risks of protracted labor; or that it cannot pass at the full time un mutilated, even when dead. We defer the consideration of another supposable instance, where the fœtus in the outset of its viability may pass, but not alive, for this pertains to the consideration of the mother's safety alone, no alternative availing for the child. In the other cases, if the necessity could be learned in season, from the previous history of the patient or by pelvic exploration, labor should most certainly be prematurely induced, as

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\* CLAY, *Loc. cit.*, p. 69.



affording some positive chance of life to the child, and as less dangerous to the mother. It were here worse than foolish, if not criminal, blindly to imitate nature, when, her course being obstructed, she would kill the child.

I have alluded for a double reason to cases, fortunately few, where craniotomy, and much more decidedly premature labor being indicated, the practitioner decides from the outset to perform neither, to give his patient or her child no aid. Such conduct is as cruel and wicked as it is unprofessional, and were not instances occasionally reported, its existence could hardly be believed. We acknowledge with Blundell the evils of meddling midwifery, but there are extremes to all things; certainly to the powers of nature and the limits of justifiable delay.

I am aware that I have referred to a reported case, which might in this connection be quoted against the opinion now expressed; but even by its exceptions do we prove the rule. Where chances are so greatly against both mother and child as in these cases if left unaided, it would be the office of the physician, were there no better procedure, by craniotomy to save the one;\* but at the present day it is no less plainly his duty, where possible, to anticipate labor, and thus save both. I have elsewhere discussed this question at some length,† and can only repeat, as is indeed allowed by Churchill,‡ that this is no matter on which to select one's words; the deliberately sacrificing an unborn, but still living child, in cases where statistics go to prove that the adoption of another mode of delivery, nothing counter-indicating, would give that child a good chance of successful birth, is nothing short of *wilful murder*, no matter by what schools or by what eminent men it may be sanctioned, and it should be branded as such by the profession.

But, undertaken for the child's sake, not merely should premature labor be resorted to for the purpose of preventing craniotomy, but often in cases of incurable disease, acute and chronic, of the mother, where it is evident that she must inevitably, or even probably, perish before the full period of pregnancy has been attained. Instances of such acute disease

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\* The subject of justifiable craniotomy has of late been ably though controversially discussed by an anonymous writer (Dublin Review, April and October, 1858,) and Dr. Churchill (Dublin Quarterly Journal of Medical Science, August and November, of the same year.) Care must be taken, lest in assenting to the decided and imperative necessity of the operation in certain cases, and by a natural professional sympathy, too great frequency is not allowed to this most horrible and appalling of all the operations to which as physicians we can ever be called.

† Review of CLAY's Obstetric Surgery; Boston Med. and Surg. Journal, November, 1856, p. 283.

‡ Theory and Practice of Midwifery, p. 348.



will readily suggest themselves. The question here is merely between the operation under consideration, the Cæsarean section, and doing nothing. The last, suppose the fœtus viable and to be still living, would in many instances be decidedly unprofessional and unjustifiable. Cæsarean section after the mother's death is comparatively unsuccessful; and before it, is so much more severe and in all probability so much more quickly fatal, that the other should be preferred, unless death be already close at hand.

Instances of chronic incurable disease necessitating the induction of premature labor, may not so readily occur to the mind. The shock of an abortion being frequently greater to the maternal system than that of labor at the full time, it is evident that this rule cannot be universally applied. It cannot in every case of thoracic disease, of the heart, for example, unless its own peculiar symptoms become so aggravated from progressing pregnancy as to render probable earlier decease of the mother, the operation then being performed partly on her account; not so much to save her life as to delay a little her death. But there are other and extreme cases, as cancer of the lower segment of the uterus, or indeed of its fundus, which may have been diagnosticated previously to pregnancy by the use of expansible tents, or of my uterine dilator hereafter referred to, where the mother would probably perish in labor at the full period, with most probably the loss of the child also. Here, by premature labor, the child may be saved, and the mother's life, greater expansion of the uterus and its more probable laceration being prevented, possibly prolonged.

So far complications on the part of the mother necessitating premature labor for the sake of the child. There are others equally imperative, afforded by itself. Excessive size of the fœtus in comparison with a normal pelvis, as evidenced and rendered probable by previous labors, is hardly of less importance in connection with craniotomy, than where the pelvis is distorted or contracted, and the fœtus of natural size; but the operation in question, as compared with premature labor, we have already sufficiently discussed.

Diseases of the placenta, congestive, inflammatory or degenerative, are no less an indication, where known to exist, for an early delivery. Their diagnosis may be difficult, but yet not wholly impossible. The occurrence of the same disease in past labors, and evident intra-uterine disturbance as discovered by auscultation or by unnaturally frequent and strong foetal movements, are, taken together, frequently sufficient to establish the fact. The impropriety of allowing such cases to proceed unaided, cannot be too strongly insisted upon. By early delivery, if the fœtus have formerly perished after the period of viability, and in addition, by special medication of the parent, if its death had usually occurred before that time, many valuable lives might annually be saved.



Premature labor as resorted to on the mother's behalf alone, putting aside the cases we have incidentally considered, where the lives of both herself and her offspring are of necessity taken into account, includes also its induction in the earlier months of pregnancy before the fœtus is viable. It may be required by diagnosticated malformation or monstrosity of the fœtus and by malformations on the part of the mother; by extreme pelvic contraction, congenital or from rickets or malacosteon, preventing the natural passage of a fœtus after viability, by tumors incapable of elevation or displacement, by contraction of the vagina, or by other severe obstetric complications, either recent or of long standing. Of this last class of causes, obstinate vomiting, puerperal convulsions, which are by no means confined to the full period of pregnancy, dropsies, irreducible displacements of the uterus, varix of the external labial vessels, sometimes fatal by laceration from tension, are all instances in point. With regard to each, the necessity of the abortion must be determined with the greatest caution, and resort be had to it, the child still living, with reluctance; especially should this be the case if the complication be supposed on the part of the fœtus, so important is it to avoid its sacrifice, if possible, and the semblance of disregarding its own important claims.

The rules for the operation when performed for the mother are the same as when for the child, save that if absolutely required, it may be resorted to at an earlier period. If the child must necessarily be lost, the labor should not be long delayed.

There are several subordinate questions arising in this connection, neither metaphysical nor merely casuistic, but practical, and because bearing on the increase of criminal abortion, directly involving human life to an indefinite extent. One of them we shall now mention.

Let physical incapacity to the birth of a living or viable child through the natural passages be supposed to exist on the part of the mother; that this has been proved by examination, or by the result of a former labor, induced or at the full time. To save the mother's life, early abortion is once brought on and the child destroyed; the woman and her husband being of course informed of the true state of the case. Is it right or justifiable, again to destroy the fœtus, and as often as sexual lust may repeat impregnation? Or should the patient be left to the risks of a subsequent Cæsarean section, which would at least give the chance of life to her child?

I am aware on which side of this question lies at present the opinion and the practice of the mass of the profession; that Nægele\* and others†

\* *De jure vitæ et necis quod competit medico in partu.* Heidelberg, 1826.

† "Where one only can by any possibility be preserved, the female herself may



have ruled it right always to destroy the fœtus when a refusal to undergo the Cæsarean operation shall have been formally expressed by the mother; and that reports of instances where early abortion has been repeated, even to nine times upon the same patient, are still unblushingly published by men of the standing of Lever and Oldham.\*

But, on the other hand, in his late admirable justification of craniotomy where absolutely necessitated, Churchill makes use of the following language, which though offered in another connection, is none the less pertinent here: "It is the due appreciation of these relative responsibilities (regarding mother and child) in difficult cases, that distinguishes the wise and experienced accoucheur; he preserves a just counterpoise between them so long as it is possible to fulfil both, and recognizes the proper moment when one ceases. *One*, I say, not *either*; for I protest against the notion that *we choose which of the two lives we shall save*, a notion as false in theory as it is in practice. *No man dare make such a choice*, for we have neither the necessary knowledge, nor the right, nor the authority, to decide which is the more important life and best worth preserving."†

"My own opinion is that such a course (the repetition of abortion) ought not to be adopted, but that pregnancy should be allowed to proceed, without interruption, to the full period; and when labor declares itself, that the infant should invariably be extracted by the Cæsarean section,"‡ which, when performed in season, is by no means necessarily fatal to the mother, and may preserve life to the child.

The question now so plainly put, is one for the profession soberly to discuss and to answer.

We have already shown that in many cases where instrumental delivery or the induction of premature labor is apparently requisite, the mother, if a Catholic, is sacrificed to the supposed impossibility of administering the right of baptism to the child. We do not, with some, allow that the physician is here justified in deliberately and falsely asserting the child's death, where such has not taken place, but we have revived the suggestion of a method by which this great and fundamental obstacle may be overcome. We assert that the negligence too often shown by physicians in these cases, the custom of practically leaving the mother and her child to their fate when instrumental delivery shall have been refused upon religious grounds

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use her right of self-preservation and choose whether her own life or that of her child shall fall a sacrifice." GUY, Principles of Forensic Medicine, p. 145.

\* Guy's Hospital Reports, 1856, p. 12.

† Dublin Quarterly Journ. of Med. Science, August, 1858, p. 10.

‡ RADFORD, British Record of Obst. Medicine, 1848, p. 84.

sincerely entertained,\* is, however wide it may appear from the point, directly incentive to the increase of criminal abortion. Provided the question of necessity is determined, but one course in these cases should be pursued, and that the performance of intra-uterine baptism.

The objections usually made to the induction of premature labor, namely, the uncertainty of all pelvic measurements and of the exact period of gestation, the greater liability to malpresentation, and, from the uninvoluted state of the cervix, to the evils of a lingering labor, lose much of their force when tested by our preceding remarks. If resorted to, the means of its induction are various, and, as regards their justifiability, they present a decided choice. We here omit the consideration of the methods indirect or of doubtful efficacy, as draughts, general or local baths or bleedings, forced exercise, fatigue, and voluntary falls or blows, so frequently resorted to by the uneducated, or used, in addition to other procedures, by the designing to mask the reality; these will be subsequently considered, and we confine ourselves, in comparing the other and more direct methods, only to ascertaining that which is safest and most efficacious, for these points alone can decide their respective justifiability.

The direct and reliable means of inducing abortion, in the physician's possession, are only instrumental. Draughts of all kinds, whether purgative, emmenagogue, or so-called specific,—aloes, ergot, or savin,—or energetic poisons, expelling the fœtus through a sudden and profound disturbance of the whole maternal system, as arsenic or cantharides, are too unreliable, unscientific, or dangerous either to mother or child. The justifiable methods are confined to those acting directly on the uterus and its contents, by dilating the os or detaching the membranes.

They are, rejecting the local application of belladonna as utterly inert :

1. Local or distant and sympathetic irritation

By the hand ;  
                   medicinal applications ;  
                   electricity or galvanism.

2. Puncture of the membranes, and evacuation of their fluid contents.

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\* The rules of the Catholic Church upon this point have been already referred to. Suffice it to say, further, that while they enjoin the Cæsarean and vaginal sections, in preference to craniotomy and in cases of extra-uterine fœtation, yet turning, the use of forceps, and the induction of premature labor, where such are indicated, are distinctly allowed by them. BARRY, *Medico-Christian Embryology*, pp. 41, 44, 45, 60.



3. Dilatation of the os, and separation of the membranes from the uterine walls

By sponge tents;  
the introduction of instruments;  
or the injection of fluids.

The first of these modes, in all of its applications, is extremely uncertain in effect.

The second, though that usually attempted, is of real avail only toward the close of pregnancy, and is even then decidedly inferior to the last of the methods proposed; at an earlier period it is probably unjustifiable. In thirteen cases reported by Lever and Oldham,\* where labor was prematurely induced by puncturing the membranes, only four of the children were born living, and in all these the presentation was by the vertex. It has been shown that malpositions are much more frequent in earlier than later pregnancy, and from evident causes, the comparative absence and weakness of the foetal movements which govern its position in utero, and the want of correspondence in form between itself and the containing organ. Of the nine cases reported where the foetus was dead, five presented by the vertex, and were therefore probably alive at the commencement of labor, as after death previous to labor, malposition very generally occurs, except there be deficiency of the liquor amnii or the pregnancy have advanced to near its close.

Again, it appears from the same statistics, which as offered for another purpose are the more to be depended upon, that in the successful cases, where the child was born living, the length of time after the operation and before the occurrence of pains, almost doubled that in the unsuccessful cases, where the child was lost; the sum of the hours in the four successful cases exceeding the sum in the nine unsuccessful ones. That is to say, in the one class of cases time was allowed for a certain amount of dilatation of the os and cervix and for some degree of detachment of the membranes, an approach, however slight, to the characters of normal labor; and in the other cases the labor was brought on at once, without either of the above processes having commenced, and when both uterus and its contents were totally unprepared. Had the times, moreover, from the commencement of labor to its close, been given in the two classes of cases, it would probably have been found that the relative proportions were reversed; that the sum of the hours in the unsuccessful cases exceeded that in the successful cases, as would be in strict accordance with the results to the foetus.

In premature labor, as in that at the full period, the bag of waters is

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\* Guy's Hosp. Reports, 1856, p. 4.



required to be preserved until it has fulfilled its purpose, on the one hand, of a fluid wedge, and on the other, of protection to the child from violence till it has fairly entered the pelvic brim. Puncture is also attended with the danger of directly wounding the uterine tissues.

The last of the methods referred to, dilatation and detachment, combined to a certain extent as they must necessarily be, is in close imitation of the processes observed in natural labor, and is recommended alike by its safety to mother and child, its certainty, and the ease both to physician and patient with which it may be effected.\*

From the above remarks it is evident that the profession need to exercise great caution lest they directly, though unintentionally, become the abettors of criminal abortion. But this liability is not confined to the instances already mentioned, where abortion has been intentionally induced. Nor is the matter in question one affecting merely the public health and morals, like prostitution or syphilization. It is a liability directly to increase the unjustifiable destruction of human life, and its existence cannot be too strongly impressed upon our minds and guarded against.

So true is this, that two of the French obstetricians, Moreau and Bégin, have not hesitated to express their fears, and not on religious grounds alone; the latter, with Tardieu, giving it as his conviction, that every physician should make a legal declaration of the act to the public prosecutor, immediately on inducing premature labor, even if the period of viability has been reached by the fœtus. The subject has also been discussed by the French Academy of Medicine;† and in Great Britain it has been referred to by Radford, in whose opinion an enactment is necessary, "entirely prohibiting obstetric abortion (before the period of viability), as the door for evil purposes is already too open, and would be still more so, if it was legally decided that where performed on supposed obstetric grounds, no inquiry should be made."‡

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\* For a full discussion of the respective merits of the several methods instanced above, see SIMPSON, *loc. cit.*, i. p. 738.

I have lately contrived an instrument very similar to one not long since proposed by Spencer Wells for dilatation of the female urethra, which by a simple combination of the three principles involved, will probably prove of material service in the induction of premature labor. It may be called the uterine dilator, as it possesses many advantages over expansible tents for all cases of uterine disease where dilatation is necessary, either for diagnosis or treatment. A description of the instrument, and of its first application to obstetric practice, is published in the current number of the *American Journal of the Medical Sciences*.

† *Bulletin de l'Académie*, xvii. p. 364.

‡ *British Record*, etc., p. 82.



Whenever an abortion is induced by a physician, even if accidentally, it is liable to be thought intentional by the patient and her friends, and consequently by the community, so far as it becomes aware of the fact. Instances of this are within the writer's knowledge.

Accidental abortions, caused by a physician, may be from two causes: error or insufficient care in diagnosis, or the absence of all likelihood of the existence of pregnancy. When cases are reported in apparent innocence of fault, and by eminent practitioners, of the pregnant uterus having been tapped for ovarian dropsy; of craniotomy having been attempted upon an infant's fundament instead of its skull, and of the same operation in another instance undertaken upon the promontory of the mother's sacrum, it cannot be alleged, I care not by whom, that this caution is unnecessary or these fears unfounded. The writer will state a few cases that have happened under his own observation. He has twice known abortion to be accidentally occasioned by the use of sponge tents;\* the patients being near the close of their menstrual lives, and neither themselves nor the physicians in attendance supposing that the contents of the enlarged uterus could be foetal; in one of these cases the woman had never before been pregnant, and in the other not for many years. He has twice known the introduction of an intra-uterine pessary to be followed by abortion; in neither case was there any probability of the existence of pregnancy, save in the fact that the patients were married. He has known abortion to be produced by the application of lunar caustic to the os, in a case where, from the character of the operator, no suspicion could be entertained of the uterus having been more deeply tampered with.

In cases like these, the practitioner would seem to render himself liable to the charge of malpractice, even though by the improbability of malicious intent he escaped that of criminal abortion. In all instances where there exists the slightest suspicion or possibility even of pregnancy, the only rule for operative interference must be, unless circumstances imperatively prevent, to wait the few months or weeks necessary to establish the diagnosis. Justice to the profession and to the risk of error demand that where such precaution is not had, it should be replaced by a consultation, which would at once dispel any suspicion of carelessness or malpractice, and prevent a criminal charge.

All that we have said regarding surgical obstetrics, applies as forcibly to its medicinal procedures. Though draughts and potions of every kind are, as we have remarked, of doubtful or indirect efficacy for inducing abortion, yet with some of them instances of its occurrence do at times result. In supposed obstructive amenorrhœa, unless of several months

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\* I have elsewhere discussed this subject; *American Journal of the Medical Sciences*, January, 1859.



standing, and in early pregnancy where established, the physician who does not intend it, must take care lest accidentally or carelessly, by purging, vomiting or over-bleeding, he produce a miscarriage.

But there is still another point in this connection we must not pass over. We state it in the following inquiries, received from one of the most eminent practitioners of the Eastern States, and put to us in all sincerity.

"Are there not cases where a physician would be justified in suggesting a course such as he would use in amenorrhœa, even where he might *suspect*, but not *know*, the existence of pregnancy? Suppose a mother of several children, which she has had in rapid succession, and the physician feels assured that health, and possibly life, will be endangered if another pregnancy occurs; would he be criminal if he were to use common means for amenorrhœa if the menses have been absent six weeks? Are the cases always so plain that a man can decide, and may he not balance a choice of evils?"

Covering as these questions do, much of the ground already gone over, we may answer them at once, and decidedly in the negative. They apply more especially to the early months of pregnancy, where it is always impossible to know its existence; and were direct or probable emmenagogues, or instrumental interference, to be here allowed, criminal abortion might be always induced before quickening, sanctioned and permitted by the rules of medicine. To justify abortion, life must certainly or very probably be endangered, not possibly merely, which is true in every pregnancy, and might be alleged at every trial for the crime.

Hufeland advised, as a "golden rule," always to suppose the existence of impregnation in such cases, and to act accordingly; that is, to temporize long enough for the fœtus, if present, to make its sign. "Thereby," he says, "the physician will avoid much mischief, and preserve his conscience as well as his reputation."\*

The ideas on this subject held by my friend, are without doubt widely entertained by the profession. This paper will have served a good purpose and have saved many fœtal lives, if it do no more than carry conviction of the error and its likelihood to indefinitely extend the crime.

Again, it is undoubtedly the case that in all cases of maternal death during pregnancy, where the fœtus has arrived at the period of viability, its immediate extraction by the Cæsarean section should be effected. We have already referred to this subject, and Kergaradec, who has well written upon it, lays down the maxim that the operation should always be per-

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\* *Enchiridion Medicum*, p. 510.



formed, even in the fifth month of pregnancy.\* In some cases, of placenta prævia, for instance, where the chances are always more or less against the child's life, success is less probable; but this in no wise invalidates the necessity of the operation. The writer has himself performed it in the complication instanced, and in vain; but he would none the more hesitate, on this account, to repeat it. There can be no reason against the procedure in any case, and by it the child may possibly be saved. In the words of an older writer, "*Est enim inhumanum, post obitum matris, fœtui pereunti et suffocari parato manus auxiliares denegare, et sæpè viventem adhuc cum matre mortuâ eodem tumultu contegere et obruere. Idcirco jurisconsulti eum necis reum damnant, qui gravidam sepelierit non prius extracto fœtu.*"†

A question has been raised concerning the rights of relatives in preventing the physician from such discharge of his duty. It has been asserted that "the father has not only the natural right of his relationship, but legal power; for Dr. Lever recently mentioned that he had consulted Dr. Alfred Taylor to know whether he would be justified in performing Cæsarean section after the death of the mother, without the consent of the father, as it appeared unjustifiable homicide to allow the infant to die. Dr. Taylor gave his opinion that, in law, the infant belonged to the father,—the infant with the life thereof,—and that if Dr. Lever touched it, even to rescue it from death, an action would lie against him."‡ I must, however, declare such doctrine to be false and pernicious. If signs of the child's life remain, no physician should hesitate endeavoring to preserve it, unless restrained by actual force. I reiterate my conviction that such neglect, or seeming neglect, of foetal life is an actual wrong, both against the individual and against society.

Similar points in which physicians are directly interested, as tending by their apparent disregard of foetal life to render themselves innocent abettors of criminal abortion, are not uncommon. Such are neglect of efforts to prevent miscarriage when threatening, or where it has become an established habit; and of attempts at resuscitating still-born children where there is the slightest chance of success, and success has now been rendered much more probable by the methods of Marshall Hall and Silvester; the performance of operations of any kind upon a pregnant woman, even tooth-drawing,§ that might be delayed; the careless or unnecessary use

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\* Question d'Embryologie Médicale, etc.; Revue de l'Amérique et de l'Ouest, 1846.

† JOAN. RIOLAN., Anthropographia, lib. vi. cap. vii. p. 589.

‡ CHURCHILL, Dublin Quarterly Journ. of Med. Science, August, 1858, p. 22.

§ A case in point has been reported by the writer; Amer. Journ. of the Med. Sciences, April, 1859.



of ergot; the relying upon a single and unaided opinion, where not one life only, but two, may be endangered.

Other instances might be adduced; but enough has already been said to prove that the importance of the subject we are considering, and the responsibilities resting upon the profession regarding it, demand as I have elsewhere suggested,\* that physicians should possess, should acknowledge, and should govern themselves by, an *Obstetric Code*—the necessity of which will be made even more manifest, as we proceed in our investigation of questions pertaining to Obstetric Jurisprudence. We have referred to some of its leading principles, but have done no more than faintly foreshadow them.

Distressing in the retrospect, inconvenient frequently in the present,† such a Code would undoubtedly prove; but it is demanded of the profession by the progress of our science, by humanity, morality and religion. Were the facts in the case more generally known, and the existence and sanctity of foetal life more universally appreciated, it would be also demanded by public opinion.

We have now seen that “the absurd enactments still remaining on the statute book, the careless indifference with which society views the crime, the reluctance with which means are adopted to prevent its occurrence, its increase, and its frequent induction by obstetricians, are all evils which loudly and imperatively call for the closest investigation.”‡

We proceed to the other relations of criminal abortion, more especially to those immediately pertaining to the claims and course of justice.

#### VII. ITS OBSTACLES TO CONVICTION.

We have already seen that there are special, though, it is to be hoped, not wholly insurmountable causes for the existing prevalence of abortion. It now becomes our duty to consider some of these reasons in detail, in so far as they relate to and obstruct the course of justice.

It would seem, from what has been previously said, that little doubt could be entertained of the inefficacy of our present statutes against abortion. There are few of the States whose laws on this point are so wisely and completely drawn as in Massachusetts; yet, as they there stand, they cannot, as such, be enforced. In that Commonwealth, according to the

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\* Reports to the Suffolk Dist. Med. Society of Massachusetts, 1857, and to the American Medical Association, 1859.

† “It would in my opinion,” says Ramsbotham, referring to the nature of foetal existence, “be much better not to endeavor to explain the secrets of nature, so deeply hidden.”—(Obst. Medicine and Surgery, p. 309.) This belief seems still, in practice, very widely entertained.

‡ CLAY, *Obstetric Retrospect*, March, 1848, p. 44.



reports of the attorney-general, during the eight years from 1849 to 1857, omitting 1853—as there seems to have been no report rendered for that year—there were, as we have seen, 32 trials for abortion, and not a single conviction!

A committee of the State Medical Society of Massachusetts, to whom the propriety of a professional appeal to the Legislature for more protective statutes had been referred by the District Society of Boston, having reported against such action, on the ground “that the laws of the Commonwealth are already sufficiently stringent, provided that they are executed,”\* it becomes the more necessary for us to strike at the root of the whole matter, and to show, if possible, why conviction, unless in case of the death of the mother, cannot at present be obtained.

It has been thought, even publicly argued, that in the fact that statutes against abortion are almost everywhere not only not enforced, but not attempted to be enforced, there is afforded strong evidence of the existence of an ultimate and absolute impossibility of thus meeting the crime. The idea, though a fallacious one, is yet attributable to an important and evident cause.

That the prevalence of abortion is in great measure owing to ignorance of guilt, on the part of the community at large, we have shown. We now assert that its futile prohibition by the law, its toleration, are plainly in consequence of similar ignorance on the part of legislators, and of officers of justice.

Our communities form their own laws, and, therefore, as was pointed out at the commencement of our remarks, these must necessarily bear the stamp of public opinion; while the officers by whom they are to be enforced—juror, attorney, judge—looking to the only source possible for their enlightenment on this subject, to medical men, have hitherto found but few bold and honest statements,† and these unindorsed by the mass of the

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\* Medical Communications of the Mass. Med. Soc., 1858, p. 77.

The writer having been a member of this committee, here enters, as he has already done by letter to the councillors of the Society, his earnest protest against the plainly erroneous opinion avowed in that report, which was presented and accepted during his absence from the State.

By the laws of Massachusetts, the offence is considered as mainly against the person of the mother. In case of her death, already sufficiently provided for at common law, convictions can be effected, with great difficulty, under the statute,—as has twice occurred the present year, in the cases of Jackson and Brown; but hardly otherwise.

† In this connection honorable mention is due Drs. TATUM and JOYNES, of Virginia, for their papers on “The Attributes of the Impregnated Germ,” and “Some of the Legal Relations of the Fœtus in Utero” (Virginia Medical Journal, 1856.) Through the agency of the latter of these gentlemen, an important modification has been made in the law of the State; as has also been effected in Wisconsin, by Dr. BRISBANE.



profession ; or, in the total silence, a practical sanction of the popular belief. This is no exaggeration ; the assertion is fully borne out by facts. Need we wonder, then, that the laws are not enforced, that indeed their enforcement is not attempted ? But this first and great cause, it is apparent, is by no means an essential one.

We need add nothing to what we have already said, of those obstacles to conviction, arising from circumstances common in greater or less degree to other crimes ;—the difficulties of detection and of obtaining proof, however great these are allowed to be,—but we proceed at once to consider the laws themselves by which in this country the crime of abortion is attempted, or is expected to be suppressed.\*

The arguments by which we have shown the mistaken premise on which the common law of England, as covering this crime, is founded, and by adoption, the common law of this country, will not have been forgotten. We shall perceive that similar reasoning applies with equal force to the special statutes, where such exist, of almost every State in the Union.

In the following States, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Iowa, and the District of Columbia, there appear to exist no statutes against abortion, and the crime can only be reached at common law and by the rulings of the courts.

In the case of the District of Columbia, all rulings are based on the common law, the old English statutes, from Elizabeth to George II., and the old colonial statutes of the Province of Maryland, down to 1800, the period of cession to the United States of that portion of Maryland lying on the north side of the Potomac, now included in the federal district.

The later English statutes, even those of George IV., being enacted subsequent to the separation from the mother country, are not recognized in the District. In the State courts, so far as the rules and principles of the common law are applicable to the administration of criminal law, and

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\* For valuable information in this connection, I am indebted to many friends, more particularly to Drs. THAYER, of New Hampshire, PHELPS, of Vermont, CHAS. HOOKER, of Connecticut, BLATCHFORD, of New York, WOOD, of Pennsylvania, THOMPSON, of Delaware, WROTH, of Maryland, BRAINARD, of Illinois, CAMERON, of Indiana, LELAND, of Michigan, LE BOUTILLIER, of Minnesota, BRISBANE, of Wisconsin, POPE, of Missouri, HOYT, of Tennessee, HAXALL and JOYNES, of Virginia, SEMMES, of District of Columbia, DICKSON, of North Carolina, LOPEZ, of Alabama, BARTON, of Louisiana, (now of South Carolina,) and to my relatives, WOODBURY and BELLAMY STORER, Esqrs., of Maine and Ohio, and JAMES M. KEITH, Esq., of Boston, late District-Attorney for Norfolk and Plymouth Counties. In every instance, however, verification of the statutes has been made from copies in the State Library of Massachusetts.



have not been altered or modified by acts of the colonial or provincial government, or by the State Legislature, they have the same force and effect as laws formally enacted.\* In the States referred to, therefore, as having no special statutes of their own, the later English statutes, though not of absolute force, are to a certain extent undoubtedly acknowledged.

By the common law of England, as stated by Blackstone :—

“If a woman is quick with child, and by a potion or otherwise, killeth it in her womb, or if any one beat her, whereby the child dieth in her body, and she is delivered of a dead child, this, though not murder, was by the ancient law homicide, or manslaughter. But the modern law doth not look upon this offence in quite so atrocious a light, but merely as a heinous misdemeanor.”† “But if the child be born alive, and afterwards die in consequence of the potion or beating, it will be murder.”‡

By this law it is necessary to furnish proof not merely of pregnancy, but of quickening; no one besides the mother can be reached, save in the rare instance of beating; it is often impossible to prove that a child, born living, has died in consequence of means used upon itself or its mother before the birth.

The Ellenborough act,§ passed in 1803, runs thus :—

“If any person shall willfully and maliciously administer to, or cause to be administered to, or take any medicine, drug, or other substance or thing whatsoever, or use, or cause to be used or employed, any instrument, etc., with intent to procure the miscarriage of any woman, not being, or not being proved to be, quick with child at the time of committing such thing, or using such means, then, and in every such case, the persons so offending, their counselors, aiders and abettors, shall be and are declared guilty of felony, and shall be liable,” etc. etc.; if before quickening, to fine, the pillory, stripes, or transportation; if after quickening, to death;—but in the clause providing for the latter case, mention of instruments was omitted.

Punishment was thus extended to the crime prior to quickening; and besides the actual perpetrator, to those counseling and assisting therein. For its commission after quickening, capital punishment was restored; but by a strange oversight, no penalty was provided for the cases occurring at this period, where the abortion was induced by instrumental or other mechanical violence.

\* DAVIS, Criminal Justice, p. 482.

† Ibid.

‡ 1 Commentaries, 129.

§ 43 George III., c. 58.

To remedy this defect another act, that of Lord Lansdowne,\* was substituted in 1828:—

“If any person, with intent to procure the miscarriage of any woman then being quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument, or other means whatever, with the like intent; every such offender, and every person counseling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon;” if the woman were “not, or not proved to be, then quick with child,” the offence was still felony, and punished by transportation, or imprisonment and stripes.

By this enactment, the mistaken belief in a difference of guilt, according to the period of foetal life, was still retained. For which reason, and in the false hope that by again abolishing capital punishment, juries would more frequently decide in accordance with fact, the English law has later, and during the present reign, still further been modified and rendered more just, simple, and comprehensive.†

“Whosoever, with the intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, shall be guilty of felony, and being convicted thereof, shall be liable,” etc. etc., to transportation or imprisonment.

By the present English statute, the woman herself can hardly yet be reached; many convictions must still be lost from failure to prove the agent either a poison or noxious thing; in other respects, however, it is well drawn. Attempts at the crime are covered, and proof is not required of pregnancy, or of actual injury to the mother.

So far the instances in this country of an absence of special statutes. Where such exist, they may be variously classified. Reserving for a little all other considerations, we find them at once falling into four great divisions.

I. Those acknowledging the crime only after quickening has occurred:—

Connecticut,  
Mississippi,  
Arkansas,

Minnesota,  
Oregon.

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\* 9 Geo. IV., c. 31; 10 Geo. IV., c. 34.

† 7 William IV.; 1 Vict., c. 85.



II. Those acknowledging the crime throughout pregnancy, but supposing its guilt to vary with the period to which this has advanced :—

Maine,	Ohio,
New Hampshire,	Michigan.*
New York,	

III. Those acknowledging the crime throughout pregnancy, unmitigated ; but still requiring proof of the existence of this state :—

Vermont,	Missouri,
Massachusetts,	Alabama,
Illinois,	Louisiana,
Wisconsin,	Texas,
Virginia,	California.†

IV. That, like the present English statute, requiring no such proof, and punishing also the attempt, even though pregnancy do not exist :—  
Indiana.

Briefly to recapitulate these groups :—

Maine,	Class II.	Alabama,	Class III.
New Hampshire,	" II.	Mississippi,	" I.
Vermont,	" III.	Louisiana,	" III.
Massachusetts,	" III.	Texas,	" III.
Rhode Island,	no statute.	Ohio,	Class II.
Connecticut,	Class I.	Indiana,	" IV.
New York,	" II.	Illinois,	" III.
New Jersey,	none.	Michigan,	" II.
Pennsylvania,	none.	Kentucky,	none.
Delaware,	none.	Tennessee,	none.
Maryland,	none.	Missouri,	Class III.
District of Columbia,	none.	Arkansas,	" I.
Virginia,	Class III.	Wisconsin,	Class III.
North Carolina,	none.	Iowa,	none.
South Carolina,	none.	Minnesota,	Class I.
Georgia,	none.	California,	" III.
Florida,	none.	Oregon,	" I.

We now proceed to the consideration of these statutes in detail, and for this purpose, present them at length.

I. States acknowledging the crime only after quickening :—

CONNECTICUT.—“Every person who shall willfully and maliciously administer to, or cause to be administered to, or taken by, any woman then being quick with child, any medicine, drug, noxious substance, or other

\* To this list may also be added the Territory of Washington.

† The Territory of Kansas belongs to the above group.

thing, with intent thereby to produce the miscarriage of such woman, or to destroy the child of which she is pregnant, or shall willfully and maliciously use and employ any instrument or other means to produce such miscarriage, or to destroy such child, shall suffer imprisonment in the Connecticut State prison for a term not less than seven, nor more than ten years.\*

MISSISSIPPI.—“The willful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of the mother, shall be deemed manslaughter.

“Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for such purpose, shall be deemed guilty of manslaughter.”† Punishment, by fine not less than one thousand dollars, or imprisonment in the county jail for not more than one year, or in the penitentiary for not less than two years.

ARKANSAS.—“The willful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be adjudged manslaughter.

“Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall employ any instrument or other means, with intent thereby to destroy such child, and thereby shall cause its death, unless the same shall be necessary to preserve the life of the mother, or shall have been advised by a regular physician to be necessary for such purpose, shall be deemed guilty of manslaughter.”‡

MINNESOTA.—“The willful killing of an unborn infant child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

“Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”§ Punishment for first degree, imprisonment in the ter-

\* Compiled Statutes of Connecticut, 1854, p. 307.

† Revised Code of Mississippi, 1857, chap. 64, p. 601.

‡ Digest of Statutes of Arkansas, 1848, chap. 51, p. 325.

§ Revised Statutes of Minnesota, 1851, chap. 100, p. 493.



ritorial prison for not less than seven years; and for second degree, not more than seven years nor less than four.

OREGON.—“Any person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child, or of such mother, be thereby produced, be deemed guilty of manslaughter.”\* Punishment, imprisonment in the penitentiary for not less than one or more than ten years, and by fine not exceeding five thousand dollars.

II. Those acknowledging the crime throughout pregnancy, but as of different degrees of guilt :—

MAINE.—“Whoever administers to any woman pregnant with child, whether such child is quick or not, any medicine, drug, or other substance, or uses any instrument or other means, unless the same were done as necessary for the preservation of the mother’s life, shall be punished, if done with intent to destroy such child, and thereby it was destroyed before birth, by imprisonment not more than five years, or by fine not exceeding one thousand dollars; if done with intent to procure the miscarriage of such woman, by imprisonment less (*sic*) than one year, and by fine not exceeding one thousand dollars.”†

NEW HAMPSHIRE.—“Every person who shall willfully administer to any pregnant woman, any medicine, drug, substance, or thing whatever, or shall use or employ any instrument or means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, at the discretion of the court.

“Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or means whatever, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for such purpose, shall, upon conviction, be punished by fine not exceeding one thousand dollars, and by confinement to hard labor not less than one year nor more than ten years.

“Any person who shall cause the death of any pregnant woman, in the

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\* Statutes of Oregon, 1855, chap. 3, p. 310.

† Revised Statutes of Maine, 1857, chap. 124, p. 685.



perpetration or attempt to perpetrate either of the crimes mentioned in the two preceding sections, or in consequence of the perpetration or the attempt to perpetrate either of said crimes, shall be taken and deemed to be guilty of murder in the second degree, and be punished accordingly.

"Any woman who shall voluntarily submit to the violation of the provisions of this act (this and the three preceding sections\*) upon herself, shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both said fine and imprisonment, at the discretion of the court."†

NEW YORK.—"The willful killing of an unborn quick child, by an injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

"Every person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child, or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

"Every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug, substance, or thing whatever, or shall use or employ any instrument, or other means whatever, with intent thereby to procure the miscarriage of any such woman, shall, upon conviction, be punished by imprisonment in a county jail not less than three months nor more than one year.

"Every woman who shall solicit of any person any medicine, drug, or substance, or thing whatever, and shall take the same, or shall submit to any operation, or other means whatever, with intent thereby to procure a miscarriage, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment."‡

OHIO.—"Any physician, or other person, who shall willfully administer to any pregnant woman, any medicine, drug, substance, or thing whatever, or shall use any instrument, or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have

\* The above should evidently read "the first two sections," to be possible.

† Compiled Statutes of New Hampshire, 1853, chap. 227, p. 544.

‡ Revised Statutes of New York, 1852, ii. pp. 847, 876. The last section of this statute does not require proof of pregnancy.



been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

"Any physician, or other person, who shall administer to any woman, pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of such child or mother, in consequence thereof, be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary not more than seven years, nor less than one year."\*

MICHIGAN.—"The willful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter.

"Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.

"Every person who shall willfully administer to any pregnant woman, any medicine, drug, substance, or thing whatever, or shall employ any instrument, or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment."†

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\* Revised Statutes of Ohio, 1854, chap. 162, p. 296.

† Compiled Laws of Michigan, 1857, vol. ii. chap. 180, p. 1509. The statute of the Territory of WASHINGTON is very similar to those above.

"Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year.

"Every person who shall administer to any pregnant woman, or to any woman



III. Those not allowing this mitigation, but still requiring proof of pregnancy :—

VERMONT.—“Whoever maliciously, or without lawful justification, with intent to cause and procure the miscarriage of a woman, then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing, or shall cause, or procure her, with like intent, to take or swallow any poison, drug, medicine, or noxious thing ; and whoever maliciously and without lawful justification, shall use any instrument, or means whatever, with the like intent, and every person, with the like intent, knowingly aiding and assisting such offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned in the State prison not more than ten years, nor less than five years ; and if the woman does not die in consequence thereof, such offenders shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the State prison not exceeding three years, nor less than one year, and pay a fine not exceeding two hundred dollars.”\*

MASSACHUSETTS.—“Whoever maliciously or without lawful justification, with intent to cause and procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing, or shall cause or procure her, with like intent, to take or swallow any poison, drug, medicine, or noxious thing ; and whoever maliciously and without lawful justification shall use any instrument, or means whatever, with the like intent, and every person with the like intent knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years, in the State prison ; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the State prison, or house of correction, or common jail, and by fine not exceeding two thousand dollars.”†

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whom he supposes to be pregnant, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall, on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars.” *Statutes of the Territory of Washington*, 1855, p. 81.

\* *Compiled Statutes of Vermont*, 1850, chap. 108, p. 560.

† *Supplement to the Revised Statutes of Massachusetts*, 1849, p. 322.



ILLINOIS.—“Every person who shall administer, or cause to be administered or taken, any noxious or destructive poison, substance, or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.”\*

WISCONSIN.—“Every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug, or substance, or thing whatever, or shall use or employ any instrument, or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman, shall, upon conviction, be punished by imprisonment in a county jail, not more than one year nor less than three months, or by fine not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court.

“Every woman who shall take any medicine, drug, substance, or thing whatever, or who shall use or employ any instrument, or shall submit to any operation, or other means whatever, with intent to procure a miscarriage, shall, upon conviction, be punished by imprisonment in a county jail not more than six months, nor less than one month, or by a fine not exceeding three hundred dollars, or by both fine and imprisonment, at the discretion of the court.”†

VIRGINIA.—“Any free person who shall administer to, or cause to be taken by a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.”‡

MISSOURI.—“Every physician, or other person, who shall willfully administer to any pregnant woman, any medicine, drug, or substance whatsoever, or shall use or employ any means whatsoever, with intent thereby to procure abortion, or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished

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\* Statutes of Illinois, 1858, vol. i. p. 381.

† Revised Statutes of Wisconsin, 1858, chap. 169, sect. 58. It will be noticed that the second section of the above statute differs from the first, in not requiring the proof of pregnancy.

‡ Code of Virginia, 1849, chap. 191, p. 724.

by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”\*

ALABAMA.—“Any person who willfully administers to any pregnant woman, any drug or substance, or uses and employs any instrument or other means to procure her miscarriage, unless the same is necessary to preserve her life, and done for that purpose, must, on conviction, be fined not more than five hundred dollars, and imprisoned not less than three or more than twelve months.”†

LOUISIANA.—“Whoever shall feloniously administer, or cause to be administered, any drug, potion, or any other thing, to any woman, for the purpose of procuring a premature delivery, and whoever shall administer, or cause to be administered, to any woman pregnant with child, any drug, potion, or any other thing, for the purpose of procuring abortion, or a premature delivery, shall be imprisoned at hard labor for not less than one, nor more than ten years.”‡

TEXAS.—“If any person shall designedly administer to a pregnant woman, with her consent, any drug or medicine, or shall use toward her any violence, or any means whatever, externally or internally applied, and shall thereby procure an abortion, he shall be punished by confinement in the penitentiary not less than two, nor more than five years; if it be done without her consent the punishment shall be doubled.

“Any person who furnishes the means for procuring an abortion, knowing the purpose intended, is guilty as an accomplice.

“If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to procure abortion, provided it be shown that such means were calculated to produce that result, and shall receive one half the punishment prescribed.

“If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder.

“If any person shall, during parturition of the mother, destroy the vitality or life in a child, which child would otherwise have been born alive, he shall be punished by confinement in the penitentiary for life, or any period not less than five years, at the discretion of the jury.§

\* Revised Statutes of Missouri, 1856, i. chap. 50, p. 567.

† Code of Alabama, 1852, sect. 3230, p. 582.

‡ Revised Statutes of Louisiana, 1856, p. 138. By its wording, this statute might be forced into the next division.

§ I insert this clause not merely for its relation to the points we are now considering, but for its important bearing on the broad question of infanticide during labor; concerning which it stands in bold and direct antagonism to all the rulings of the common law in this country and abroad. In other respects also, though not faultless, the Texas statute is rationally and admirably drawn.



"Nothing contained in this chapter shall be deemed to apply to the case of an abortion procured or attempted to be procured by medical advice for the purpose of saving the life of the mother."\*

CALIFORNIA.—"Every person who shall administer or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instrument whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the State prison for a term not less than two years, nor more than five years; provided, that no physician shall be affected by this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life."†

IV. The State, like England, where proof of pregnancy is not required:‡

INDIANA.—"Every person who shall willfully administer to any pregnant woman, or to any woman whom he supposes to be pregnant, anything whatever, or shall employ any means with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be punished by imprisonment in the county jail not exceeding twelve months, and be fined not exceeding five hundred dollars."§

The impossibility of proving the existence of pregnancy, in all cases of early occurring, and in many of advanced abortion, save by its result, is undeniable. Quickening, where abortion is criminal, is seldom pre-

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\* Penal Code of Texas, 1857, p. 103.

† Digest of Laws of California, 1857, art. 1905, p. 334. The statute of the Territory of KANSAS, similar to the above, is as follows:—

"Every physician or other person who shall willfully administer to any pregnant woman, any medicine, drug, or substance whatever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion, or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment." Statutes of Kansas, 1855, chap. 48, p. 243.

‡ We have already commented upon the phraseology of the Louisiana statute. The latitude of its first clause is shown by the context to have been unintentional, and therefore hardly justifies a change in its classification. The second section of the Statute of Washington Territory, however, is closely analogous to that now given; while the final sections of the statutes both of New York and Wisconsin, which make it penal for a woman voluntarily to effect or submit to the unjustifiable induction of abortion, are equally silent regarding proof of the existence of pregnancy.

§ Revised Statutes of Indiana, 1852, p. 437.



viously ascertained by witnesses, at least from actual examination. If the mother is dead, her own testimony, not often willingly given, is lost, and the only reliable evidence that the usual period of quickening had been reached, is from the body of the fœtus, frequently concealed or destroyed. The law requires, in proof of the existence of quickening, that the woman should herself have felt the child move within her;\* thus discarding† the distinction once very properly made by a learned judge, "Quick with child, is having conceived; with quick child, is where the child is quickened."‡

We have already sufficiently insisted on the error, injustice, and actual wrong to society, of making this absurd distinction between the fœtus of an early and a later age, and only refer to it at the present time as foremost among the existing obstacles to conviction.

In some of the States, the offence is considered a trifling one, except as affecting the person or life of the mother; this is the case in New Hampshire, Vermont, and Massachusetts. In Ohio, Michigan, Minnesota, Wisconsin, and Oregon, the proved death of either child or mother is required to make abortion a high misdemeanor, felony or manslaughter; while in Virginia and Arkansas it is necessary to constitute an indictable offence, in the one State that the death of the child should be proved, and in the other that this or its premature discharge has actually taken place. An attempt at the crime would here seem beyond indictment, unless fœtal life were destroyed; though if this could be proved, the attempt might perhaps be reached, even though the fœtus were retained in utero, and a true abortion, its discharge, had not taken place. In Maine, the fœtus must have died before birth; if, born living, it yet die in consequence of the abortion, the crime would seem not indictable, save at common law. In other States, allowing the fact of pregnancy to be proved, and in Indiana alone this is not necessary, attempts at abortion are as indictable as the act consummated, save in Texas, where the means used must be shown to be such as "were calculated to produce the result."

In but few instances is the crime, intrinsically considered, accounted a heinous one, and recognized in its true character—an attempt to destroy the life of the child. In Texas, the consent of the mother half palliates the crime; while in very many codes abortion is omitted from the list of offences against the person, and accounted only a breach of public decency and morality.

In Ohio, as we have seen, it is called a high misdemeanor; in New

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\* *Rex vs. Phillips*, 3 CAMPBELL, 77; RUSSELL, *Crim. Law*, 553-4; 1 GABBETT, *Crim. Law*, 522; 1 BISHOP, *Crim. Law*, 386.

† *State vs. Cooper*, 2 ZABRISKIE, 52, 57; *Rex vs. Russell*, 1 MOODY, 356, 360.

‡ *Regina vs. Wycherley*, 8 CARRINGTON and PAYNE, 265.



York, Michigan, Oregon, Arkansas, and Mississippi, it is styled manslaughter in the first degree. The punishment inflicted by the latter of these States, however, is ridiculously trivial, and in all of them proof of quickening is required. In New York it has been determined that under an indictment for procuring the abortion of a quick child, which by the revised statutes is a felony, the prisoner may be convicted, though it turn out that the child was not quick, and the offence therefore a mere misdemeanor;\* as in the remaining States it is indeed either in name or by penalty considered,—a simple, trivial, and venial offence.

But it must not be forgotten that the true nature of manslaughter consists in the absence of all malice or willful intent, expressed or implied, to do personal injury: out of tenderness to the frailty of human nature,† the law mercifully denying to such homicide, from unlawful accident or hasty passion, the same degree of guilt with the cool, deliberate act;‡ nor that misdemeanors are specifically confined to the following category: disturbances of the public peace, trivial personal injuries, public nuisances and scandals, lewdness, and incentives to special crimes.§ It is evident that under neither of these heads can the crime of abortion be properly made to fall.

Difficulties of conviction, similar to those we have seen obtaining in England, and arising from requirement of proof that the means employed are unlawful, also present themselves in several of our States, though in most they have been wisely avoided. In Vermont and Massachusetts the agent administered, to be indictable, must have been a "poison, drug, medicine, or noxious thing;" in Illinois, a "poison, noxious, or destructive substance, or liquid;" in Texas, a "drug or medicine;" and in California, a "medicinal substance." In Maine, New Hampshire, Connecticut, New York, Ohio, Michigan, Minnesota, Wisconsin, Oregon, Virginia, Missouri, Arkansas, Alabama, Mississippi, and Louisiana, the wording of the statute is sufficiently comprehensive; while in Indiana, there is used the curt but significant expression "anything whatever," it not being necessary under this statute, in an indictment for administering medicine or any other substance, to procure abortion, for the agent to be described as noxious, or even its name to be stated.|| The use of instrumental and other violence is generally well provided against.

The truth is, as has indeed been ruled, that it should not be necessary to show, in pleading or evidence, that the drug, etc. administered is

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\* *The People vs. Jackson*, 3 HILL, N. Y. Reports, 92; WHARTON, Criminal Law, 98.

† DAVIS, *Crim. Justice*, 484.

‡ WHARTON, *Amer. Crim. Law*, 424.

§ WHARTON, *Amer. Crim. Law*, 75.

|| *The State vs. Vawter*, 7 BLACKFORD, 592.

noxious or the like, the intent to procure abortion being the gist of the attempt;\* and if a person administer a bit of bread merely, with this intent, it is sufficient to constitute the offence.† On the other hand, it has been laid down, that if the thing administered could of itself by no possibility produce the abortion, and it were proved that this fact were known to the person administering, the crime would not have been committed; on the ground that he must be presumed to have acted without the malicious intent which the law requires.‡ Here, however, the frequent and important physiological effect through the imagination, in producing a definite result where such is supposed to be intended, has been entirely forgotten.

In several States, a seemingly unwise discrimination has been made by the law between the various methods employed. Thus in Michigan, Mississippi, Arkansas, and Minnesota, a special statute has been enacted for cases where the crime is effected "by any injury to the mother, which would be murder if it resulted in the death of such mother." We have seen that the surest and most efficient means of producing abortion are those where no injury whatever is necessarily inflicted upon the mother. Such statutes as the above, therefore, actually tend to encourage the crime.

Another important obstacle to conviction is found in the latitude the statutes allow, generally by omission, to the plea of justification.

In Illinois and Louisiana no justification whatever is allowed by the law. In Connecticut the offence is penal where committed "willfully and maliciously;" in Vermont and Massachusetts to the latter of these expressions are added the words, "or without lawful justification:" but in each case, decision upon this point is left in great measure or wholly to the court. In Virginia, to be allowable, the abortion must have been necessary for the life of either the mother or child. In Maine, New Hampshire, Massachusetts,§ New York, Ohio, Indiana, Michigan, Missouri, Alabama, Mississippi, Arkansas, Texas, Minnesota, California, Oregon, and the Territories of Kansas and Washington, it must have been performed for the sake of the mother's life alone.

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\* 1 GABBETT, *Crim. Law*, 523; ARCHBOLD, *P. A.*, lxx, 2.

† ROSCOE, *L. E.*, 242; *Eng. Com. L. Rep.*, xxv. 453; *Rex vs. Coe*, 6 *CAR. & P.*, 403; *Vaughan*, 13.

‡ 1 BISHOP, *Crim. Law*, 527.

§ In Massachusetts, though the statute is silent on these points, it is asserted that whenever a potion is given, or other means are used, by "a surgeon," for the purpose of saving the life of the woman, the case is free of malice, and has a lawful justification. DAVIS, *Crim. Justice*, 282; *Report of the Criminal Law Commissioners*, 1844, *Causing Abortion*, I., note *a*.



In none of these States is a standard of such justification established by the statute. In Maine, New York, Indiana, Alabama, Oregon, and the Territory of Washington, this is not even attempted. In Texas, the statute acknowledges "medical advice." In Missouri, Mississippi, California, and the Territory of Kansas, the sanction of "a physician" is allowed as excuse; in Arkansas that of "a regular physician;" in New Hampshire, Ohio, Michigan, and Minnesota, "two physicians" may decide on its necessity; but in every one of these States, the word "or" stands engrossed upon the statute, and thereby the precaution is practically invalidated; which could not have been the case had the word "and" have been used instead.

The truth is, as we have seen, that when such latitude is allowed by the law, it is inevitably abused. Medical evidence, medical sanction, and medical performance are absolutely essential for excuse in every case; if the opinion of a single physician is allowed to be sufficient, an escape is afforded for all instances where this privilege has been dishonored; the word "regular" is much more liable to be misinterpreted than the word "competent;"\* in every case before abortion can be justified, its necessity should previously have been decided and the possibility of crime thus prevented, by a consultation of at least two competent medical men.

We have pointed out many circumstances under which premature labor is demanded, by the rules of humanity and of medicine, for the sake of the mother's life, and have seen that in several States it is for this cause allowed. But we have also shown that it is often equally necessitated for the sake of the child. In no State save Virginia is its justifiability for this purpose yet recognized by the statute law.

By the codes of most States, the mother is not punishable, however directly implicated in the crime. New Hampshire, New York, and Wisconsin, are apparently the only exceptions to this statement; the last two of them also not requiring proof of pregnancy for conviction, while by implication New Hampshire does.

By the statute of Indiana, all other women equally with the mother would seem released from prosecution, the word "he" being used of the persons indictable. The same oversight is noticed in the first section of the statute of Texas.

Objections were formerly made, especially in England, to the severity of the penalties then inflicted, (death in case of quickening, transportation or long imprisonment otherwise,) on the erroneous ground that this severity was wholly disproportionate to the guilt of the offence, and that, therefore,

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\* After a little reflection, it will be seen that this word is not so open to objection as might at first be supposed.

juries did not convict. The mistaken character of this supposition is shown by abundant proof in this country. In many States the penalties of the law are absurdly insignificant, tending, equally with the uncertainty of their infliction, to encourage the crime, and yet the same difficulties of conviction prevail. The true nature of these difficulties we have endeavored in great measure to explain, and we think it will have appeared that however numerous and serious they may be, they are yet not insuperable.

Before concluding this subject, it is proper that we examine more fully into the doctrine of the common law, to understand more precisely its meaning. In so doing, we shall quote freely from the leading authorities of the day, especially those of this country.

The destruction of an unborn child is not at the present day murder at the common law, though such was formerly the case;\* to constitute which crime, the person killed must at the time of death have been alive,† as we have shown the fœtus to be from the time of conception, and "a reasonable creature in being,"‡ a quality in this connection denied to the child by the law, though in all other relations it inconsistently allows and affirms it; as it does also, and always, from the moment of birth, even though the funis is undivided and the placenta still attached.§

To cause abortion after quickening, is not, as such, murder or manslaughter at common law, but a high misdemeanor.||

Whether to cause, or to attempt, abortion before quickening is a penal offence at common law, has been differently decided. In several of the States, as Maine, Massachusetts, and New Jersey, it has been ruled by the Supreme Court not to be indictable, even as an assault, if done with the consent of the woman; on the ground that only in case of high crimes is the person assaulted incapable of assenting.¶ The Pennsylvania court, however, has discarded this doctrine, and has decided that the moment the womb is instinct with embryo life, and gestation has begun, the crime may be perpetrated.\*\*

\* 1 RUSSELL, Crimes, 671; 1 VESEY, 86; 3 COKE, Inst., 50; 1 HAWKINS, C. B., s. 16; 1 HALE, 434; 1 EAST, P. C., 90; 3 CHITTY, Crim. Law, 798; WHARTON, Crim. Law, 537.

† DAVIS, Crim. Justice, 486.

‡ ARCHBOLD, Crim. Pleading, 490.

§ Regina vs. Trilloe, 2 MOODY, C. C., 260, 413.

|| The State vs. Cooper, 2 ZABRISKIE, 52; HANES, U. S. Digest, 5.

¶ The Commonwealth vs. Parker, 9 METCALF, 263; The Commonwealth vs. Bangs, 9 Mass., 387; The State vs. Cooper, 2 ZABRISKIE, 57; HANES, U. S. Digest, 5; Smith vs. State, 33 MAINE, (3 RED.) 48.

\*\* BISHOP, Crim. Law, 386; Mills vs. The Commonw., 1 HARRIS, Pa., 631, 633.



The distinction alluded to with regard to quickening, is allowed by an acknowledged legal authority\* to be at open variance not only with medical experience, but with all other principles of the common law.† The civil rights of an infant in utero are respected equally throughout gestation; at every stage of which process, no matter how early, it may be appointed executor,‡ is capable of taking as legatee§ or under a marriage settlement,|| may take specifically as "a child" under a general devise,¶ and may obtain an injunction to stay waste.\*\*

When, in an attempt to procure an abortion, there is an evident intent to produce the death of the mother, and her death does actually occur, such attempt becomes murder at common law;†† but when nothing more is intended than to commit the misdemeanor, it is only manslaughter,‡‡ being an instance of homicide from individual malice toward a third party, when the fatal blow falls on the deceased by mistake. It has been said, however, that this last is not the true doctrine, the destruction of an infant in utero being, even at common law, in some respects felonious, and the act in its nature malicious and deliberate, and necessarily attended with danger to the person on whom it is performed. §§

The use of violence upon a woman, with an attempt to produce her miscarriage without her consent, rules Chief Justice Shaw, of Massachusetts, is an assault highly aggravated by such wicked purpose, and would be indictable at common law. So where, upon a similar attempt, the death of the mother ensues, the party making such an attempt, with or without her consent, is guilty of murder, on the ground that it is an act done without lawful purpose, dangerous to life, and that the consent of the woman cannot take away the imputation of malice, any more than in case of a duel, where in like manner there is the consent of the parties. |||

Though to kill the fœtus in utero is as such, by the common law, no murder, yet if it be born alive, and die subsequently to birth from the

\* WHARTON, *Crim. Law of the U. S.*, 537.

† 1 RUSSELL, *Crimes*, 661; 1 VESEY, 86; 3 COKE, *Inst.*, 50; 1 HAWKINS, c. 13, s. 16; BRACTON, l. 3, c. 21.

‡ BAC. AB., tit. Infants.

§ 2 VERNON, 710.

|| *Doe vs. Clark*, 2 H. Bl., 399; 2 VESEY, jr., 673; *Thellusson vs. Woodford*, 4 VESEY, 340; *Swift vs. Duffield*, 6 SERG. & RAWLE, 38.

¶ FEARNE, 429.

\*\* 2 VERNON, 710; *The Commonwealth vs. Demain*, 6 Penn. Law Journ., 29; BRIGHTLY, 441.

†† 1 HALE, 90; *The Commonw. vs. Chauncey*, 1 ASHMEAD, 227; *Smith vs. State*, 23 MAINE, (3 RED.) 48.

‡‡ Ibid.; HANES, *U. S. Digest*, 5.

§§ WHARTON, *Law of Homicide*, 44.

||| *The Commonw. vs. Parker*, 9 METCALF, 263, 265; DAVIS, *Crim. Justice*, 281.

wounds it received in the womb, or from the means used to expel it, the offence becomes murder in those who cause or employ them.\* If a person, intending to procure abortion, does an act which causes the child to be born earlier than its natural time, and therefore in a state much less capable of living, and it afterwards die in consequence of such premature exposure, the person who by this misconduct brings the child into the world, and puts it into a situation in which it cannot live, is guilty of murder, though no direct injury to the child be proved; and the mere existence of a possibility that something might have been done to prevent the death, does not lessen the crime.†

The earlier English statutes, from their peculiar phraseology, held pregnancy essential for the commission of the crime,‡ yet an attempt to produce abortion is now indictable at common law,§ though it fail by reason of the woman being, in fact and contrary to the belief of the party, not pregnant.|| For though as no man would attempt what he absolutely knew he could not in fact perform, nor would be deemed in law to have so attempted, and as every one being conclusively presumed to understand the law, no man can legally intend what is legally impossible, the rule as to facts is different; for men are not conclusively held by the law to know facts. And if a man fails in what he undertakes, because of an impossibility in fact, which he did not know, he is just as answerable as if the failure were from any other cause.¶

We have seen the mistaken basis, as regards the criminality of abortion, on which the common law is founded, and that while it recognizes the distinct existence of the fœtus for civil purposes, it here considers its being as totally engrossed in that of the mother.

A recent authority thus accounts for and defends the mistake. The wealth and prosperity of the country, it is assumed, and the growth and efficiency of its population, are alike matters of general concern, and therefore the law takes them under its care. As to population, there are in civil jurisprudence such rules, as that the husband may hold the lands of his deceased wife during his life, if before her death a living child was born, but not otherwise; the law thus offering, in effect, a reward for

\* 1 BLACKSTONE, 129; *Rex vs. Senior*, 1 MOODY, C. C., 346; 3 Inst., 50; WHARTON, C. L., 537; *Ibid.*, Law of Homicide, 93.

† *Rex vs. West*, 2 CARR. & KIR., 784; 1 BISHOP, C. L., 255; WHARTON, Law of Homicide, 93.

‡ *Rex vs. Scudder*, 1 MOODY, 216, 3 CAR. & P., 605, overruling *Rex vs. Phillips*, 3 CAMPBELL, 73; RUSSELL, Cr., 763, note.

§ If made without her consent?

|| *Regina vs. Goodchild*, 2 CAR. & KIR., 293; *Rex vs. Goodhall*, 1 DEN. C. C., 187; 3 CAMPBELL, 76.

¶ 1 BISHOP, Crim. Law, 518.



issue. It does not compel matrimony, because that would be an infringement of private rights; but for the same end, it does punish abortions.\*

Another writer has also implied that the common law, in making foeticide penal, had in view the great mischiefs which would result from even its qualified toleration: namely, the removal of the chief restraint upon illicit intercourse, and the shocks which would be sustained thereby by the institution of marriage and its incidents; among which the delicacy of women.†

In unison with these opinions, Judge Coulter, of Pennsylvania, has ruled, that "it is not the murder of a living child which constitutes the offence, but the destruction of gestation."‡

If our previous assumptions of the actual character of criminal abortion be granted, and we believe that they have been proved to a demonstration, it must follow from the subsequent remarks that the common law, both in theory and in practice, is insufficient to control the crime; that in many States of this Union, the statutory laws do not recognize its true nature; that they draw unwarrantable distinctions of guilt; that they are not sufficiently comprehensive, directly allowing many criminals to escape, permitting unconsummated attempts, and improperly discriminating between the measures employed; that they require proofs often unnecessary or impossible to afford; that they neglect to establish a standard of justification, and thereby sanction many clear instances of the crime; that by a system of punishments wholly incommensurate with those inflicted for all other offences whatsoever, they thus encourage instead of preventing its increase; and that in many respects they are at variance, not merely with equity and abstract justice, but with the fundamental principles of law itself.

"It is to be hoped," has forcibly been written, "that the period is not far remote, when laws so cruel in their effects, so inconsistent with the progress of knowledge and civilization, and so revolting to the feelings and claims of humanity, will be swept from our statutes."§

In a similar trust, it now behooves us to consider whether, and in what manner, the difficulties in the way of generally suppressing the crime of abortion can be overcome.

#### VIII. CAN IT BE AT ALL CONTROLLED BY LAW?

To this important question I do not hesitate to give an unqualified answer in the affirmative. The fact that criminal abortion is not con-

\* 1 BISHOP, *Crim. Law*, 385.

† WHARTON, *Crim. Law*, 541.

‡ 1 HARRIS, *Pa.*, 631, 633.

§ LEE, *Note to Guy's Principles of Forensic Medicine*, p. 134.

trolled by law anywhere, cannot be entertained as a valid argument to the contrary of this assertion; for it is equally the fact, as we have seen, that laws against abortion do not as yet exist, which are in all respects just, sufficient, and not to be evaded.

It is evident that in aiming to suppress this crime, the law should provide not merely for its punishment, but indirectly as well as directly, and so far as possible, for its prevention. The punishment of a crime cannot be just, if the laws have not endeavored to prevent that crime by the best means which times and circumstances would allow,\* and this is to be accomplished by a twofold process: by rendering on the one hand its detection more probable, and on the other its punishment more certain.

As indirect though important measures for the former of these ends, we have already mentioned laws for registration,† and against concealment of births and secret burials. As a single proof of their possible influence in this respect, out of many that might be adduced, we instance the fact that in Paris the number of premature fœtuses deposited at the Morgue, during the nine years, from 1846 to 1854, inclusive, was found to exceed by more than two-thirds that of the full decade just preceding, from 1836 to 1845.‡ To render this difference more apparent, we have compiled the following table:—

Age of fœtuses deposited.					Ten years: 1836-1845.	Nine years: 1846-1854.
From 2 to 3 months	.	.	.	.	21	58
" 3 to 4 "	.	.	.	.	35	73
" 4 to 5 "	.	.	.	.	56	102
" 5 to 6 "	.	.	.	.	69	82
Total	.	.	.	.	181	315

Part of this advance, it is true, is attributable to the increase in the population of Paris, and in the prevalence of criminal abortion, but in great measure it is clearly owing to the enforcement of a more rigid law against secret burials. The above remarks are strikingly corroborated

\* BECCARIA, Crimes and Punishments, 104.

† "An efficient and practical remedy for the prevention of this crime would be a law requiring the causes of death to be certified by the physician in attendance, or where there has been no physician, by one called in for the purpose. In this way the cause of death, both in infants and mothers, could be traced to attempts to procure abortion. In three cases which occurred in Boston, in 1855, the death was reported by friends to be owing to natural causes, and in each it was subsequently ascertained that the patient died in consequence of injuries received in procuring abortion. It is probable that such cases are by no means rare; and if the cause of death were known, an immediate investigation might lead to the detection of the guilty party." (Boston Med. and Surg. Journal, Dec., 1857, p. 365.)

‡ Register of the Morgue.



by the fact that of trials for the crime, and we must not forget that these bear but a small ratio to the whole number of cases preliminarily investigated,\* there were in France, during the latter of these periods, fully four times the number occurring from 1836 to 1845.

The establishment of foundling hospitals, by the State governments, has been urged as a preventive of the crime, and, on the other hand, fears have been expressed lest the same means should increase it. For ourselves, however, and from some experience in such cases, we believe that these fears are groundless, and that with equal justice might they be entertained of every large charity having for its end the improvement, sanitary or otherwise, of the masses of society.

We have quoted a statute existing in Massachusetts, though practically unenforced, against one great agent in the increase of abortion, an abuse of its license by the public press. Were such laws to become general, and to be faithfully executed, and were it also made penal to sell any drug, popularly known as emmenagogue, except as advised by physicians, just as the sale of direct poisons is, or should be, controlled by law, the present system of openly advertising by abortionists would undoubtedly be brought to a close.

In no matter is it of more importance than in cases of suspected criminal abortion, that coroners should be intelligent and well-educated medical men; and we could wish that this point might have received especial attention from Dr. Semmes, in his late admirable report to the American Medical Association.† In the sudden excitement of an inquest, the guilty are more likely than at a later period to be off their guard, and evidence may often be elicited at this time, which, at the subsequent trial, it would be impossible to obtain. There can be no question of the importance of this point; the coroner should be skilled in all that pertains to obstetric jurisprudence; and if similar knowledge were more generally possessed by other officers of justice, attorney, juror, and judge, a far greater number of convictions, under a proper law, would be secured.

As regards the more direct statutes, we have already considered their important points.

"In order to render laws effectually preventive," has wisely been said, "they should be consistently framed, and based on justice."‡ In accordance with this truly axiomatic doctrine, and with various rulings of the

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\* From 1846 to 1850, 188 cases of criminal abortion were discovered in Paris, but for want of proof, only 22 of them were sent to trial. (*Comptes Rendus Ann. de la Justice Criminelle.*)

† Report on the Medico-legal duties of Coroner. 1857.

‡ RADFORD, *British Record of Obstetric Medicine*, vol. i. p. 55.

courts, already quoted, no proof should be demanded which is not necessitated by the actual character of the crime. We have seen that neither in intent nor in fact is this an attempt against the person or life of the mother. If she die in consequence, the offender is already amenable for it as homicide; in the absence of any special statute, at common law. The crime, both in intent and in fact, is against the life of the child.

The attempt being proved, it is unnecessary that it should have been consummated, not merely the completion of a crime bringing its punishment, but also certain overt acts with intent to the perpetration; nor is it requisite that any injury, specific or general, should have been inflicted upon the person of the mother.

The offence being of equal guilt throughout pregnancy, proof of quickening, the incident, not the inception of vitality,—indicating neither the commencement of a new stage of existence, nor an advance from one stage to another,—\* and, therefore an element without the slightest intrinsic value, should not be required.

The crime of abortion should be considered to include, as it does in the absolute fact of moral guilt, all cases of attempted or intentionally effected destruction and miscarriage of the product of impregnation; and this, whether it be living or dead, normal or abnormal, which last expression equally comprehends instances of moles, hydatids, extra-uterine conception, acephalous, anencephalous, and other monsters.

Proof should not, as now, be required of intent to destroy the child.† This should be considered shown by the intent to produce miscarriage, in the absence of lawful justification therefor; the act in all stages of pregnancy being attended with great danger to the child, and, in much more than a moiety of the period, necessarily fatal to it.

The attempt being considered criminal, it follows that proof of pregnancy is not necessary, and that conviction should be had though it were proved that pregnancy did not exist,‡ even that the woman on whom the abortion was attempted, however unlikely, was still a virgin.§

No discrimination should be made as to the means criminally employed, and an escape thus afforded to the guilty; as we have seen still obtaining in Great Britain and many of our own States.

The mother, almost always “an accessory before the fact,” or the principal, should not, as now, be allowed almost perfect impunity. There is no valid reason for such exemption, there is every reason against it. The

\* WHARTON, Criminal Law, 540.

† Smith *vs.* The State, 33 MAINE, (3 RED.) 48.

‡ Rex *vs.* Phillips; Regina *vs.* Goodall; Reg. *vs.* Haynes, etc.

§ TAYLOR, Med. Jurisprudence, p. 386.



woman is covered by the laws of most continental nations of Europe,—France, Austria, Germany, Bavaria, and Italy,—and by many of them her punishment, if married, is greatly increased. Similar severity is also exercised in these countries against the father of the fœtus, if he too is implicated in the crime.

To allow that abortion is extenuated in the unmarried, it has been said, will “to the moral and political philosopher appear to have exalted the sense of shame into the principle of virtue, and to have mistaken the great end of penal law, which is not vengeance, but the prevention of crime. Law, which is the guardian and bulwark of the public weal, must maintain a steady and even rigid watch over the general tendencies of human actions.”\* But, on the other hand, “the measure of punishment should be proportionate, as nearly as possible, to the temptation to offend, and to the kind and degree of evil produced by the offence.”†

We have seen the increase in moral guilt, and of opportunity for commission and for escape, in the case of nurses, midwives, and other classes of persons, who, from their profession, are brought more directly into contact with pregnant women. By the penal code of Napoleon the First, remarkable in so many respects for the wisdom of its provisions, an increase of punishment was enacted for abortion criminally induced or advised by physicians, surgeons, or other officers of health, including midwives, or by druggists;‡ their guilt being enhanced by their greater opportunities and knowledge.

Punishments for the crime of abortion should not, as is now generally the case, be so framed as to render the statute, in fact, if not in name, simply nugatory. Were the murder of adults to be made answerable by merely a year or two in prison, far more convictions than at present would undoubtedly be secured; but it is certain that the instances of the crime would be fearfully increased. We have reason to believe that it is precisely thus with the case in hand.

A standard of justification for the instances of necessary abortion should be fixed by law. If perfection in this respect be impossible, let the nearest approach be made to it that can. Since my remarks upon the relative rights of the mother and fœtus to the chance of life in doubtful cases were published in a former paper of the present series, I have received from Dr. Rattenmann, late of Tübingen, an essay, written by himself, in which this question is discussed at length, and the repetition of abortion upon the same individual, in the early months of pregnancy, is defended.

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\* PERCIVAL, *Medical Ethics*, p. 84.

† *Ibid.*, p. 85.

‡ *Loc. cit.*, article 317.

I have carefully considered the several arguments advanced by the gentleman, and am compelled to adhere to the views I have already expressed.

In presenting a report upon the matter, in 1857, by direction of the Suffolk District Medical Society of Massachusetts, the writer offered the draft of a law, prepared after much thought and consultation with legal as well as with medical men, and embodying the suggestions made above. This was intended for the consideration of the Legislature of the State, in the hope that it might be of aid toward a modification of the present defective law.

Having seen no reason to change the opinions then avowed, but, on the contrary, receiving constant confirmation of their truth, I now present the essential portions of that draft, acknowledging most willingly that its wording may, perhaps, with safety, be simplified and condensed; but contending, in all sincerity and earnestness of purpose, that its general tenor is what justice and humanity alike, and imperatively, demand at the hands of society.

"Whoever, with intent to cause and procure the miscarriage of a woman, shall sell, give, or administer to her, prescribe for her, or advise, or direct, or cause, or procure her to take any medicine, or drug, or substance whatever, or shall use, or employ, or advise any instrument, or other means whatever, with the like intent, unless the same shall have been necessary to preserve the life of such woman, or of her unborn child, and shall have been so pronounced (in consultation) by two competent physicians; and any person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony," etc. etc.; "and if such offence shall have been committed by a physician, or surgeon, or person claiming to be such, or by a midwife, nurse, or druggist, such punishment may be increased at the discretion of the court."

"Every woman who shall solicit, purchase, or obtain of any person, or in any other way procure, or receive, any medicine, drug, or substance whatever, and shall take the same, or shall submit to any operation or other means whatever, or shall commit any operation or violence upon herself, with intent thereby to procure a miscarriage, unless the same shall have been by two competent physicians (in consultation) pronounced necessary to preserve her own life, or that of her unborn child, shall be deemed guilty," etc. etc.; "and if said offender be a married woman, the punishment may be increased at the discretion of the court."

It was also advised that the encouragement of criminal abortion, by publication, lecture, or otherwise, or by the advertisement, sale or circulation of such publication, should be made penal, and that the present well



worded statute against the personal advertisements of abortionists, and their nostrums, should be rigorously enforced.

To the words now quoted were added, and they are still applicable, the following:—

“We have aimed at a statute, which, while it better defined this atrocious crime, and covered the usual grounds of escape from conviction, established also the proper standard of competence in all medical questions involving issues of life and death. We believe that it would be the means of preventing much of the present awful waste of human life. But enforce such a law, and the profession would never allow its then high place in the community to be unworthily degraded; nor, as now, would those be permitted, unchallenged, to remain in fellowship, who were generally believed guilty, or suspected even of this crime.”\*

In the same belief, strengthened by nearly three years careful reflection, that criminal abortion can, to a great extent, be controlled by law, if but the community so will, we proceed to the last division of our subject, and discuss the duty of the medical profession toward the ultimate suppression of the crime.

#### IX. THE DUTY OF THE PROFESSION.

I have stated that the prevalence of criminal abortion is in great measure owing to a seeming neglect of foetal life on the part of medical practitioners, and that in other degree it is attributable to ignorance by the community of the actual character of the offence, an ignorance of physiological facts and laws; and on both these points abundant proof has been afforded of the truth of my assertions.

I have also stated that medical men, in all obstetric matters, are the physical guardians of women and their offspring; a proposition that none can deny.

We have seen that unjustifiable abortion, alike as concerns the infant and society, is a crime second to none; that it abounds, and is frightfully on the increase; and that on medical grounds alone, mistaken and exploded, a misconception of the time at which man becomes a living being, the law fails to afford to infants and to society that protection which they have an absolute right to receive at its hands, and for the absence of which every individual who has, or can exert, any influence in the matter, is rendered so far responsible.

Under these circumstances, therefore, it becomes the medical profession to look to it, lest the *whole* guilt of this crime rest upon themselves.

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\* Report to Suffolk District Med. Society, May, 1857, p. 12.

And, in the first place, it might be asserted with some truth, that such is indeed the case. For, on the one hand, it was from physicians, as is proved by early medical literature, that the mistaken notions, both of the law and of the people, regarding intra-uterine vitality, were derived; and on the other, the apathy and silence still existing on this subject among medical men, though thousands and hundreds of thousands of human lives are thus directly at stake, and are annually sacrificed, can only be explained on one of two suppositions,—either that we do not yet really believe in the existence of fœtal life, though professing to do so, or that we are too timid or slothful to affirm and defend it. By the one alternative a gross lie seems proved; by the other a degrading and strange inconsistency.

But, I believe, this apparent negligence proceeds only from ignorance of the real duty of the profession. It is my aim, while setting forth a deliberate and carefully prepared opinion upon this point, to inspire, if possible, in my fellow-practitioners throughout the land, somewhat of the holy enthusiasm sure in a good cause to succeed despite every obstacle, and an earnest, uncompromising hostility to this result of combined error and injustice, the permitted increase of criminal abortion.

Enough has already been said to show that there is need of increased vigilance on the part of medical men, lest they themselves become innocent and unintentional abettors of the crime.\* If, on the other hand, the community were made to understand and to feel that marriage, where the parties shrink from its highest responsibilities, is nothing less than legalized prostitution, many would shrink from their present public confession of cowardly, selfish and sinful lust. If they were taught by the speech and daily practice of their medical attendants, that a value attaches to the unborn child, hardly increased by the accident of its birth, they also would be persuaded or compelled to a similar belief in its sanctity, and to a commensurate respect.

But it is asked, is our silence wrong? Is there not danger otherwise of increasing the crime? These are the questions not of wisdom, or prudence, or philanthropy, but of an arrant pusillanimity. Vice and crime, if kept concealed, but grow apace. They should be stripped of such protection, and their apologists, thereby their accomplices, condemned. Answers, however, are ready at hand to the questions proposed.

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\* In this connection, I cannot too strongly deprecate a practice that has lately been proposed, the detection, namely, of the early existence of pregnancy by the administration of ergot. (Boston Med. and Surg. Journal, April, 1859, p. 197.) The use of ergot for this purpose, in however small a dose, would seem utterly unjustifiable.



"It is one of the great desiderata of registration, that more particularity should be observed in collecting facts relating to the subject of the still-born."\*

"Has it been sought," society demands of the profession, "to account for the peculiarities relating to the still-born, and to combat the causes which in certain circumstances swell their number in so deplorable a manner?"†

"An honest and fearless expression of these causes and circumstances, on the part of medical men, would bring to light an amount of knowledge that might be useful in checking this horrible and increasing waste of life."‡

"Such an exercise of his knowledge, experience, and true moral courage, is not only the province, but the conscientious duty of the physician."§

"It should be constantly borne in mind, that there is here a high and stern morality, that should stimulate the medical profession in the exercise of their utmost effort and ingenuity, with the view to master and disclose the secrets of these villainous practices; the more villainous, because they are very generally conceived in fraud, practiced in deception, upon innocent and unsuspecting victims, and result the most commonly in the destruction of two lives at once."||

"For ourselves, we have no fear that the truth in reference to the crime of procuring abortion, would do aught but good. It would appear that sheer ignorance in many honest people, is the spring of the horrible intra-uterine murder which exists among us; why not then enlighten this ignorance? It would be far more effectually done by some bold and manly appeal, than by the scattered influence of honorable practitioners alone. Will not the mischief, by-and-by, be all the more deadly, for delaying exposure and attempting relief?

"Whatever estimate may attach to our opinion, we believe that not only ought these things not so to be, but that the public should know it from good authority."¶

\* Fifteenth Massachusetts Registration Report, 1857, p. 199.

† QUETELET, Theory of Probabilities, p. 234.

‡ New York Med. Gazette, Editorial; London Medical Times and Gazette, 1850, p. 487.

§ Boston Med. and Surg. Journal, Editorial, 1855, p. 411.

|| DEAN, Medical Jurisprudence, p. 139.

¶ Boston Med. and Surg. Journal, Editorial, Dec. 13, 1855.

"This is a topic which ought to be regarded of the highest interest to the profession and the public."\*

"It is by far the most important subject before the profession, and in its medical as well as moral bearings, appeals alike to our patriotism and humanity."†

"We think the public have very erroneous ideas of the turpitude of this crime, and we deem it our duty, as conservators both of the public health and morals, to set it in a correct light before them."‡

"The question of criminal abortion is doubtless one of extreme difficulty; it is not, however, beyond the reach of the enlightened prudence and the firm will of the authorities. It is a subject of such vital import to society in general, that we feel convinced it cannot but awaken the anxious thought of the persons who, from their position, are entrusted with the application of the laws and the control of public morals."§

Whoever shall succeed in fixing upon it the attention it deserves, "has taken a stand in this matter alike creditable to his head and his heart, and we feel that he will receive the hearty thanks of every true physician."||

"The increasing prevalence of infanticide," which is but rare compared with criminal abortion, "its dangerous moral influence, the apathy with which so many regard its spread, and the very considerable difficulty in obtaining conviction, call loudly for reform. The question is one of national importance."¶

"With this view of the case before us, I suggest it as our imperative duty to direct the attention of legislators to the importance of enacting a statute in conformity thereto."\*\*

Such are the confessions, independently given, of high-minded and honorable medical men. No more can be added, no less would have been true.

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\* American Medical Gazette, Editorial, July, 1857, p. 390.

† Ibid., April 1859, p. 289.

‡ Maine Med. and Surg. Reporter, Editorial, June, 1858, p. 39.

§ DEVILLE, *Researches on the proportion of still-born children compared with the mortality of the City of Paris during the thirteen years, 1846-58. Memoirs of the French Academy*, 1859.

|| New Hampshire Journal of Medicine, Editorial, July, 1857, p. 216.

¶ London Lancet, Editorial, July, 1858, p. 66.

\*\* TATUM, *Virginia Med. Journal*, June, 1856, p. 457.



It must be granted, then, that a bold and manly utterance of the truth, combining as this must, contradiction of the error and denouncement of the crime, should be made by the members of the profession on every occasion. By this course it is plain that a healthier moral tone would be made to prevail in the community, the crime would become of rarer occurrence, and the laws, such as they are, would be more faithfully attempted to be enforced.

But it has been shown that the laws on the subject of criminal abortion are radically imperfect and defective, and that this is attributable, wholly, to a medical cause. We assert, therefore, that not only is it the duty of the profession as individual components of society, but more especially as medical men, to see them amended, and to leave no means untried, no effort unmade, for the attainment of this end.

"Physicians alone," says Hodge in his Introductory Address, "can rectify public opinion, they alone can present the subject in such a manner that legislators can exercise their powers aright in the preparation of suitable laws; that moralists and theologians can be furnished with facts to enforce the truth upon the moral sense of the community, so that not only may the crime of infanticide be abolished, but criminal abortion properly reprehended, and that women in every rank and condition of life may be made sensible of the value of the fœtus, and of the high responsibility which rests upon its parents."\*

It has been stated, indeed publicly avowed by a medical body,† that when a physician "shall become cognizant of any attempt unlawfully to procure abortion, either by persons in the profession or out of it, it shall be his duty immediately to lodge information with some proper legal officer, to the end that such information may lead to the exposure and conviction of the offender."

This doctrine is doubtless true to a great extent, but it cannot be applied to the confidential disclosures of patients themselves, which no man has a right to reveal, unless constrained by the direct command of the court, at which, it has been ruled, even professional secrets must be divulged.‡

It follows, from the evidence we have now adduced, that if it be the duty of the profession to urge upon individuals the truth regarding this

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\* Loc. cit., p. 19.

† The Councillors of the Massachusetts Medical Society. Proceedings of the Society, 1858, p. 77.

‡ PHILLIPS, *On Evidence*, i. p. 135; RYAN, *Medical Jurisprudence*, p. 193; STORER, Sen., *Introductory Address*, 1855, p. 10; SIMPSON, *Physicians and Physic*, p. 31.

crime, it is equally their duty to urge it upon the law, by whose doctrines the people are bound; and upon that people, the community, by whose action the laws are made.

And this should be done by us, if we would succeed in suppressing the crime, not by separate action alone, but conjointly, as the profession, grandly representing its highest claim,—the saving of human life.

Every step toward this end should be hailed with enthusiasm. The late action of the State Society of Massachusetts, directly resulting from professional agitation of the subject, deserves praise and imitation; the body referred to having passed a series of resolutions to the following effect: "That the Fellows of the Massachusetts Medical Society regard with disapprobation and abhorrence all attempts to procure or promote abortion, except in cases where it may be necessary for the preservation of the mother's life; and that no person convicted of such attempt, can, consistently with its by-laws, any longer remain a fellow of the society."\*

But the mere passage of resolutions in disapproval of this horrible and so rapidly increasing crime is not sufficient to effect its abatement. Something more is wanted than the testimony of record books, the pointless vote of a board of councillors. There must come a hearty, earnest, and unanimous voice from the mass of the profession; an assertion that criminal abortion, or at least its permitted commission, shall no longer exist.

Too much zeal cannot be shown by physicians in relieving themselves from the weight of responsibility they may have incurred by innocently causing the increased destruction of human life. Let it not be supposed by the public that there is among us, either in theory or practice, any disregard of the unborn child. If such impression have already obtained, from our own negligence, the falsehoods of irregular practitioners, or otherwise, it should at once be removed. Fœtal life ever is, and ever has been, held sacred by all respectable physicians, and whenever criminal abortion has been known to have been advised, perpetrated or abetted by one claiming our honorable name, he has invariably and at once lost all professional standing.

We have seen that it is no trifling matter, this awful waste of human life. It is a subject that demands the best efforts of the whole profession as a body and as men. The crime, no longer practiced in secret, must be met boldly; and met with unanimity, it will be met successfully.

But whether these efforts are to be at once decisive or not, whether they are to be received with the gratitude of the community or its disfavor, is no concern of ours. Our duty is very plain; it is to stand,

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\* Proceedings of the Society, 1858.



irrespective of personal consequences, in the breach fast making in the public morality, decency, and conscience, and, to the best of our strength, to defend them.

It might be, it very likely would be, for our immediate pecuniary interest, as a profession, to preserve silence; for we have shown that abortions, of all causes, tend to break down and ruin the health of the community at large. But to harbor this thought, even for a moment, were dishonorable. "I will never set politics against ethics," said Bacon, "for true ethics are but as a handmaid to divinity and religion."

We must take this decided stand, there is no choice; else we are recreant to the high trust we have assumed, and to ourselves. Whether the suppression of abortion be effected or no, one thing is certain, our own hands will have been cleansed of this sea of blood. We shall have declared our abhorrence and our innocence of the crime.

Longer silence and waiting by the profession would be criminal. If these wretched women, these married, lawful mothers, aye, and these Christian husbands, are thus murdering their children by thousands, through ignorance, they must be taught the truth; but if, as there is reason to believe is too often the case, they have been influenced to do so by fashion, extravagance of living, or lust, no language of condemnation can be too strong.

Let us, then, meet the issue earnestly and boldly. Silence and patient expectance have been fairly tried; the disease is not self-limited; the evil, instead of working its own cure, has assumed a gigantic, an awful growth.

Abstract discussions of this matter, by ourselves, and within the closed doors of our several societies, no longer avail. We are all agreed upon the guilt of abortion; we ever have been. Our prayers for its suppression have not been answered, for they have hitherto been offered with inactive hand.

We should, as a profession, openly and with one accord appeal to the community in words of earnest warning; setting forth the deplorable consequences of criminal abortion, the actual and independent existence, from the moment of conception, of foetal life. And that the effort should not be one of words merely, we should, as a profession, recommend to the legislative bodies of the land, the revision and subsequent enforcement of all laws, statutory or otherwise, pertaining to this crime,—that the present slaughter of the innocents may to some extent, at least, be made to cease. For it is "a thing deserving all hate and detestation, that a man in his very originall, whiles he is framed, whiles he is enlived, should be put to death under the very hands and in the shop of nature."\*

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\* Man Transformed. Oxford, 1653.

In conclusion; a committee, consisting of Drs. Blatchford, of New York, Hodge, of Pennsylvania, Pope, of Missouri, Barton, of South Carolina, Lopez, of Alabama, Semmes, of the District of Columbia, Brisbane, of Wisconsin, and the writer, was appointed by the National Medical Association, at its meeting at Nashville, in 1857, to report upon criminal abortion, with a view to its general suppression. The report of this committee, brief, but in strict accordance with the series of papers now ended, has lately been made to the Association, at its session held at Louisville, in May of the present year. The report was accepted, and the resolutions appended to it\* were *unanimously* adopted.

In behalf of the committee, of whom he had the honor to be chairman, the writer cannot close this portion of his labors without thanking the physicians of the land, represented as they are by the Association, for their hearty and noble response to the appeal that has been made them. He would express, were it possible, the gratitude not of individuals, but society; for by this act the profession has again been true to "its mighty and responsible office of shutting the great gates of human death."

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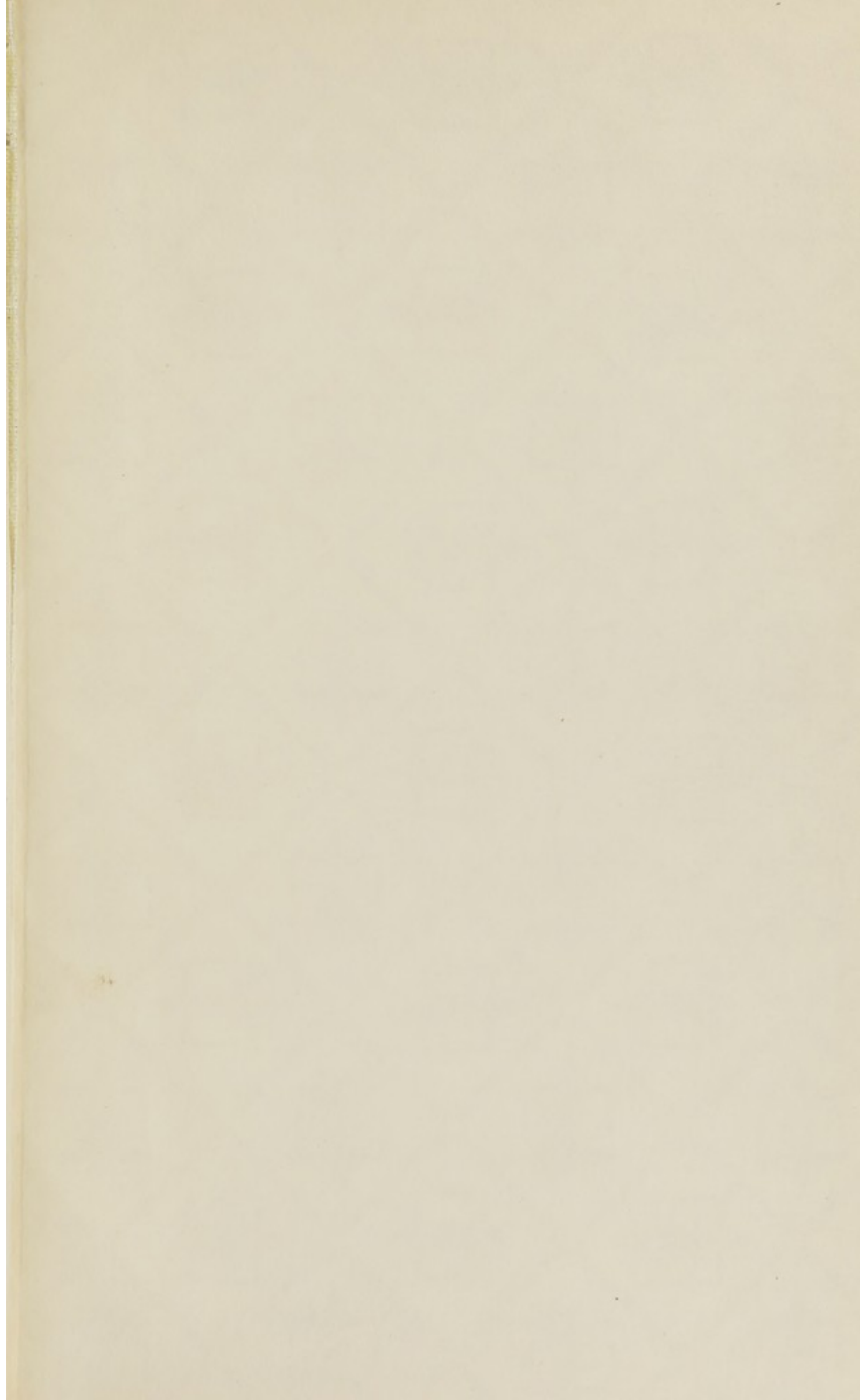
\* "*Resolved*, That while physicians have long been united in condemning the procuring of abortion, at every period of gestation, except as necessary for preserving the life of either mother or child, it has become the duty of this Association, in view of the prevalence and increasing frequency of the crime, publicly to enter an earnest and solemn protest against such unwarrantable destruction of human life.

"*Resolved*, That in pursuance of the grand and noble calling we profess,—the saving of human life,—and of the sacred responsibilities thereby devolving upon us, the Association present this subject to the attention of the several legislative assemblies of the Union, with the prayer that the laws by which the crime of abortion is attempted to be controlled may be revised, and that such other action may be taken in the premises as they in their wisdom may deem necessary.

"*Resolved*, That the Association request the zealous co-operation of the various State medical societies in pressing this subject upon the legislatures of their respective States, and that the president and secretaries of the Association are hereby authorized to carry out, by memorial, these resolutions."—*Transactions of the Am. Med. Association*, 1859, vol. xii. p. 75.









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