

Between Hostility and Sympathy:

Abortionists on Trial at the Old Bailey, London c. 1823 – 1899.

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Abstract

This thesis investigates cultural perceptions of abortionists in nineteenth century Britain, as understood by the cultural turn of the history of medicine. I use the 1861 Offences Against the Persons Act as a reference point to examine the extent to which attitudes to abortionists shifted from sympathy to condemnation as the century progressed, alongside increased legal, medical and popular differentiation between regulated and lay practitioners. I argue that this is not evident in the historical record, which shows that attitudes were more contradictory, and a chronological progression of changes in attitudes cannot be mapped so easily. These perspectives can be revealed through the cultural history of medicine which helps us understand complicated and inconsistent attitudes towards different practitioners, mediation, discursive representations of abortionists, and socially constructed attitudes to reproduction, abortion and abortionists. These were multivocal and fluid, and can be traced through official texts such as court cases, trials, and the popular press.

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1. Chapter 1: Introduction

On 17th September 1888, thirty-four-year old Dr James Gloster was indicted and charged for the ‘wilful murder of Eliza Jane Schumacher’ at the Old Bailey, London. The details of the case are said to be so horrific that they are ‘unfit for publication’, and the proceedings state that ‘the defendant, a medical man, was alleged to have caused the death of the deceased by an unlawful operation, performed with intent to procure abortion’.¹ The same case is reported somewhat sympathetically in the conservative daily newspaper the *Morning Post* (London, Friday 17th August 1888) as:

It was not likely that a man of skill and even special ability of Dr Gloster would perform an operation for which there could be no necessity. The fatal injury, he argued, was either occasioned by herself, or by some unskilled person.²

James Gloster was found not guilty due to lack of evidence.³ This case and the corresponding newspaper report raise questions regarding attitudes to abortionists in nineteenth century Britain. As Carlson argues, trials are ‘mirrors of public attitudes that serve as a form of social knowledge’; court cases can act as indicators of public attitudes of cultural norms and assumptions.⁴ This thesis uses this lens to analyse cultural perceptions of abortionists as expressed through nineteenth century British court cases at the Old Bailey, London, and corresponding newspaper reports. I examine the trials of male and female, lay and professional, abortionists, and abortifacient sellers indicted for illegal abortion, to argue that criminalisation of abortion was shaped by cultural perceptions about regulating medical practitioners and informed

¹ *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), September 1888, trial of JAMES GLOSTER (34) (t18880917-864).

² ‘*Morning Post* - London, Friday 17th August, 1888’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000174/18880817/074/0006>

³ *Old Bailey Proceedings* Online September 1888, JAMES GLOSTER (t18880917-864).

⁴ A. Cheree Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law* (University of Illinois Press, 2009), 15 - 16.

by the professionalisation of medicine. Together these arguments demonstrate that cultural attitudes to abortionists in the nineteenth century were multivocal and contradictory.

The trials I consider took place within a medical discourse that arose out of the increasing professionalisation and specialisation of medicine, which actively contributed to shape legal, political and social change.⁵ This period saw pivotal changes in ideas about the body, the foetus, the role of medicine and the law, and women's role in society. The emergent medical profession contributed to in new anti-abortion statutes Britain as the century progressed (1803, 1828, 1837 and 1861) as they campaigned to control newly illegal abortion and perceived increase of professional abortionists.⁶

1.1 Research Question

In the context of changing legal interests in managing and defining these practices, this thesis poses the overarching question: to what extent did the 1861 Offences Against the Persons Act shape and reflect cultural perceptions of abortionists in nineteenth century Britain? What do court cases of abortionists on trial for illegal abortion at the Old Bailey, London, and corresponding newspaper reports reveal about shifting perceptions of professional and lay abortionists in nineteenth century Britain? I address how changing concerns around who was carrying out abortion, were perceived and alluded to in mid to late nineteenth century abortionists' trials and reports. I examine how this shapes and reflects how abortion began to be framed as a medical, rather than domestic, practice, alongside claims that the number of abortions carried out by medical practitioners increased. I use the 1861 act as an analytical

⁵ Ornella Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929* (Cambridge University Press, 1990), 5.; Catherine Crawford and Michael Clark, eds., *Legal Medicine in History* (Cambridge: Cambridge University Press, 1994), 17.

⁶ Catherine Gallagher and Thomas Laqueur, ed., *The Making of the Modern Body: Sexuality and Society in the Nineteenth Century* (Berkeley ; London: University of California Press, 1987), 5 – 29.

reference point to assess these attitudes. My examination includes what abortionists were prepared to say in court, and how these were represented in the press.⁷

I have several interconnected areas of enquiry. My sub-questions are firstly, if sympathy or hostility can be identified towards the agents in these cases? Do attitudes towards, and representations of, 'irregulars'⁸ (such as herbalists) differ from those towards 'professional' abortionists (such as surgeons). Were both these actors referred to as abortionists and what kind of language was used? I examine how the newspaper reports reflect the trials, for example, were descriptions embellished, or information omitted? I examine these sources together to ask whether the court cases and newspaper reports reveal 'embedded accounts' of abortion as demonstrated by Lesley Hall through analysis of the rhetoric and language of the court cases, to reveal new ways of seeing contemporary perceptions of abortionists.⁹ I investigate what these sources reveal about regulating abortion practices during this period, and to what extent these were affected by, and produced, social, legal, and political changes.

My focus on trials and the press examines the public domain rather than individual experiences. The focus is solely on London (including Middlesex) as a core urban metropole which reveals higher levels of scrutiny by official and elite structures. The same actions may not have reached the public domain in more rural areas or provincial trials included in a wider methodological scope. However, while the trials are London-centric, the reports are from a selection of national and local newspapers, which testifies to a wider geography. I produce a focused analysis on connections between court and contemporary media, and the result of abortion law as experienced in court by abortionists and medical practitioners.

⁷ Cathy McClive, *Menstruation and Procreation in Early Modern France* (Farnham: Ashgate Publishing, 2015), 153.

⁸ John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (Cambridge: Cambridge University Press, 1988), 22 – 24.

⁹ Lesley A. Hall, *Sex, Gender, and Social Change in Britain since 1880*, (New York: Palgrave Macmillan, 2013), 4.

1.2 Historiography of Abortion

My critical discussion of cultural perceptions of abortionists is formed in the context of previous scholarly discussions around legal-medical approaches to abortion, abortion practices, feminist histories of women's experiences, and the recent examination of shame and abortion. I build on these to understand nineteenth century attitudes to abortionists during a time of legal and social change as relevant background information about the role of abortionists and the attitudes of the medical profession more generally. I develop these to examine wider cultural perceptions through my detailed case-studies in the courts and news reports.

1.2.1 Legal-Medical Approaches

A significant proportion of the existing historiography is from a legal-medical perspective, including research on nineteenth century campaigns to criminalise abortion.¹⁰ It includes studies that consider the changing responsibility and participation of medical professionals in abortion procedures, that focus on medical attitudes and the impact of the professionalisation of medicine on nineteenth century abortion reform.¹¹ For example, Saur argues that motivations for legal reform stemmed from the desire to avoid subsequent illegitimacy and poverty.¹² Following Sauer, John Keown's study outlines the passage of the nineteenth century anti-abortion statutes under the influence of the male professional medical profession, and argues that their perceptions of abortionists played a crucial role.¹³ My research sits across the legal history of abortion and the professionalisation of medicine to identify how new knowledge about abortionists was produced.

¹⁰ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 1 – 78.

¹¹ Anne-Marie Kilday and David S. Nash, *Shame and Modernity in Britain: 1890 to the Present*, (London: Springer, 2017). 116.

¹² R. Sauer, "Infanticide and Abortion in Nineteenth-Century Britain," *Population Studies* 32, no. 1 (March, 1978): 81 – 93.

¹³ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 1.

I consider how cultural perceptions were created in the public domain regarding lay and professional abortionists.

1.2.2 Feminist Roots and Approaches

I examine court cases to identify embedded accounts of abortionists.¹⁴ Previous work has predominantly focused on the women procuring abortion, rather than the practitioners. Histories of abortion first came to attention as a focused topic of research to a new generation of feminist scholars in the 1980s who were concerned with women's personal experiences of abortion, the structure of ordinary women's lives, patriarchy and class, female agency, and women's roles in society.¹⁵ For example, Barbara Brookes' influential 1988 study of abortion in Britain combines feminist and legal methods to examine intersections between women's culture, medicine, law and public policy.¹⁶ Similarly, and relevant to my research question, Michael Thomson argues that opposition to abortion in nineteenth century Britain resulted from state interests in maintaining existing gender relations that kept women in the domestic sphere. These analyses inform the understanding and interpretation of contemporary cultural perceptions of abortionists.¹⁷

This subject has a rich historiography that sets the scene for other approaches, such as examination of abortion practices and public attitudes. However, with rising interests in narrative and discourse approaches, histories of abortion which focus on women are no longer considered the sole prerogative of feminist histories.¹⁸ For instance, Hall's wider study of women and the state showed how trial evidence and case-histories presented to doctors in cases of illegal abortion which uncovered new perceptions of abortionists.¹⁹ These discussions about women's

¹⁴ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 4.

¹⁵ Joan Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91, no. 5 (December, 1996): 20.

¹⁶ Barbara Brookes, *Abortion in England, 1900-1967* (London: Croom Helm, 1988), 4 – 53.

¹⁷ Michael Thomson, "Woman, Medicine and Abortion in the Nineteenth Century," *Feminist Legal Studies* 3, no. 2 (1995): 160.

¹⁸ Chris Beasley, *What Is Feminism?: An Introduction to Feminist Theory* (London: Sage, 1999), 23.

¹⁹ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 3 – 5.

experiences of abortion inform my research question as they highlight women's perceptions of abortionists and highlight distinctions between regular and irregular practitioners. In summary, my discussion adds to feminist historiographical attention to women's experiences of abortion by examining cultural perceptions of abortionists.

1.2.3 Practice of Abortion

The above historiography contributes to broader studies of abortion practices. It provides important information about nineteenth century abortionists' decisions to offer services, the reasons behind women's decisions to procure abortion, and the materiality of abortion, including instruments, abortifacients, costs, and questions of class, marital status and age, access, and birth control.²⁰ Research has been carried out regarding which contraceptive options were available to women throughout British history, and how these options changed in the context of modernity.²¹ However, these discussions do not provide information regarding cultural perceptions of the people selling and providing these services, which my work develops. In summary, existing historiography regarding why women were practicing and procuring abortion lacks an understanding of how the changing shape of regulated and unregulated services contributed to changing ideas about how and why women practiced and procured abortions.

1.2.4 Public Attitudes to Abortion

Many scholars discuss attitudes towards abortionists in the late nineteenth and early twentieth century within their broader studies of abortion, they all conclude that the public, the state and

²⁰ Tania McIntosh, "An Abortionist City', Maternal Mortality, Abortion, and Birth Control in Sheffield, 1920 – 1940," *Medical History* 44 (2000): 76 – 95; Patricia Knight, "Women and Abortion in Victorian and Edwardian England," *History Workshop* 4 (1977): 46 – 67; Simon Szreter, *Fertility, Class and Gender in Britain, 1860-1940* (Cambridge: Cambridge University Press, 1996): 424 – 6; Angus McLaren, "Abortion in England, 1890 – 1914," *Victorian Studies* 20, no. 4 (Summer, 1977): 380.

²¹ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 116.

the medical profession predominantly felt sympathy towards abortionists.²² Hall, and Kilday and Nash argue that the public expressed sympathy towards abortionists throughout the nineteenth century.²³ These scholars identify a chronological slow progression away from sympathy towards hostility as the nineteenth century progressed and fully materialised towards the end of the century.²⁴ Crucially, Ornella Moscucci identifies strong public sympathy in Britain for abortionists in public attitudes and courts until the 1870s, when sympathy diminished and was replaced with condemnation based on new concerns about endangering the foetus.²⁵

More recently, Kilday and Nash's new historiographic insights around shame and abortion in modern Europe show continuing cultures of shame and shaming practices in the nineteenth century.²⁶ This research provides relevant arguments to my discussion, I analyse whether shame is evident in the representation of abortionists in court and the press. Emma Jones investigates how twentieth century stereotypes of abortionists as unskilled, incompetent, and with low standards of hygiene, were constructed by medical experts in medical journals and public statements. She shows how lay abortionists did not conform to these typecasts, and many were skilled and knowledgeable.²⁷ I consider these stereotypes of twentieth century abortionists retrospectively. Keown argues that the medical profession possessed negative attitudes towards 'irregular practitioners'.²⁸ My examination follows Keown to explore perceptions of laymen as

²² Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142; Hall, *Sex, Gender, and Social Change in Britain since 1880*, 4 – 7. Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 115 – 118; Shani D'Cruze and Louise A. Jackson, *Women, Crime and Justice in England since 1660* (Basingstoke: Palgrave Macmillan, 2009), 77.

²³ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 18 – 19; Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 77.

²⁴ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 116.

²⁵ Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142.

²⁶ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 116.

²⁷ Emma Jones, 'Representations of Illegal Abortionists in England, 1900-1967', in Andrew Mangham and Greta Depledge, eds., *The Female Body in Medicine and Literature* (Liverpool: Liverpool University Press, 2018), 208; Emma Jones, "Abortion in England, 1861-1967," Royal Holloway, University of London, 10 – 14.

²⁸ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 39 – 40.

well as professional medics. I also consider how differences between attitudes towards, and representations of 'irregulars' and 'professional' abortionists became increasingly marked.²⁹

In summary, I provide an in-depth analysis of attitudes towards nineteenth century professional abortionists that has not been specifically covered in these previous historiographies. I develop these questions and approaches to provide a deeper understanding of public attitudes towards abortionists in nineteenth century court cases and newspaper reports. I discuss the cultural-historical significance of contemporary public opinion, discourse, and abortion rhetoric and how it affected cultural perceptions of abortionists. I discursively unravel their multiple and contradictory perceptions.

1.3 Valorisation

My claim is that nineteenth century attitudes towards abortionists can be traced through court records in the Old Bailey digital collection and in related newspaper reports. Previous work has primarily examined the experiences of women undergoing abortions. This thesis furthers knowledge in the field of gender, crime and nineteenth century abortion studies. The outcome of my research adds new perspectives in relation to perceptions of abortionists, both lay and professional, in the nineteenth century. My examination of court cases at the Old Bailey, London in conjunction with newspaper reports provides a new angle for this period. This approach helps reveal prevailing concepts and ideas about these actors in these sources. Previous historical work regarding focused attitudes towards abortionists has focused on the twentieth century, while research on crime reporting before 1850 is primarily based on micro-histories of individual cases.³⁰ Instead, I provide a broader discursive study, that provides new insights about gender, nineteenth century cultural perceptions and reproductive knowledge through examining nineteenth century abortionists in court trials and newspaper reports.

²⁹ Ibid, 39 – 40.

³⁰ Peter King, "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth and Early-Nineteenth-Century London," *Continuity and Change* 22, no. 1 (2007): 75.

The historical context of abortion helps shed light on continuing discussions around abortion in Britain today, still a much debated and relevant topic, for example, in the recent referendum and change in legislation in Ireland. It helps understand the shifting boundaries between expert and lay knowledge, such as who has the right to practice abortions. This is particularly relevant in the twenty-first century climate where perhaps it is less clear that discourses around abortion were historically framed in alternative ways, taking different perspectives and informed by different ideas. For example, the ideas of morality here that pivot between shame or sympathy are heightened less by the rights of the foetus or mother but situated by the right to be a regulated medical professional. This demonstrates the critical need for an engaged cultural history of medicine to demonstrate fluctuating and shifting ideas.

1.4 Theoretical Framework

My research questions are framed by social constructionism, and its relevance to cultural theory and history. As Ludmilla Jordanova argues, this is a valuable perspective for historians of health, medicine and healing: as a medical-legal practice, abortion is an example of this.³¹ I use this framework to examine narratives and discourses of abortion in the court and the press found at different periods.³² As Lesley Hall argues, more than one discourse can operate at any one time, these are not monolithic, but contradictory, undermining and inconsistent, and operate at both social and individual levels.³³ Also central to my research are Foucault's arguments around social bodies. He argues that sexuality and governance are discursively produced, and sexuality and governance must be understood as forms of socially constructed knowledge and identity, and as part of a proliferation of discourses about sexuality, as well as expert medical and psychiatric

³¹ Frank Huisman and John Harley Warner, eds., *Locating Medical History: The Stories and Their Meanings* (London: Johns Hopkins University Press, 2004), 356.

³² King, "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth and Early-Nineteenth-Century London.", 75 – 76.

³³ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 3.

power.³⁴ This helps understand changing attitudes to pregnancy and abortion as reported in the trials I investigate.³⁵

My research sits within the context of established work around gender, medicine and science. Central to all these discussions is Joan Scott's argument that gender can be usefully treated as an important analytical tool in an investigation of history,³⁶ not separate but a part of history. This notion of gender as a category of analysis is a key concept that critically informs my research. As discussed by Peter King, there are questions about how political and cultural ideas about gender affected trial outcomes, which in turn is an element of my research question.³⁷ More recently, as Jordanova argues, science has been regarded as a form of discursive knowledge, and is a contributory factor in the shaping of gender as a naturalised category.³⁸ This helps to understand contemporary debates about refining abortion law, which contributed to cultural perceptions of abortionists. The distinctions between regulated and unregulated practitioners offering abortion were largely scored down gendered lines: the male professional medics took precedence over unregulated and unprofessional women.

My research uses this theoretical framework of the history of medicine, which the history of abortion is part of, after the cultural turn.³⁹ The cultural history of medicine is informed by social constructionist concepts, and illness, medicine and health, are cultural constructions as well as biological events. Health and medicine are understood as shaped by social, economic and political issues,⁴⁰ and categorised and mediated, with focus on agency, gender, class, and

³⁴ Michel Foucault, *The History of Sexuality* (Harmondsworth: Penguin, 1978), 8 – 9.

³⁵ Ibid, 8 – 9.

³⁶ Scott, "Gender: A Useful Category of Historical Analysis.": 1067.

³⁷ Peter King, 'Gender, crime and justice in late eighteenth and early nineteenth-century England' in Margaret L. Arnot and Cornelia Osborne, *Gender and Crime in Modern Europe* (London: UCL Press, 1999), 39 – 55.

³⁸ Ludmilla Jordanova, "Gender and the Historiography of Science," *The British Journal for the History of Science, The Big Picture* 26, no. 4 (December, 1993): 482.

³⁹ Susan M. Reverby and David Rosner, "Beyond the Great Doctors' Revisited: A Generation of the 'New' in Social History of Medicine' in *Locating Medical History: The Stories and Their Meanings*, ed. Huisman and Warner, (Baltimore: John Hopkins University Press, 2004), 179 – 181.

⁴⁰ Willem de Blécourt & Cornelia Osborne, 'Who is Afraid of Constructionism?' (from the unpublished introduction to *Mediating Medicine*, written c. 2003), Accessed 11 July 2018 <http://www.historicalanthropologist.eu/publication/constructionism>

discourse.⁴¹ As a part of this cultural-historical perspective of the history of medicine I apply Willem de Blécourt and Cornelia Osborne's arguments about the fluid boundaries between lay and professional medicine.⁴² For example, conflicting distinctions between regular healers such as physicians and obstetricians, and irregular healers such as 'quack' and folk healers and irregular abortionists. In nineteenth century Britain abortionists as illegal practitioners had specific purposes for women (and male partners) accessing abortion. Women (and men) in the private household and in the illegal public market still accessed abortion even though it was illegal. These help provide a means to analyse the deepening of boundaries between lay and expert medical practitioners.

1.5 Methodology and Sources

This thesis examines nineteenth century court cases relating to abortion, and newspaper reports of the corresponding trials. I focus on public and cultural perceptions, as revealed and understood through these sources. Defining public opinion can be problematic, by 'public perception' I mean how the public, the state and the medical profession perceived and understood abortionists. As many historians have discussed,⁴³ it is hard to measure how public opinion and debates were informed and represented by the press (media).⁴⁴ Nineteenth century contemporary scholars and commentators disputed whether printed texts such as newspapers, and in this case the court publication *Proceedings*, had specific agendas,⁴⁵ and political public opinion of the press was divided.⁴⁶

⁴¹ Willem de Blécourt & Cornelia Osborne, 'Who is Afraid of Constructionism?' (from the unpublished introduction to *Mediating Medicine*, written c. 2003), Accessed 11 July 2018., <http://www.historicalanthropologist.eu/publication/constructionism>

⁴² Willem de Blécourt and Cornelia Osborne, "Women's Medicine, Women's Culture: Abortion and Fortune-Telling in Early Twentieth-Century Germany and the Netherlands," *Medical History* 43 (1999): 376 – 383.

⁴³ Hannah Barker, *Newspapers, Politics and English Society, 1695-1855* (Harlow: Longman, 2000), 28. Adrian Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978* (Oxford: Oxford University Press, 2009.), 6 – 11.

⁴⁴ Barker, *Newspapers, Politics and English Society, 1695-1855*, 28.

⁴⁵ Roy Porter, *Bodies Politic: Disease, Death and Doctors in Britain, 1650-1900* (London: Reaktion, 2001), 31.

⁴⁶ Barker, *Newspapers, Politics and English Society, 1695-1855*, 27.

As Adrian Bingham argues there is no mechanical way of measuring the 'impact' or 'influence' of newspapers or court documents on society; considered assumptions have to be made from the available sources.⁴⁷ However, ideas about cultural perceptions can be established from analysing discourse and language in the trials and reports. As everyday views are not recorded except in response to trials and news reports, then it is through these (male) formal, legal and journalist sources that we can identify how ideas were changing and contested. Certain information can help us understand what public perception was, such as readership, audience response and target audience, I refer to these when relevant, however I mainly focus on the language and rhetoric used.⁴⁸

Newspapers therefore both shape and reflect society, and public opinion is informed and represented by the press.⁴⁹ The press (then as now) interacts with the cultures that produced it and which it produces, this is how it informs public opinion. In the nineteenth century context, newspaper reports played an important role in perceptions of crime and newspaper reporting influenced how many sections of the public considered crime and possible methods of combating it.⁵⁰ Views of contemporary commentators, especially about the criminal class, in this case abortionists, contributed to the construction of Victorian social reality.⁵¹ This illustrates Foucauldian ideas about the shaping of knowledge through discourse and is important to analyse attitudes to abortionists, as these ideas were being actively established during this period.

The British press rapidly expanded in the nineteenth century, due to wider technological and economic developments such as the expansion of the railway system, the removal of Stamp Duty (1855) and the repeal of the Paper Tax (1861).⁵² These factors created and sustained a

⁴⁷ Adrian Bingham, *Family Newspapers? : Sex, Private Life, and the British Popular Press 1918-1978* (Oxford: Oxford University Press, 2009). 10.

⁴⁸ *Ibid.*, 10.

⁴⁹ Barker, *Newspapers, Politics and English Society, 1695-1855*, 28 – 48.

⁵⁰ King, "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth and Early-Nineteenth-Century London." 103.

⁵¹ Helen Johnston, *Crime in England 1815-1880 : Experiencing the Criminal Justice System*. 30.

⁵² Laurel Brake, Bill Bell, and David Finkelstein, *Nineteenth-Century Media and the Construction of Identities* (Basingstoke: Palgrave, 2000). 1.

demand for newspapers, cheap weeklies and periodicals.⁵³ By the early nineteenth century most London papers had circulations of around three-thousand and papers such as the *Courier*, *The Times* and the *Evening Mail* had sales of over five-thousand.⁵⁴ By the mid-century new Sunday papers such as *Lloyd's Weekly News* (1842) and *News of the World* (1843) demonstrated the continuing expansion of the press.⁵⁵ Different papers catered for different sections of society and strands of opinion, and were specifically situated in time and place, these are not homogenous or streamlined accounts. For example, the *Daily Mail* (1896) targeted a new lower middle-class readership, and the *Penny Magazine* (1832) targeted a working-class audience.⁵⁶ Brake argues that nineteenth century readers inhabited increasingly textual environments, and were part of textual communities with their own ideologies, social aspirations and cultural assumptions.⁵⁷ This is crucial for understanding how public opinion and cultural perceptions of abortionists were formed.

The selection of newspaper reports I use corresponds to the trials found in the Old Bailey digital archive. I discuss routine and sensationalist abortion trials as reported in the popular press. Nineteenth century newspaper reports of Old Bailey trials are useful, although generally only spectacular 'sensational' trials are reported in detail, so attitudes to smaller trials are harder to isolate.⁵⁸ I consider the placement of the article, author, publisher and audience, and how these might influence discursive understanding. However, as the newspaper articles I examine were informed by the reports available to the appropriate cases, I do not include the political angle of the newspaper unless relevant.

⁵³ David Reed, *The Popular Magazine in Britain and the United States, 1880-1960* (London: British Library, 1997), 99

⁵⁴ Barker, *Newspapers, Politics and English Society, 1695-1855*, 21.

⁵⁵ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 124.

⁵⁶ Barker, *Newspapers, Politics and English Society, 1695-1855*, 21.

⁵⁷ Brake, Bell, and Finkelstein, *Nineteenth-Century Media and the Construction of Identities*, 1.

⁵⁸ Allyson N. May, *The Bar and the Old Bailey, 1750-1850* (London: University of North Carolina Press, 2003), 99.

Also, it is crucial to bear in mind that newspaper reports of Old Bailey trials focused primarily on the cases that resulted in convictions. They gave the greatest attention to those sentenced to death to demonstrate that crime would be punished. Acquittals were rarely reported. The most information that would be given was the number of not guilty verdicts.⁵⁹ This was because crimes in nineteenth century newspapers published based on luridness and the potential shock factor.⁶⁰ This is the case in the newspaper reports I examined where the longest, more detailed cases refer to guilty verdicts. As Adrian Bingham argues, the key to this form of popular journalism was suggestion. Tantalizing headlines introduced stories which gave limited detail to inspire imagination.⁶¹ This is evidenced by These emotive headlines such as ‘Serious Charge’,⁶² ‘Suspicious Death’,⁶³ ‘A Surgeon’s Serious Offence’,⁶⁴ ‘West End Doctor Tried for His Life’,⁶⁵ ‘Shocking Case of Abortion’.⁶⁶

The court cases I examine are the *Proceedings* held in the Old Bailey digital archive. These are an important source in identifying legal, social and cultural attitudes to abortion,⁶⁷ and provide both methodological benefits and disadvantages. Trials of abortionists are easily identifiable as the sources are well categorised and easy to search for by ‘offence’, ‘verdict’ and ‘sentence’.⁶⁸ The *Proceedings* were known and read by a wide mid-nineteenth century audience,

⁵⁹ Paul Knepper, *Jonathan Doak, and Joanna Shapland, Urban Crime Prevention, Surveillance, and Restorative Justice: Effects of Social Technologies* (London: Taylor & Francis, 2009), 8.

⁶⁰ David Nash and Anne-Marie Kilday, *Cultures of Shame: Exploring Crime and Morality in Britain 1600-1900* (Basingstoke: Palgrave Macmillan, 2010), 153.

⁶¹ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 129.

⁶² ‘York Herald - Saturday 07 July 1888’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000499/18880707/127/0012>

⁶³ ‘Manchester Courier and Lancashire General Advertiser - Thursday 05 June 1890’, British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000206/18900605/090/0008>

⁶⁴ ‘Daily Gazette for Middlesbrough - Tuesday 18 January 1898’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000159/18980118/020/0003>

⁶⁵ ‘Worcestershire Chronicle - Saturday 29 September 1888’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000350/18880929/041/0006>

⁶⁶ ‘Maidstone Telegraph - Saturday 17 July 1869’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000387/18690717/031/0007>

⁶⁷ Peter King, ‘Gender, Crime and Justice in Late Eighteenth and Early Nineteenth-Century England’ in Arnot and Osborne, *Gender and Crime in Modern Europe*, 79 – 103.

⁶⁸ David Turner, “Disability and Crime in Eighteenth-Century England: Physical Impairment at the Old Bailey,” *Culture and Social History* 9, no. 1 (2012): 49 – 50.

and as Knepper argues, the Old Bailey *Proceedings* had a significant impact on public perceptions of crime and criminal justice.⁶⁹ Early editions of the *Proceedings* were inexpensive and targeted popular audiences.⁷⁰ By the mid-century this changed to property owning middle and upper classes, and the legal profession. Although Shoemaker argues these trials in practice were accessed by a wide audience including working-class Londoners. The extensive examining of court cases and trials reported in newspapers provides crucial connections for the dissemination of information. At this time, court reports became the main selling point of mass-circulation Sunday newspapers such as *Lloyds Weekly News* and the *News of the World* which demonstrates a long history of reporting on illicit expressions of sexuality.⁷¹

Court cases are texts generated by orthodox authorities.⁷² It is important to acknowledge that the *Proceedings* were shaped by selection, inclusion, exclusion and emphasis of the evidence and reflective discussions. As the court proceedings were second-hand published accounts of court business and included editorial changes they are semi-official and semi-accurate⁷³ Publishers were licensed and monitored by the City of London, and were obliged to report trials in ways that would please these same authorities.⁷⁴ Trials were edited to present a particular image of crime and public justice, and could be 'spun' by decisions about what to include and what to omit,⁷⁵ although editors did not go so far as misreporting courtroom events.⁷⁶ The *Proceedings* were treated as accurate and authoritative, but not infallible; the reading public did question their aims and content. As McClive identified, 'what people [in court cases] say can be restricted by concerns of honour, acceptability and strategies of damage limitation'.⁷⁷

⁶⁹ Knepper, Doak, and Shapland, *Urban Crime Prevention, Surveillance, and Restorative Justice: Effects of Social Technologies*, 9.

⁷⁰ *Ibid.*, 9.

⁷¹ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 124.

⁷² Hall, *Sex, Gender, and Social Change in Britain since 1880*, 4.

⁷³ David Turner, "Disability and Crime in Eighteenth-Century England: Physical Impairment at the Old Bailey," *Culture and Social History* 9, no. 1 (2012), 49 – 50.

⁷⁴ Knepper, Doak, and Shapland, *Urban Crime Prevention, Surveillance, and Restorative Justice: Effects of Social Technologies*, 9.

⁷⁵ *Ibid.*, 10.

⁷⁶ *Ibid.*, 9.

⁷⁷ McClive, *Menstruation and Procreation in Early Modern France*, 153.

As the number of cases of illegal abortion (found under the offence category ‘illegal abortion’) in the Old Bailey digital archive is limited (c. 100 court proceedings between 1823 – 1899) I do not use sampling techniques. I use selection techniques after 1861 as this is when the majority of the trials for illegal abortion took place; I select every third court case and the five longest and most relevant corresponding newspaper reports. The selection criteria is dependent upon language, time and place. For instance, search terms such as ‘miscarriage’, ‘noxious substance’, and ‘pennyroyal’. Abortionists within these sources are referred to as ‘midwife’, ‘surgeon’, ‘herbalist’, ‘chemist’ and ‘physician’, not as abortionists as this was generally part of larger medical roles. Importantly, until the mid-twentieth century words such as ‘abortion’ and ‘pregnancy’ were rarely used in the press. Instead journalists referred to ‘illegal operations’, and a ‘certain condition’.⁷⁸ In the early to mid-nineteenth century the term spontaneous miscarriage was used to describe a purposeful end to pregnancy, rather than abortion. This directs my search strategy in terms of pin-pointing relevant sources. Furthermore, there are difficulties with searching for cases relating to abortion in this archive. Searches for ‘abortion’ and ‘miscarriage’ reveal cases of ‘abortion’ in terms of extortion, kidnapping and finance and cases of concealing a birth and infanticide, as well as cases of illegal abortion.

A key element of my analysis focuses on the rhetoric in these court cases, and attempts to read across silences and gaps in accounts. Legal reports and cases are all presented according to strategies adopted by the individuals who record them. It is important to consider whether words may have been changed by transcribers for a range of reasons, and which cases and information were chosen to be documented. I consider Stoler’s use of the archive as a subject that produces knowledge, not just for extraction. The trials are not objective knowledge, how they were recorded and formed is important. For example, as outlined above, these reports are not first-hand.⁷⁹ Stoler argues that it is important to identify and read along archive ‘fault lines’.

⁷⁸ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 129.

⁷⁹ Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002), 87.

By this she means the obstacles, in the case of the nineteenth century the hidden voices of women, as well as against the grain, the evidence that is not explicit.⁸⁰ This is relevant to my use of trial documents, court cases and newspaper reports because these represent active and responsive dialogues between different public bodies: newspapers, the courts and parliament. I implement this approach through a close reading of the sources to analyse nineteenth century attitudes towards professional and lay abortionists. I analyse how meaning is created through the language, words and terms used.

I argue that this question cannot be asked without considering interrelated class and gender. I discuss these in relation to abortionists' trials and examine to what extent these inform nineteenth century London abortionists' trials at the Old Baily and corresponding press reports, in terms of the verdict, the language used, how professional abortionists are reported in the popular press; the number of articles, details, the length of the trial, and the questioning style.

1.6 Overview of Chapters

The first chapter provides an overview of crime, gender, professionalisation of medicine and criminalisation of abortion in nineteenth-century Britain. I discuss the historiography of abortion in relation to my analysis of abortionists. The second chapter discusses mixed and contradictory sympathetic and hostile attitudes towards abortionists before 1861. I ask if attitudes towards, and representations of 'irregulars' such as midwives were different from 'professional' abortionists? The third chapter discusses attitudes towards abortionists after 1861. Were attitudes towards abortionists influenced by the mid to late nineteenth century framing of abortion as a medical as opposed to domestic practice? I examine whether the pivotal 1861 act caused a greater association of shame, and whether it altered cultural perceptions. I argue that here attitudes were also mixed. Sympathy existed post criminalisation, and did not cease with the introduction of new legislation that criminalised abortion and regulated medicine.

⁸⁰ Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002), 109.

In chapters two and three I discuss the influence of contemporary discussions and developments in medical and legal practices, and the wider effect towards abortionists as a new kind of legal-medical category that set up new boundaries about the moral implications of abortion. At this point these debates were not framed in terms of the moral rights of either the mother or foetus, but as an outcome of concerns about female health and safety, the impact of new regulation of male medics, and the start of vilification of female and unregulated medical practices. I show how claims that nineteenth century attitudes towards abortionists are marked by increased condemnation is not entirely demonstrated by the historical record. Furthermore, during this time both sympathy and hostility can be mapped against both regular and irregular practitioners, despite the increasing distinctions and separation between these categories of medics.

2. Chapter 2: Women, The Body and Sexuality, Crime and Gender and Abortion: History and Historiography

2.1 Introduction

This chapter provides a historiographical overview of wider societal changes within nineteenth century Europe, including the history of crime and gender, women, the body and sexuality and the criminalisation and materiality of abortion in the context of the professionalisation of medicine. I expand the existing historiography of abortion and its relationship to my analysis of nineteenth century abortionists. I first discuss the changing ideas and emergent discourses about women, the body, and sexuality in the nineteenth century. These new discussions were particularly relevant as they framed the social and cultural world of the nineteenth century abortionist, and provide a context for the world these abortionists were practising in. Secondly, I discuss gender and crime and their relationship to abortionists' trials. The nineteenth century also saw significant changes in the legal system, the law and attitudes to crime. These concepts, and new laws and regulations, all provide the context for my analysis of abortionists in nineteenth century Britain. This chapter provides context for the gradual criminalisation of abortion throughout the nineteenth century, in which public opinions and new laws and regulations of abortionists was formed, and in turn shaped attitudes that demanded criminalisation.

2.2 Women, The Body, and Sexuality

In this section I discuss women, the body and sexuality, all important to provide context regarding the historical information about women and the medicalisation of women's bodies during the nineteenth century. The nineteenth century saw the medicalisation of women's bodies as a result of the professionalisation of medicine by men that included developments in medical technology, techniques, knowledge and specialisation.

Correspondingly, the establishment of new nineteenth century ideas and discourses about women, the body, and sexuality are also relevant. Pivotal changes in ideas about women's and men's role in society, were being worked out together as a set of binary gender distinctions. Changing medical knowledge about the body, in particular, female biology and reproduction contributed significantly to changing ideas about the status of women and 'femininity', in which women's bodies were viewed as central.⁸¹ This resulted in a more formalised separation between men and women in the European nineteenth century as a result of male power, control and autonomy. For instance, men had formal, legal, control over women as daughters and wives, and legally owned the potential baby (foetus).

This is important to this thesis, which discusses the legal territory and cultural perceptions of abortion, and the relation to these ideas about what it meant to be female in the nineteenth century. Women's fertility was viewed as controlled by medical men in their scientific discoveries and theories of foetal development, in which women's bodies were seen as containers. For example, new ideas about the status of the foetus and early foetal life developed in the nineteenth century which affected anti-abortion statutes. From the mid-century onwards the idea of the foetus as having life from conception, as opposed to after quickening', the first signs of foetal movement, gained ground, many contemporary commentators and medical professionals claimed foetal life should be privileged over the life of the mother. However conversely, the foetus was also now regarded as a parasite⁸² while nineteenth century embryologists described foetuses as 'tipping out' waste material.⁸³ These changing ideas about the foetus contributed to, and informed, ideas about what counted as abortion and who had the

⁸¹ Mary Poovey. "Scenes of an Indelicate Character': The Medical Treatment' of Victorian Women' in Gallagher and Laqueur, eds., *The Making of the Modern Body: Sexuality and Society in the Nineteenth Century*, x.

⁸² Sauer, "Infanticide and Abortion in Nineteenth-Century Britain.", 90 – 92.

⁸³ Nick Hopwood, "Producing Development: The Anatomy of Human Embryos and the Norms of Wilhelm His," *Bulletin of the History of Medicine* 74 (2000): 39.

right to carry it out. These new medical discourses were also connected to shifting attitudes to motherhood, pregnancy, reproduction and fertility, as well as the distancing of sexuality from reproduction and more effective fertility management. These are part of some significant shifts in ideas about womanhood in Anglo-American culture that became visible between the mid-eighteenth and mid-nineteenth century that reinforced the notion of the maternal woman. The concept of the woman as mother, and maternity as the primary purpose of womanhood was widespread.⁸⁴ These concepts and ideas all informed the contemporary debates around abortion and contributed to its gradual criminalisation.

2.3 Crime and Gender

The complexities of gender and violence in nineteenth century Britain are important issues as I am interested in the way that accused men and women were spoken about in different ways in the Old Bailey trials and in the popular press. Firstly, it is important to state my discussion of gender and crime includes both men and women, not just women. Gender is a cultural product and practice, about the dynamics between the sexes, 'as these are experienced, explained and represented'.⁸⁵ As Shani D'Cruze argues, gendered identities were constructed in nineteenth century British culture through social interaction and the intersection of discourses.⁸⁶ Gender is important in my analysis as abortionists' trials are gendered events and ideas. Both crime and gender relate to the arguments about professional and lay practitioners as generally men were 'regular' and women were 'irregular'. Significantly, while some men were irregular there are not many regular female practitioners as medicine as a profession excluded women during the nineteenth century. This, in part, is what the professionalisation of medicine is about, making

⁸⁴ Nora Doyle, 'The Highest Pleasure of Which Woman's Nature Is Capable': Breast-Feeding and the Sentimental Maternal Ideal in America, 1750-1860, *The Journal of American History*, Vol. 97, No. 4 (March 2011): 958- 973.

⁸⁵ Emma Jones, 'Representations of Illegal Abortionists in England, 1900-1967', in Mangham and Depledge, eds., *The Female Body in Medicine and Literature*, 482.

⁸⁶ Shani D'Cruze, *Everyday Violence in Britain, 1850-1950: Gender and Class* (Harlow: Longman, 2000). 1 – 16.

sure that untrained, and therefore presumed to be unsafe, women and men, and non-professional medical practices were criminalised. This therefore shows that nineteenth century legal questions and crime regulation were produced by influential actors and an emergent powerful state interested in regulation.

As Helen Johnston argues, the nineteenth century, specifically the period 1815 – 1880 saw major transitions in and establishments in criminal justice systems.⁸⁷ For example, the Criminal Law Act (1827), The Prisoners' Counsel Act (1836) and the Metropolitan Police Act (1829).⁸⁸ The Metropolitan Police Act 1829 meant that penalties were aimed to be appropriate to the crime, and more uniformly enforced. This regulation of criminal justice provides important context for later discussion of the criminalisation of abortion.

The organisation and management of crime in nineteenth century Britain was gendered, as laws were made and enforced by men through government, the police and the courts. Women are important as they are the people having abortions, and because many of the abortionists themselves were women: these are relations between different women, as well between expert (or non-expert) men and pregnant women. Responses to women offending were also shaped by cultural assumptions about gender roles.⁸⁹ How women were treated in court, how they could speak, and who spoke for them were all influenced by gender. As Clive Emsley argues there was a gender monopoly, nineteenth century courts were dominated by men, they were the judges, jurors and magistrates.⁹⁰ Women had little opportunity for a voice in nineteenth century courts; if judges or magistrates considered evidence presented in trials unsuitable for women they were removed from the court, even in cases of sexual assault or rape where the victim was a woman.⁹¹

⁸⁷ John Hostettler, *A History of Justice in England and Wales* (Hampshire: Waterside Press, 2009), 1.

⁸⁸ *Ibid.*, 179.

⁸⁹ D'Cruze and Jackson, *Women, Crime and Justice in England since 1660*, 2- 3; Clive Emsley, *Crime and Society in England, 1750-1900*, (London: Routledge, 2018), 24 – 27; Arnot and Osborne, *Gender and Crime in Modern Europe*, 28.

⁹⁰ Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004), 36.

⁹¹ Emsley, *Crime and Society in England, 1750-1900*, 18 – 26.

In relation to crime and the press, hearings involving female offenders were slightly more likely to be reported in the than those of males.⁹²

Furthermore, as D’Cruze and Jackson argue, women’s relationship to crime has been viewed in different ways to men: by sexuality and vice and virtue. For instance, normative stereotypes of the ‘criminal’ were gendered as masculine; male violence was seen as a ‘normal’ characteristic of masculinity and male violence was seen to be rooted in ‘men’s structural power and the negotiation of power with others’.⁹³ Therefore, the criminal in the nineteenth century was strongly gendered as male.⁹⁴ Specifically in relation to the Old Bailey, the male proportion of those prosecuted at the court rose from approximately three-quarters in the 1830s to over ninety percent by the end of the century (at a national level this was seventy-three percent, matched by a general increase in criminal prosecution in the first half of the nineteenth century.⁹⁵ Conversely, women engaged in criminality were viewed as ‘bad’ or ‘mad’ and were associated with other types of transgression, such as prostitution and infanticide. However, women not engaged in criminal activity were viewed as vulnerable or susceptible to crime. Female vulnerability was sometimes accepted as a defence.⁹⁶

It is important to note how men and women were treated differently in the courts in cases of illegal abortion. Even though all practices of abortion were illegal whether male or female, women were treated more leniently in the courts in terms of sentencing, but more harshly in terms of rhetoric and shame. This vividly demonstrates that there were contradictory practices, which I discuss in chapter two and three. This reinforces my arguments that cultural perceptions are complex and not easily organised into orderly arrangements. Importantly, it follows Joanna Bourke’s identification of ‘a shift from an emphasis on the insensible body to the

⁹² Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), 196.

⁹³ D’Cruze and Jackson, *Women, Crime and Justice in England since 1660*, 1 – 7.

⁹⁴ D’Cruze, *Everyday Violence in Britain, 1850-1950: Gender and Class*, 1 – 7.

⁹⁵ Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England*, 36.

⁹⁶ D’Cruze and Jackson, *Women, Crime and Justice in England since 1660*, 3.

psychological self' in the nineteenth century which had dramatic effects on legal conceptions of the female body.⁹⁷

2.4 Abortion

This section provides context for nineteenth century abortion law reform, abortionists, professional and lay, and public attitudes towards them. I situate my British study of abortionists in wider international scholarly debates of abortion and abortion practices. I demonstrate the connection between the professionalisation of medicine in nineteenth century Britain and the criminalisation of abortion.

2.4.1 International Comparison and Perspectives

My research sits within European and Anglo-American histories of abortion, and I briefly sketch a more international context before focusing on Britain. The turn towards classifying abortion as a medical category is not limited to Britain and can be found across the northern hemisphere, and for historians represents a critical lens on changing social ideas, personhood, and morality. As Kilday and Nash state:

Historically, abortion and its consequences have been considered a divisive issue that motivates individuals to closely examine both their actions and their consciences. It is, and regularly has been, a touchstone of how a society debates the current state of morality within it⁹⁸

It is therefore important to outline historical perspectives. For example, Angus McLaren discusses the views that the state and professionals took unprecedented interest in people's reproductive decisions in nineteenth century British Columbia, Canada.⁹⁹ While in the American

⁹⁷ Joanna Bourke, "Sexual Violence, Marital Guidance, and Victorian Bodies: An Aesthesiology," *Victorian Studies* 50, no. 3 (Spring 2008): 419.

⁹⁸ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 115.

⁹⁹ Angus McLaren, "Illegal Operations: Women, Doctors and Abortion, 1886 – 1939," *Journal of Social History* 26, no. 4 (Summer, 1993), 798.

context, Kristin Luker traces the origins of claims that abortion is murder to the medicalisation of abortion in nineteenth century America.¹⁰⁰ Importantly to my research, Leslie Reagan traces the practice and policing of abortion to argue that abortionists were not all 'backstreet' providers, they often practiced openly and safely, and numerous (professional) physicians performed abortions.¹⁰¹ Female abortionists were also common, for instance, the term 'female physician' became a well-known code for abortionists in nineteenth century America.¹⁰² These all have a bearing on the shape of abortion debates into the twentieth and twenty-first century, as does my focused British study.

In the European context work has been carried out on the Netherlands, Germany and France. Willem de Blécourt and Cornelia Osborne have studied cultures of abortion in The Hague in the early twentieth century, in which they focus on language, the experience and the actions of abortionists, as well as aborting women and their male partners.¹⁰³ de Blécourt and Osborne have also carried out research on Weimar Germany, in which they examine the relationship between lay or irregular healing and women in respect of both female practitioners and female patients to argue that geography and finances were not always the decisive factor in women's decisions about which practitioners to access abortion from.¹⁰⁴ Crucially, this approach of this research informs my discussion of cultural-historical perceptions of lay and professional practitioners in Britain. Cathy McClive's discussion of complex cultural narratives of abortion in early modern France, in court cases and legal discourse around abortion and menstruation,

¹⁰⁰ Kristin Luker, *Abortion and the Politics of Motherhood* (London: University of California Press, 1984), 11 – 14.

¹⁰¹ Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (London: University of California Press, 1997), 139.

¹⁰² Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law*, 113.

¹⁰³ Willem de Blécourt, 'Cultures of Abortion in The Hague in the Early Twentieth Century' in ed. Gert Hekma and Alain Giami, eds., *Sexual Revolutions* (Basingstoke: Palgrave MacMillan, 2014), 196 – 205.

¹⁰⁴ de Blécourt and Osborne, "Women's Medicine, Women's Culture: Abortion and Fortune-Telling in Early Twentieth-Century Germany and the Netherlands." 379 - 383.

supports my arguments around 'embedded accounts'¹⁰⁵ and narratives of abortionists in Old Baily trials.¹⁰⁶

2.4.2 Context: Abortion Law Reform

Criminalisation of abortion is linked to the regulation of professional medics. Professionalisation and regulation of medicine and the law provided a framework for social change in the nineteenth century. From the early century onwards, a succession of parliamentary acts (1858, 1859, 1860, 1876, 1886) were passed with the aim to regulate the practice of medicine.¹⁰⁷ The 1858 Medical Act, for example, established a register of qualified practitioners in Britain.¹⁰⁸ The professionalisation of medicine was circular; legislation made medicine professional and the professionalisation generated new legislation.¹⁰⁹ For instance, one of the main reasons why contemporary opinion became so overtly anti-abortion in the latter decades of the nineteenth century was the response to reports, found chiefly in the medical press, of a surge in the number of procedures across Europe and the Americas, representing an endemic desire to limit family size.¹¹⁰ Abortion was blamed for the declining birth-rate, which was seen as a problem, particularly in middle and upper class families from the mid-century onwards.¹¹¹ As Kilday and Nash argue abortion legislation was predominantly based around regulating who could perform it.¹¹² The medical profession, informed by these medico-legal changes and influences, pressed for

¹⁰⁵ McClive, *Menstruation and Procreation in Early Modern France*, 116 – 118.

¹⁰⁶ *Ibid.*, 116 – 118.

¹⁰⁷ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 46.

¹⁰⁸ *Ibid.*, 44.

¹⁰⁹ Christopher Lawrence, *Medicine in the Making of Modern Britain, 1700-1920* (London: Routledge, 1994), 76 - 77.

¹¹⁰ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*. 115 – 118.

¹¹¹ Joan Perkin, *Women and Marriage in Nineteenth-Century England* (London: Routledge, 1989), 282; Janet Greenlees, Linda Bryder, and Janet Greenlees, eds., *Western Maternity and Medicine, 1880-1990* (London: Pickering & Chatto, 2013); Joan Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950* (London: Routledge, 2001), 25 – 37; Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950*, 37 – 38.

¹¹² Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 148.

abortion law reform, and for all abortion not carried out by the medical profession to be made illegal, which heavily influenced the criminalisation of abortion¹¹³

As a consequence of these multiple pressures the law regarding abortion progressively tightened during the nineteenth century.¹¹⁴ Scholars argue that before the early to mid-nineteenth century, before the passing of this act, attitudes towards abortion, abortionists and women procuring abortion, by both the medical profession and among lay people were relatively lenient.¹¹⁵ In their opinion, abortion was not generally viewed as a moral or legal problem, if it took place before 'quickening', the first signs of foetal movement.¹¹⁶ Before the turn of the nineteenth century abortion had been punished by a fine or a short prison sentence, and there was no penalty for abortion before 'quickening'.¹¹⁷ Early legislation changed the definitions of abortion in terms of quickening, and placed more value on early foetal life.¹¹⁸ Lord Ellenborough's Act (1803) clarified the law regarding 'quickening',¹¹⁹ and Lord Lansdowne's Act (1828) prohibited instrumental abortion after 'quickening'. Subsequently, The Offences Against the Person Act (1837) removed distinctions between 'interference' (abortion) before and after 'quickening', before this it was possible to plead that the woman was not quick with child, as with the case of Thomas Prior in 1836, in which he was indicted for 'unlawfully administering to Rhoda Mead a certain drug, with intent to procure her miscarriage, she being with child, but not quick with child to which he pleaded'.¹²⁰ Concerns at this time mainly focused on the perceived health and

¹¹³ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 44.

¹¹⁴ Clive Emsley, *Crime and Society in England, 1750-1900*, (Harlow: Longman 2005), 103.

¹¹⁵ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 37 – 40; Hall, *Sex, Gender, and Social Change in Britain since 1880*, 4 – 7; Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142; Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 115 – 118.

¹¹⁶ Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142.

¹¹⁷ Emsley, *Crime and Society in England, 1750-1900*, 103.

¹¹⁸ Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142.

¹¹⁹ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 12.

¹²⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), September 1836, trial of THOMAS PRIOR (t18360919-2090).

wellbeing of the woman, the regulation of abortion procedures, and differentiating between deliberate abortion and spontaneous miscarriage.¹²¹

The Offences Against the Persons Act 1861 (sections 58 and 59), which I use as an analytic reference point, made it a criminal offence for a woman to practice abortion on herself and for others to supply abortifacients or instruments for the purpose of procuring miscarriage.¹²² The act confirmed the ruling *R. v. Goodhall* (1846) that ‘pregnancy was not a necessary element of the offence when committed by a third party’.¹²³ If the woman died as a result of the attempted abortion the accused could be charged with murder or manslaughter.¹²⁴ Therefore, importantly, after 1861 the woman was guilty of the offence, before 1861 only the abortionist was guilty of the offence.¹²⁵ The 1861 act meant abortion, referred to as the ‘illegal operation’, was the only operation specifically prohibited by statute law.¹²⁶ The offence was punishable by imprisonment from three years to life.¹²⁷

2.4.3 Abortionists (Professional and Lay)

In this section I discuss who abortionists were, their classification as ‘regular’ or ‘irregular’. Despite the lack of detailed historical records regarding how abortion was practiced and performed¹²⁸, and debates regarding the frequency of abortion practices,¹²⁹ it has been established that from the early nineteenth century abortion was widespread with most abortions were carried out by women themselves, or with the help of familial and friendship networks.¹³⁰ It

¹²¹ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 29.

¹²² *Ibid.*, 33.

¹²³ *Ibid.*, 33.

¹²⁴ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 29.

¹²⁵ Emsley, *Crime and Society in England, 1750-1900*, 103.

¹²⁶ Brookes, *Abortion in England, 1900-1967*, Introduction

¹²⁷ Emma Jones, ‘Representations of Illegal Abortionists in England, 1900-1967’, in Mangham and Depledge, eds., *The Female Body in Medicine and Literature*, 196.

¹²⁸ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 39; Szreter, *Fertility, Class and Gender in Britain, 1860-1940*, 424 – 6.

¹²⁹ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 47.

¹³⁰ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 54.

is not known how many women actually procured and practiced abortion and were not found out by legal conviction rates. The trials mainly represent cases of persons performing abortion and providing abortion services as opposed to women procuring abortion, or male partners providing abortifacients. As demonstrated in table 1 and 2, two women were on trial at the Old Bailey for procuring abortion between 1803 and 1899, and only fifteen boyfriends and husbands. This is because abortion was mostly a concealed practice, if practiced by the women herself it was unlikely to come to the attention of the legal profession, unless it resulted in death.¹³¹

However, although it has been established following on from these arguments that abortion was mainly practiced by women themselves, at the same time, it is shown that a network of abortionists (both professional and lay) also existed in which abortions were carried out, classified as illegal after the 1803 law. The numbers of which increased as the nineteenth century progressed, as demonstrated by Lesley Hall.¹³²

From the limited historical sources available it is known that abortionists acted in many other roles, as both 'regular-professional' and 'irregular-lay'.¹³³ By professional I mean qualified medical practitioners who practiced abortion illegally. Abortionists were employed as midwives, fortune-tellers, herbalists (female and irregular), as chemists (male and irregular), and as surgeons, physicians, obstetricians and gynaecologists, (male and regular). Significantly, midwives in Britain in the nineteenth century were 'irregular' practitioners. Midwives were not trained or licenced until the Midwives Act of 1902. Throughout the nineteenth century there was opposition from the medical establishment to train and licence midwives, as much of the medical profession believed trained midwives would be a more dangerous form of opposition to their professional practice.¹³⁴

¹³¹ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 148.

¹³² Hall, *Sex, Gender, and Social Change in Britain since 1880*, 54.

¹³³ Porter, *Bodies Politic : Disease, Death and Doctors in Britain, 1650-1900*, 254 – 256; McIntosh, "An Abortionist City', *Maternal Mortality, Abortion, and Birth Control in Sheffield, 1920 – 1940.*", 76 – 77.

¹³⁴ Edwin R. Van Teijlingen, *Midwifery and the Medicalization of Childbirth : Comparative Perspectives* (New York: Nova Science Publishers 2004), 338.

Midwives and nurses were presumed to have a knowledge of how to effect and bring on abortion.¹³⁵ There are contradictory arguments that midwives were both generally accepted and employed as abortionists, more often in working-class communities, and that therefore in Britain midwives were anxious to distance themselves from the issue of abortion.¹³⁶ In relation to physicians, if the mother's life was in danger, or health was at risk, most doctors would destroy the life of the child to save the mother, in childbirth.¹³⁷ However, there was growing unease about this as the nineteenth century progressed.¹³⁸ For example as the use of craniotomy and embryotomy developed, these operations which were recognised and justified by the British medical profession in 1880 were used if the mother's health was at risk.¹³⁹

There were differences in attitudes towards herbalists (female), physicians, nurses and midwives. The gender of the abortionist was important, as Jones states, criminal records reveal that the law operated to the advantage of those with money and professional status. It was much more difficult to raise charges against a medical practitioner (usually male) than an 'amateur' operator, usually female.¹⁴⁰ Previous scholars have outlined that female abortionists were mainly midwives and working class.¹⁴¹ Alternatively male abortionists were mostly upper class, such as surgeons and doctors.

These debates all contribute to the establishment of an idea that women constitute irregular and dangerous providers of abortion in contrast to clean and professional regulated men. Although both are ultimately criminalised through attention

¹³⁵ Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950*, 121; de Blécourt, 'Cultures of Abortion in The Hague in the Early Twentieth Century', 205.

¹³⁶ Emsley, *Crime and Society in England, 1750-1900*. 103; de Blécourt, 'Cultures of Abortion in The Hague in the Early Twentieth Century', 205.

¹³⁷ Brookes, *Abortion in England, 1900-1967*. 53; Perkin, *Women and Marriage in Nineteenth-Century England*, 283.

¹³⁸ Salim Al-Gailani, Pregnancy, 'Pathology, and Public Morals: Making Antenatal Care in Edinburgh Around 1900' in Greenlees, Bryder, and Greenlees, ed., *Western Maternity and Medicine, 1880-1990*, 35.

¹³⁹ Brookes, *Abortion in England, 1900-1967*, 53.

¹⁴⁰ Emma Jones, 'Representations of Illegal Abortionists in England, 1900-1967' in Andrew Mangham and Greta Depledge, *The Female Body in Medicine and Literature* (Liverpool: Liverpool University Press, 2011). 23.

¹⁴¹ Joan Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950* (London: Routledge, 2001), 121.

to legal and regulatory conditions in the nineteenth century. Importantly, I argue the records show that many wealthy, important medical men were taken to court for providing abortions, as well as lay practitioners, the criminalisation did not only target poor or female medical practitioners.

2.4.4 Materiality of Abortion Practices: Techniques, Instruments and Costs

Part of the increasing distinction between professional and irregulars is the use of techniques and surgery by one group and potions, and drugs by the other. Class was an important factor in these transactions. As de Blécourt and Osborne suggest it was mainly middle class women who used the services of more expensive male professional abortionists rather than consulting midwives, nurses, herbalists; buying abortifacients from a chemist's shop; or procuring the services of a lay (usually female) practitioner.¹⁴² Abortionists, both professional and lay, predominantly used instruments and implements, such as knitting needles, catheters and pumps, to bring on miscarriage. These medical (instrumental and mechanical) techniques improved as the nineteenth century progressed,¹⁴³ for example the use of obstetric anaesthesia and antisepsis by male surgeons and physicians.¹⁴⁴ These changes match the increasing calls for greater differentiation between regulated and unregulated practitioners.

Alongside the new range of medical interventions were remedies considered part of a more domestic and less professional approach. These were all used and sold by abortionists and abortifacient sellers as well as by women in domestic settings, available easily and cheaply without prescription from chemists and herbalists.¹⁴⁵ Many of these remedies were often available from mail order catalogues and advertised in the press under euphemistic language that

¹⁴² de Blécourt and Osborne, "Women's Medicine, Women's Culture: Abortion and Fortune-Telling in Early Twentieth-Century Germany and the Netherlands.", 383.

¹⁴³ Richard A. Posner, *Sex and Reason* (London: Harvard University Press, 1992), 276.

¹⁴⁴ Greenlees, Bryder, and Greenlees, eds., *Western Maternity and Medicine, 1880-1990*, 92 – 95.

¹⁴⁵ Knight, "Women and Abortion in Victorian and Edwardian England.", 59.

claimed to cure 'menstrual irregularities' and to 'remove obstructions'.¹⁴⁶ These remedies included herbal strategies such as ergot of rye, savin, colocynth, hiera picra, pennyroyal and tansy. Chemical abortifacients such as lead, diachylon, mercury and quinine, were also popular and available from chemists, and found in the domestic realm.¹⁴⁷ All of these abortifacients were taken or administered with the aim of producing vomiting, muscular contractions or convulsions that would hopefully produce abortion as a side-effect.¹⁴⁸ Many were dangerous and could bring on death, although it has been established that they were more often unsuccessful in preventing the continuation of pregnancy. However, it is known that women took these remedies in the knowledge that they could be fatal, and with the hope that they would bring on miscarriage, due to desperation. I suggest that if women were prepared to take potentially deadly substances, then this might exemplify the turn to outside advice, whether regulated or not, even under new conditions of criminalisation.

There is limited evidence in regarding the cost of abortion services by a nineteenth century abortionist practising instrumental abortion as opposed to selling abortifacients. There is some evidence about the cost in the cases I have looked at, which helps to set up ideas about money relationships I later discuss. In the trials I examine abortifacients cost between £3 and £5 depending on the substance and quantity sold, and are often sent and received via post.¹⁴⁹ Angus

¹⁴⁶ Emsley, *Crime and Society in England, 1750-1900*, 58 – 61.

¹⁴⁷ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 54; Anna Clark, 'Female Sexuality' in *The Routledge History of Women in Europe since 1700*, ed. Deborah Simonton, (London: Routledge, 2006), 67; Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950*, 25 – 92; Perkin, *Women and Marriage in Nineteenth-Century England*, 282; Knight, "Women and Abortion in Victorian and Edwardian England." 57 – 62.

¹⁴⁸ Hall, *Sex, Gender, and Social Change in Britain since 1880*, 4 – 7; Anna Clark, 'Female Sexuality', 67; Lane, *A Social History of Medicine: Health, Healing and Disease in England, 1750-1950*, 25 – 92; Perkin, *Women and Marriage in Nineteenth-Century England*, 282; Knight, "Women and Abortion in Victorian and Edwardian England.", 57 – 62.

¹⁴⁹ 'Boston Guardian - Saturday 06 July 1889', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001888/18890706/115/0008>; *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), June 1889, trial of RICHARD PASCOE (60) (t18890624-580); *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), March 1907, trial of WHITEFOORD, Caleb Charles (65, medical practitioner) (t19070318-16); *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), August 1869, trial of HENRY TIMSON (52) WILLIAM HENRY McGRATH (21) (t18690816-747).

McLaren provides evidence that in the late-nineteenth century abortion was a lucrative practice, abortionists could make up to £2000-3000 a year in London, Manchester, and other cities and large towns.¹⁵⁰ Sauer states that in 1898 one professional abortionist offered a financial plan to carry out any number of abortions for £15 a year.¹⁵¹ During the 1860s, the British Medical Journal reported that midwives charged from £3 to £4 for performing an abortion (a third of the annual disposable income of a domestic servant at that time).¹⁵² This information regarding how much abortionists could charge in the late nineteenth century helps shape understanding of how abortion was shaped through public and medical discourses.

2.5 Conclusion

In this chapter I outlined the history of medical, legal and abortion in Britain in the nineteenth century, and demonstrated how wider societal changes within nineteenth century, such as the history of crime and gender, women, the body and sexuality and the criminalisation of abortion contribute to cultural perceptions of abortion, have been analysed by historians. Crucially, these influential medico-legal ideas contributed to the eventual criminalisation of abortion in the mid-century, and subsequently also affected abortion practices. Importantly, the court records show that while professionally trained medics fought for greater distinctions between themselves and unregulated others, many wealthy and important men were taken to court for providing abortions. The criminalisation and rising profile of abortion in the courts did not only target poor or women.

¹⁵⁰ McLaren, "Illegal Operations: Women, Doctors and Abortion, 1886 – 1939.", 392.

¹⁵¹ Sauer, "Infanticide and Abortion in Nineteenth-Century Britain.", 90 – 92.

¹⁵² Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 120.

3. Chapter 3: Attitudes Towards Abortionists Between 1823 – 1861

3.1 Introduction

This chapter focuses on cultural perceptions of abortionists in early to mid-nineteenth century Britain, prior to the passing of The Offences Against the Persons Act in 1861, which made it a criminal offence for a woman to practice abortion on herself and for others to supply abortifacients or instruments to procure abortion.¹⁵³ Many scholars of abortion¹⁵⁴ argue that public sympathy existed in these trials in terms of public, legal, and medical professional attitudes towards abortionists, and by default towards abortion in principle.

Some sympathy is apparent in court and press rhetoric and in the number of convictions and sentences of agents carrying out abortions on women. However, my research reveals there was also a significant amount of condemnation of abortionists before 1861. I argue that attitudes towards abortionists were more complex and dynamic than is generally supposed, and was not predominantly sympathetic in the early decades of the nineteenth century. The records do not show a chronological progression of sympathy followed by condemnation in public attitudes. The gradual criminalisation and medicalisation of abortion during this period, including the 1803, 1828, and 1837 acts, as outlined in chapter two, resulted in negative attitudes towards abortionists at earlier times by the medical and legal profession. This is reflected in the negative attitudes towards the practices of abortionists by both lay and professional medics in the court cases and newspaper reports I examine.

¹⁵³ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 29.

¹⁵⁴ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 115 – 118; Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142; Hall, *Sex, Gender, and Social Change in Britain since 1880*; 5 -7; Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 4 – 7.

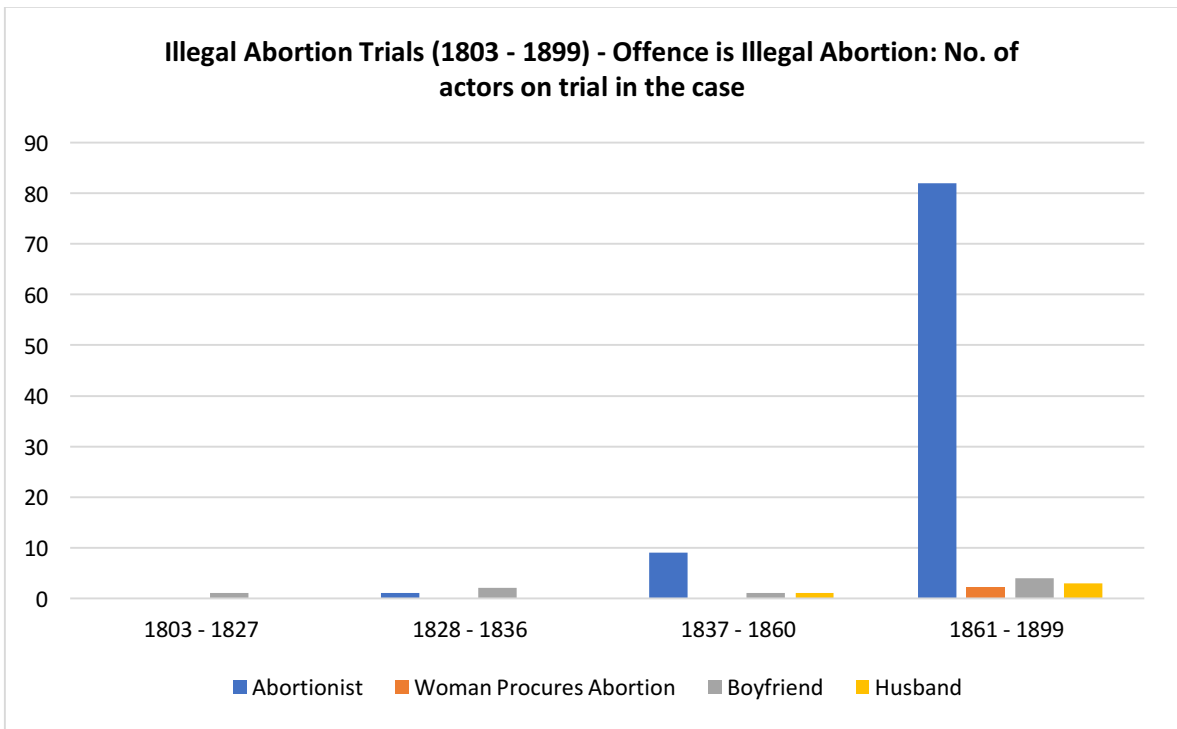
I analyse all trials of abortionists within this period, a total of fifteen cases, around eighteen actors (abortionists), and a maximum of five corresponding newspaper reports for these cases, between 1823 and 1861, the first abortionist trial at the Old Bailey is in 1823. I also refer to trials of illegal abortion where the accused is not an abortionist, but the abortionist is mentioned in the case. These are cases of theft and extortion where an abortionist is an actor, and cases where the indictment is for killing or murder but the death is as a result of illegal abortion.

3.2 Expressions of Hostility

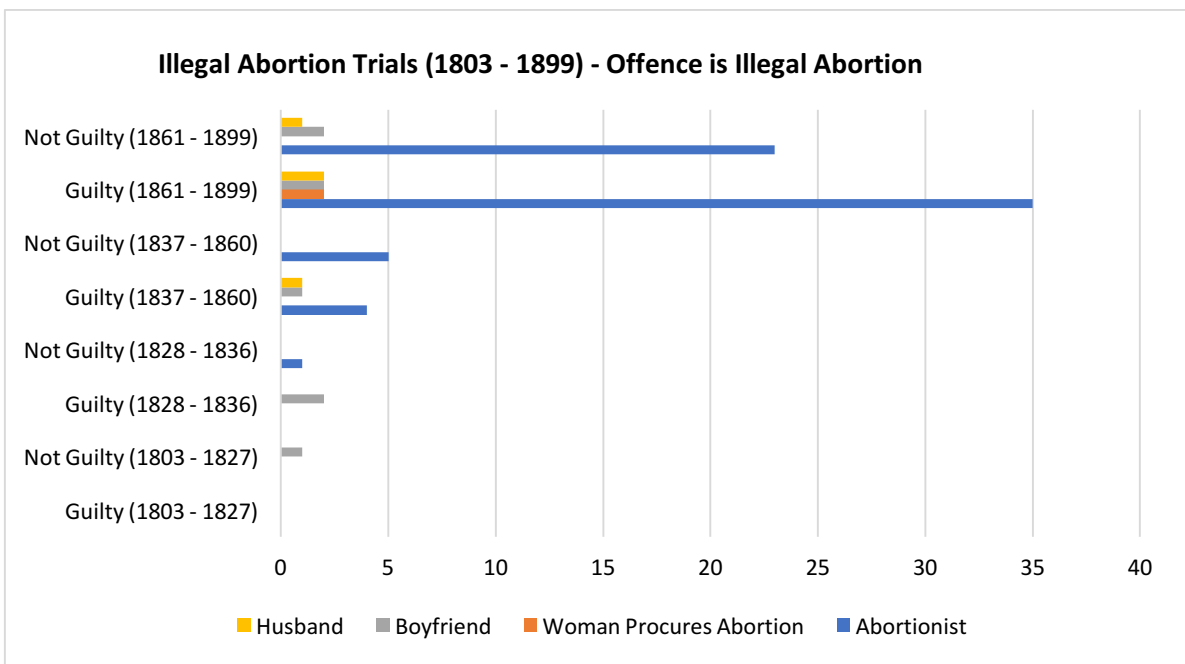
As previously outlined, scholars have argued both the public and the law were sympathetic in terms of abortionists' convictions.¹⁵⁵ There were very few trials of illegal abortion in general, and particularly of professional and lay abortionists before 1861. As shown by graph 1 and there no abortionists were indicted for illegal abortion in the early part of the nineteenth century (between 1803 and 1827), and only eighteen between 1823 and 1860 (if indictments for murder, killing theft and extortion where the charge was illegal abortion are included). This in itself implies abortion was not something seen as important by the legal profession and the police, and also alludes to sympathy from above; from the government, state and the law. Abortionists, such as physicians, midwives, and healers on trial for practising illegal abortion before 1861 were generally not found guilty, this is true in the Old Bailey cases I have examined (fourteen out of eighteen cases were found not guilty, see table 1 and 2). This demonstrates some leniency from the courts in abortionists sentencing.

¹⁵⁵ Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 142.

Graph 1



Graph 2



Expressions of sympathy are evident in the numerous examples of positive descriptions of abortionists in the newspaper reports I have examined. For example, references to abortionists' characters refer to a 'gentlemanly appearance',¹⁵⁶ or a 'respectable-looking man'¹⁵⁷. We learn that 'she had always borne a good character'¹⁵⁸ while another was considered to have 'received a most exceptionable character from a number of respectable witnesses'.¹⁵⁹ These statements refer to both professionals and non-professionals, men and women, and are found across a range of newspapers and dates. It can be implied from these statements that the moral character of the defendant was important in the trials, in legal terms, but that it was viewed as an important factor to report in the press. Wider community support of people on trial for practising abortion is also evident, as shown in the 1835 case of Naomi Poore, who was accused of practising abortion, and found not guilty. In this instance, the newspapers all report that the expenses of the prosecution would be covered by the community.¹⁶⁰

These examples all demonstrate the existence of sympathy in cultural perceptions of abortionists pre-1861. However, my research demonstrates that although abortionists were generally not found guilty, and were viewed sympathetically, negative perceptions towards abortionists are still to be found in the treatment of the accused in terms of the language and rhetoric used and embedded in the discourse created by the state, the law, and the public: these were not always sympathetic. It is generally accepted that these more critical views towards

¹⁵⁶ 'Morning Post - Monday 26 August 1850', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000183/18501128/034/0004>

¹⁵⁷ Old Bailey Proceedings Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), April 1829, trial of CHARLOTTE INMAN JOHN McFEDYEN (t18290409-234).

¹⁵⁸ 'The Evening Chronicle - Tuesday 23 June 1835', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0001315/18350623/023/0004>

¹⁵⁹ 'Morning Advertiser - Monday 22 June 1835', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0001427/18350622/029/0003>

¹⁶⁰ 'The Examiner, Sunday 28 June 1835', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000054/18350628/011/0011>

abortionists (and by default abortion) were held mainly by the medical and legal profession and not by the lay public.¹⁶¹

I argue that more general, public (lay) opinion was also negative during this period. Disparagement towards abortionists was often based on the gender, training and perceived exploitation of abortionists. I provide examples of negative attitudes towards abortionists, and the beginning of stereotypes towards 'the professional abortionist' as unskilled, unhygienic and unknowledgeable, as argued by Emma Jones.¹⁶² I argue these attitudes formed initial cultural perceptions, which contributed to establishing familiar stereotypes of professional abortionists as unskilled and disgraceful, which dominate debates in the early twentieth century.¹⁶³

3.2 Treatment of Abortionists in Court

Following on from these discussions of negative public opinion towards abortionists', condemnation is apparent in their treatment by the court. Although there are very few guilty verdicts for abortionists before 1861 (as shown in table 1 and 2 below), sentencing of a guilty verdict in the Old Bailey trials I examine is predominantly harsh. For example, in 1836 Thomas Prior (aged 63) was indicted and found guilty for 'unlawfully administering to Rhoda Mead an abortifacient with intent to procure her miscarriage', and sentenced to transportation for fourteen years. This harsh sentence demonstrates harsh sentencing in this and other guilty cases, and implies the abortionist's actions were viewed as serious by the court.

Knowledge is shaped discursively, through practice and daily life as well as texts, as is shown by court cases and accusations that the trial documents and news reports are about. There are numerous examples of abortionists referred to as immoral and unfeeling with the trial

¹⁶¹ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*. 37 – 40. Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*. 142. Hall, *Sex, Gender, and Social Change in Britain since 1880*. 4 – 7.

¹⁶² Emma Jones, 'Representations of Illegal Abortionists in England, 1900-1967' in Mangham and Depledge, eds., *The Female Body in Medicine and Literature*. 23.

¹⁶³ Emma Jones, 'Representations of Illegal Abortionists in England, 1900-1967' in Ibid. 23.

press reports. For example, surgeon Henry Smith ¹⁶⁴ is represented as cold and heartless in the following report in *Lloyd's Weekly Newspaper* (1852) in which it is reported that, '...on my telling him [Henry Smith] he was charged with attempting to procure abortion he made no observation whatever'.¹⁶⁵ Smith's lack of response is reported as interpreted by the barrister as a lack of care about the seriousness of the charge. This report would have been widely available, and it can therefore be assumed widely read, as the new *Lloyd's Weekly* was commercially successful at this time.¹⁶⁶ The repetition of these statements in the press therefore testifies to a wider discourse; this media informed knowledge of abortionists as cold-hearted, cruel and uncaring.

Additionally, the statements of the trial reporters were not always sympathetic in their transcription of the proceedings. It was common to declare abortion cases 'unfit for publication'. From 1796, onwards the Old Bailey started to suppress its publication of court transcripts of sexual offences (including abortion) on the grounds of 'immorality'.¹⁶⁷ Between 1828 (Lord Lansdowne's Act) and the passing of the Offences Against the Persons Act of 1861 there were four cases of illegal abortion seen as unfit for publication at the Old Bailey. This is a fairly high percentage of the illegal abortion cases during this period (26%), and it can therefore be implied that the details of the practice of abortion were viewed as shocking, or too shocking to report. This is supported by similar statements in the popular press, such as in the *Fife Herald* (1853) in which it is stated that the evidence is 'peculiar and painful',¹⁶⁸ and in the *Morning Post* (1835) that the details of the case 'are unfit for publication'.¹⁶⁹ These examples demonstrate that anxieties around abortion and towards abortionists, were apparent in the early to mid-

¹⁶⁴ *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), February 1852, trial of HENRY SMITH ROBERT DENN CHRISTMAS (t18520223-323a).

¹⁶⁵ '*Lloyd's Weekly Newspaper* - Sunday 01 February 1852', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000079/18520201/036/0009>

¹⁶⁶ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 15.

¹⁶⁷ Anne-Marie Kilday and David Nash., *Histories of Crime: Britain 1600-2000* (Basingstoke: Palgrave Macmillan, 2010), 83 - 87.

¹⁶⁸ '*Fife Herald* - Thursday 14 July 1853', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000447/18530714/003/0002>

¹⁶⁹ '*Morning Post*, Monday 22nd June, 1835', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000174/18350622/030/0004>

nineteenth century as well as in the later nineteenth century. It also testifies to the presence of wider fear of abortionists as dangerous, at least in the early nineteenth century press. Attitudes to abortionists and the details of the abortion cases themselves were not as sympathetic as previous scholars have suggested.

3.3 Multiple Abortions, Exploiting and Profiteering from Women

Criticism and ill-feelings towards abortionists are apparent in some of the cases I identify, in the discussion and accusation of abortionists profiteering from abortion and exploiting women. As Brookes argues, the opponents of abortion associated it with criminality and profit.¹⁷⁰ These trends are more evident after 1861, as discussed in chapter 3, although substantial evidence of these attitudes can be found in these earlier trials. It is significant that abortionists were shamed in the *Proceedings* for repeatedly carrying out abortions, evident through use of the term ‘again’ in trial reports, to indicate that the prisoner was indicted multiple times.¹⁷¹ The term ‘again’ is italicised for emphasis in the trial report available on the Old Bailey *Proceedings* digitised record. Although this is a digitised version of the proceedings and therefore the formatting may not be original, it can be assumed the italics were there in the original as this is replicated across all cases that use this phrase.

Profiteering, extortion, and exploitation are also evident in examples of newly criminalised abortion as expressed through these sources. Abortionists were not only thought to be capable of exploiting and profiteering from women, they were also considered to exploit each other and the wider (male) public. A case study which effectively illustrates that some abortionists were represented as exploiting and acting out of profiteering interest by the courts,

¹⁷⁰ Brookes, *Abortion in England, 1900-1967*, 53.

¹⁷¹ For example, in 1835 Naomi Poore was indicted for using a certain instrument with intent to cause the miscarriage of Mary Ann Preedy (first count), in this case it states *again*. *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018); June 1835, trial of NAOMI POORE (t18350615-1576); ‘*The Examiner*, Sunday 28 June 1835’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000054/18350628/011/0011>

is the 1836 case of surgeon James Cook (aged 41). He was tried for extorting George Thomas White Esquire, after performing instrumental abortion on White's girlfriend Elizabeth Adnum. White was a barrister and was also the person who questioned James Cook in the trial, which highlights the complex and significant connections between the medical and legal professions at the time. Cook extracted money from White under duress, to keep the abortion a secret and not damage White's reputation (Cook was eventually found guilty and transported for life). Both Cook and White express statements that refer to their worry about being exposed for performing illegal abortion. It was reported in the *Globe* that Cook 'took her [Elizabeth Adnum] to town rather than be exposed',¹⁷² and that:

On the 4th of January Mr. White preferred his bill before a grand jury, and conscious of his honour and integrity, now appeared before the Court and jury to have his character freed from blemish, and to punish the person who had for years been the destroyer of his peace and that of his respectable family.¹⁷³

Here, the language of coercion is also the language of the trials, although Adnum's statement also demonstrates that fear of publicity was used as a suitable excuse for the abortionists' actions, and in this instance was accepted. The fact that White could be extorted, and that he referred to Cook as someone with the power to ruin his home and family life due to illegally carrying out abortion in his role as surgeon demonstrates the existence of shame and public humiliation associated with abortionists, even as early as 1836.

The case of James Cook and George Thomas White Esquire was widely published in the press with a large amount of detailed reporting regarding the particulars of the case. It can be argued this demonstrates the case was thought of as scandalous, as it was chosen as a story to sell by these publications, and also as there may have been readers for this and similar stories. It is important not to overemphasise this; it is possible this reaction is more to do with the serious

¹⁷² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), February 1836, trial of JAMES COOK (t18360201-401).

¹⁷³ '*Globe* - Tuesday 02 February 1836', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001652/18360202/035/0004>

crime of extortion than abortion. But, the combination of abortion and extortion together make this a shocking case. This trial, and the reporting of it, is a good example and application of Stoler's 'fault lines' in which obstacles, in the case of this thesis, the unheard voices of the public condemning abortionists, can be identified.¹⁷⁴

The courts and the press both provide the evidence we can use to see what kind of discussions of abortionists were had when they were accused, after crimes were identified, but in order to see the spaces in-between these, where there is no written audience.¹⁷⁵ What I mean by this is that it can be inferred from the evidence available that people thought those things more generally.¹⁷⁶ This is because the extortion case exposes or reveals assumptions about abortion, and reveals what laypeople, the medical profession, and the law and legal profession thought about abortionists; that it was a shocking and immoral occupation and practice.¹⁷⁷ Significantly, one that money could be extorted for. Carrying out abortion on a woman was viewed as something shameful as it was illegal, but also because of connections to sexual impropriety or potential illegitimacy. Being a doctor who carried out abortion was therefore viewed as something that could be used as a bargaining chip in these cases of extortion. Physicians did not want to risk the public shame and humiliation of being on trial and the subsequent damage this would do to their reputation as a medical man. The press played on and amplified these fears in their extensive coverage of these crimes at the Old Bailey court.

3.4 Medical Training and Professional and Lay Abortionists

Many historians argue that there was a tension between these lay and professional abortionists. There were fears from obstetricians and the medical profession (regular practitioners) that unsupervised and unlicensed practitioners would increase the business of criminal abortion.¹⁷⁸

¹⁷⁴ Stoler, "Colonial Archives and the Arts of Governance.", 109.

¹⁷⁵ Ibid., 109.

¹⁷⁶ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 6 – 10.

¹⁷⁷ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 116 – 148.

¹⁷⁸ Greenlees, Bryder, and Greenlees, eds., *Western Maternity and Medicine, 1880-1990*, 35.

For example, attitudes towards, and representations of ‘irregulars’ such as midwives were different from those towards ‘professional’ abortionists, including obstetricians and physicians. These tensions inform contemporary discussion and understanding of the medical training and professional and non-professional abortionists.

Anxieties regarding professional status are reflected in references to abortionists’ medical training made in numerous cases, such as ‘who received his diploma as a licence of the Apothecaries’ Company’¹⁷⁹ and ‘a number of medical gentlemen of high station’.¹⁸⁰ The reference to the actor’s training is seen as important in these cases as the doctors and obstetricians are understood to be acting against the medical profession, in that they are not complying with the new legal and professional changes in medicine; they are acting like an irregular medical practitioner.

In relation to this, many physicians in these cases on trial for carrying out illegal abortions were described as letting down the medical profession by the judge and the medical profession, both at the trial and in the discussion of the trial in the press. For example, the surgeon Cunningham is indicted for illegal abortion in case in 1853. It is reported in the *Alloa Advertiser* that he ‘...had been carrying on a wicked trade, and that he had abused the noble science to which he belonged for the most base purposes.’¹⁸¹ There is a similar report in the *Evening Mail* in which it is reported that the judge states that ‘...allow me for the honour of the profession, to assure you that no such names [Cunningham and Thomson] are [now] to be found in the Medical Directory’.¹⁸² Cunningham and Thomson’s removal from the medical directory reflects contemporary arguments about the professionalisation of medicine and about setting up a

¹⁷⁹ ‘*London Evening Standard* - Wednesday 06 November 1861’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000183/18611106/040/0007>

¹⁸⁰ ‘*Morning Post* - Thursday 28 November 1850’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000174/18501128/020/0004>

¹⁸¹ ‘*Alloa Advertiser* - Saturday 09 July 1853’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001604/18530709/054/0004>

¹⁸² ‘*Evening Mail* - Monday 09 May 1853’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001316/18530509/004/0001>

medical body. Their names are removed first and foremost as abortion is illegal, however it is the emotive language used by the judge which is telling.

Trust of the competency of medic performing the abortion is an important theme throughout these cases. For instance, it is stated in a report of the trial of a nurse In the *Bucks Gazette* (1829) states that 'by the further advice of the charwoman, [she] was induced to consent to some medical man performing an operation on her to produce abortion'.¹⁸³ Here the woman procuring the abortion states should would prefer the abortion services of a female 'irregular' practitioner.

In some cases male physicians are seen as more trustworthy than female abortionists; their expert opinion is utilised and trusted in the court proceedings. For example, it is stated in *Reynolds Newspaper* in 1861 that 'the patient had been since kept alive by the skill and attention paid to the case by Mr. Robinson'.¹⁸⁴ Mr Robinson is the doctor, his opinion is trusted as a male medical expert. This supports Osborne and Blécourt's arguments that geographical or financial barriers were not always the decisive factor in women's choice for cures, in this case abortion, this choice also depended on confidence that the doctor would be able to understand the condition and be prepared to help.¹⁸⁵ In summary this demonstrates that the shifting and complex boundaries between different healers in the nineteenth century.

3.5 Multi-vocal and Contradictory Attitudes

The following 1848 case effectively demonstrates both sympathy and vilification, and illustrates the two areas of condemnation, exploiting and profiteering from women; and criticism of abortionists in terms of medical training and professional and non-professional abortionists. This

¹⁸³ *Bucks Gazette*, Saturday 4th April, 1829', British Newspaper Archive, accessed July 11, 2018
<https://www.britishnewspaperarchive.co.uk/viewer/bl/0001288/18290404/014/0003>

¹⁸⁴ *Reynolds's Newspaper* - Sunday 10 November 1861', British Newspaper Archive, accessed July 11, 2018
<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000101/18611110/016/0006>

¹⁸⁵ de Blécourt and Osborne, "Women's Medicine, Women's Culture: Abortion and Fortune-Telling in Early Twentieth-Century Germany and the Netherlands.", 383.

case is again discussed at length in the press.¹⁸⁶ The medical and post-mortem details are outlined and discussed, the conversations and language are detailed, the instruments used are analysed and medical experts are called as witnesses to discuss this. This demonstrates interest in the trials of abortionists by the press, and provides a useful case study.

Midwives Spencer Lindfield and Mary Ann Dryden, and Richard Orpin (the partner of Eliza Wilson) were 'indicted for the wilful murder of Eliza Wilson [aged 32], by procuring her miscarriage with the use of a catheter.' Sympathy towards the midwife Lindfield is evident in the court proceedings statement that 'several females deposed to Lindfield's good character, and to her skill as a midwife.'¹⁸⁷ Therefore abortionists under trial were not always shamed, and their medical, professional, skills not always questioned. It is reported in *The Morning Post*, Friday 29 September 1848, that the jury returned a verdict against Spencer Lindfield of 'Wilful Murder' and against Richard Orpin and Mary Anne Dryden, of being 'accessories to the murder before the fact'. They were therefore found not guilty.¹⁸⁸ This again demonstrates compassion from the court and judges towards these actors, in terms of sentencing and convictions.

However, criticism of Spencer Lindfield and Mary Ann Dryden is demonstrated in Eliza Wilson's statement that Richard Orpin took her 'to see a woman in East-lane, Walworth' and she performed the abortion 'by some instrument'. The use of the term 'some' in this case implies derogatory attitudes towards the midwife Lindfield. Although, it is important to acknowledge this negative attitude is probably expressed as Eliza Wilson died as a result of this abortion. Lindfield and Dryden's professional training is questioned by male surgeons who examine her body after her death, and in the barrister's questioning of the midwives. For example, one of the surgeons in the case, John Chapman, provides a statement that he attended Eliza Wilson until her death.

¹⁸⁶ 'Morning Post - Friday 29 September 1848', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000174/18480929/030/0004>

¹⁸⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), October 1848, trial of SPENCER LINDFIELD MARY ANN DRYDEN RICHARD ORPIN (t18481023-2442).

¹⁸⁸ 'Morning Post, Friday 29 September 1848', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000174/18480929/030/0004>

John Chapman and another surgeon -Edward Ray- examine the body after death and confirm Eliza suffered a miscarriage, and that death was due to inflammation. This trial therefore provides an important example of interconnecting and contradictory attitudes towards abortionists from the press, the court and the public, both sympathy and condemnation exist within this case, in terms of the attitudes expressed in the court and in the press towards these irregular practitioners.

3.6 Conclusion

This chapter argued that attitudes towards abortionists in the early to mid-century were complex and dynamic, as opposed to predominantly sympathetic. Condemnation of abortionists existed in earlier abortionist trials, as well as in cases in the later nineteenth century. There was therefore not a chronological progression of sympathy followed by condemnation in public attitudes. Criticism towards abortionists during this period falls into two sub-categories; abortionists shamed for carrying out multiple abortions, connected to exploiting and profiteering from women; and criticism of abortionists in terms of medical training and professional and non-professional abortionists.

These case studies and examples therefore demonstrate that people possessed these negative views of abortionists as it was an illegal practice. And that references to fear of publicity and shame as a consequence of revealing the practice of carrying out abortions was evident. Together these show cultural perceptions of abortionists were nuanced and did not shift in one continuous direction, which I demonstrate from the other end of the spectrum in chapter three, that while attitudes did become harsher, examples of sympathy could still be found.

4. Chapter 4: Cultural Perceptions of Abortionists Post 1861

4.1 Introduction

In the previous chapter I explained how attitudes towards abortionists in court trials and the popular press in the early decades of the nineteenth century were often inconsistent. They reflected contradictory ideas about abortion as an increasingly medical, rather than domestic, concern and expressed both hostility and sympathy towards abortionists, while the medics encouraged greater differentiation between themselves as professionals and irregular practitioners. In this chapter I focus on cultural perceptions of abortionists in mid to late nineteenth century Britain after the enactment of The Offences Against the Persons Act in 1861. Many scholars of abortion argue that there was progression from sympathy to condemnation in attitudes towards abortionists throughout nineteenth century Britain, and in this chapter I demonstrate how these claims are not so evident. I show how expressions of sympathy, as well as condemnation, continued to be found in contemporary opinions of abortionists in court and in the popular press after the 1861 act. I demonstrate there was not a chronological progression, which reflects more nuanced and multivocal positions.

My research demonstrates there was also a significant amount of public sympathy apparent towards abortionists in later abortionist trials. There are examples in the earlier nineteenth century of public support of abortionists in trials and in the corresponding newspaper reports, and campaigns to support their legal cases. As Keown and Kilday and Nash argue this ran alongside more hostile approaches where abortionists were shamed for carrying out multiple abortions, and accused of exploiting and profiteering from women.

4.2 The 1861 The Offences Against the Persons Act: A Starting Point

As a legislative change, the 1861 Offences Against the Persons Act, provides a useful point at which to assess attitudes towards abortionists and to discuss the claims of previous scholars that

there was gradual condemnation as the nineteenth century progressed. These attitudes to abortionists post 1861 must be understood within wider changing ideas about crime and criminals¹⁸⁹ that were met with new practices in criminal justice and punishment among the public and medico-legal experts.¹⁹⁰ For example, as Clive Emsley argues, in the second half of the nineteenth century there was general stability of the Victorian social order, faith in progress and belief in the police and the courts. Importantly many contemporaries thought of crime as something committed by a criminal class.¹⁹¹ As I outline, it can be argued that many contemporaries thought of abortionists as belonging to this new criminal class.

I analyse a sample of sources in this period, I examined every third trial of an abortionist (male and female) and a maximum of five corresponding newspaper reports. The depth of reporting of the abortionist's trials in the press is variable, some reports are a few lines long and mainly just announce the crime committed, however, others more explicit. The reports post-1861 are mainly longer and tell the story of the case.¹⁹² This contrasts with the length of the *Proceedings* of illegal abortion which hugely decreases in the later part of the nineteenth century. Long trials that include the full text of the case only make up 3% of the trials, as opposed to 33.3% between 1828 and 1837 and 50% between 1837 and 1861. From this we can infer that there was a greater interest in reporting on crimes of this nature, both by the public and the press. On this basis, reports on court cases were often sensationalised, and provided scandalous stories, and abortionist's trials often provided such entertainment value.¹⁹³ However, these cases also reveal negative attitudes towards abortionists when read against the grain of these accounts to detect subtle meanings regarding public gendered, medical and legal attitudes. Abortionists

¹⁸⁹ David Christopher Churchill, *Crime, Policing and Control in Leeds, C. 1830-1890* (Open University, 2012), Thesis (Ph.D.), 1 – 6.

¹⁹⁰ Emsley, *Crime and Society in England, 1750-1900*, 10 – 12.

¹⁹¹ *Ibid.*, 10 – 12.

¹⁹² King, "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth and Early-Nineteenth-Century London.", 92.

¹⁹³ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 11 – 16.

were not passive in this later sensationalist reporting. For example, there is an interesting case in 1898 in which the victim sues the newspaper:

Following the police-court proceedings these persons brought a libel suit against an evening newspaper, which had exposed their practices, but verdict was given for the defendants in that action — It was urged on behalf of Tomasso [who he conspires with] that he had held good positions in America, and that since he had been in England nothing had been known against him prior to this case.¹⁹⁴

This demonstrates the sometimes multi-directional exchange and movement between the press, the public and the accused, which provides greater depth of understanding to the mid to late-nineteenth century culture these abortionists were practicing in.

4.3 The Coexistence of Sympathy and Criticism

The examination of the trials and corresponding newspaper reports generally supports Keown's claim that there was a chronological slow progression away from sympathy and towards condemnation, but this was slower and more contradictory than is often assumed. Despite these complexities, the records do show some significant changes after 1861. The number of convictions of abortionists increased significantly, and these saw guilty verdicts and harsher prison sentences of abortionists. For example, there were seventy-two indictments for illegal abortion in the Old Bailey after 1861, and fifty-three out of these the accused was found guilty, as compared to fifteen between 1823 and 1860. Most of these were found not guilty (about three quarters for men and two thirds for women). However, detailed analysis of these sources demonstrates that these parallel events, the increase in trials but not necessarily in convictions reflects the complicated and nuanced attitudes towards abortionists in the court, as well as sympathy as put forward by historians. The reporting of these cases reflects less simplistic

¹⁹⁴ 'North Devon Gazette - Tuesday 25 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001193/18980125/066/0002>

analysis. Although the level of non-guilty verdicts supports the claim that sympathy existed, the rhetoric used demonstrates there was also criticism.

Sympathy towards abortionists is evident in that the court proceedings demonstrate that the jury recommended leniency in many cases, in statements such as ‘strongly recommended to mercy by the jury’.¹⁹⁵ There are some examples of juries ignoring charges against abortionists. For example, abortionists Caroline Forester and Helen Forester, were acquitted by the jury,¹⁹⁶ and the grand jury ignored the bill against them.¹⁹⁷ There is also compassion in sentencing due to the age of the defendant. Leniency is shown towards Rebecca Anne Algar Croft, on trial ‘for administering noxious drugs’ in March 1881, because of her age (aged 55). She was found guilty and sentenced to five years’ penal servitude.¹⁹⁸ However, as reported in the *Islington Gazette* (1881) the judge warned that under normal circumstances, by this he means her being younger, she would have received a longer sentence. These interpretations of the law show that the jury, who were public, did possess some sympathy in these cases, even if the verdict was guilty, as they considered the situation of case and provided judgement accordingly.¹⁹⁹ From this we can infer that the law, which consisted of the judgements of judges and juries, was enacted compassionately against a significant proportion of abortionists even in the later part of the nineteenth century.

Kilday and Nash state that public opinion did not consider that all abortionists were shameful or exploited women, and that some individuals had sincere sympathy towards

¹⁹⁵ See for example *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), September 1898, trial of JOHN LLOYD WHITMARSH (68) (t18980913-598); *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), June 1898, trial of WILLIAM MAUNSELL COLLINS (t18980620-460); *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), February 1899, trial of JANE WHITE (67) (t18990206-176); *Old Bailey Proceedings* Online October 1848, SPENCER LINDFIELD MARY ANN DRYDEN RICHARD ORPIN (t18481023-2442).

¹⁹⁶ *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), June 1866, trial of HELEN FORESTER (60) (t18660611-569).

¹⁹⁷ ‘*Islington Gazette* - Tuesday 19 June 1866’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000438/18660619/012/0003>

¹⁹⁸ *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 8.0, 11 July 2018), March 1881, trial of REBECCA ANNE ALGAR CROFT (55) (t18810328-397)

¹⁹⁹ *Old Bailey Proceedings* Online October 1848, SPENCER LINDFIELD MARY ANN DRYDEN RICHARD ORPIN (t18481023-2442).

abortionists. A significant example of this sympathy found in the court is in the 1895 case of Harold Wood, Annie Bowyer and Emma Nicholson,²⁰⁰ in which it is reported in the *Essex Newman* that the non-guilty verdict 'received applause in court, and friends congratulated the prisoners'.²⁰¹ Although it is important to remember this is their family and friends, so not wider public opinion in this instance.

Throughout this period there are also numerous examples of abortionists referred to in a positive light in descriptions in newspaper reports. For example, in the case of Helen Forester, 60, in 1866 in which she is accused of the 'wilful murder' of Helen Ann Venables she is referred to as a 'decent looking woman' in the *USK Observer*, *Raglan Herald* and *Monmouthshire Central Advertiser*²⁰², *London Daily News*²⁰³ and the *Teesdale Mercury*.²⁰⁴ Abortionists (professional and lay, male and female) are often referred to as 'respectable' and 'competent' within these sources.²⁰⁵ Defendants are reported as having good characters both within the proceedings and in reports, for example, in the court case of surgeon John Stirling (aged 48) in 1872 in which the trial proceedings state the prisoner exhibited an 'excellent character'.²⁰⁶ It could be argued that this feeling is also reflected in many newspaper headlines which also report heavy sentences. In terms of the attitudes towards sentencing it is stated in the *Northern Daily Telegraph* in 1889 that abortionists George Hare and Lilian Ayliffe received 'Heavy Sentences'.²⁰⁷ The use of this

²⁰⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), March 1895, trial of HAROLD WOOD (30) ANNIE BOWYER (24) EMMA NICHOLSON, (t18950325-337).

²⁰¹ 'Essex Newsman - Saturday 13 April 1895', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000381/18950413/042/0003>

²⁰² 'USK Observer, Raglan Herald, and Monmouthshire Central Advertiser - Saturday 23 June', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000927/18660623/051/0005>

²⁰³ 'London Daily News - Monday 18 June 1866', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000051/18660618/010/0003>

²⁰⁴ 'Teesdale Mercury - Wednesday 20 June 1866', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001059/18660620/034/0002>

²⁰⁵ 'South London Chronicle - Saturday 22 June', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000443/18950622/056/0007>; *Globe* - Saturday 30 April 1887 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001652/18870430/041/0005>

²⁰⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), July 1872, trial of JOHN STIRLING (48) (t18720708-533).

²⁰⁷ 'Northern Daily Telegraph - Saturday 11 May 1889', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000652/18890511/024/0002>

language to describe abortionists demonstrates the continuation of compassion towards abortionists after the 1861 act. Heavy is weighty and implies that it is more than they deserved, so there is some sympathy here. However, alternatively heavy sentences could also just be a literary tool, or demonstrate condemnation as a highlight of just desserts, this therefore demonstrates the existence of complex narratives.

Alongside the existence of sympathy towards abortionists, which did not decrease in a straightforward chronological way, the records also show extensive criticism and condemnation of abortionists in the mid to late nineteenth century after the 1861 act. As Anna Clark argues, the authorities, including the courts and judges, often harshly punished abortionists when on trial.²⁰⁸ Trial reports were constructed to present a positive image of justice, therefore many abortionists were shown as receiving their 'just desserts'.²⁰⁹ This is evident in these newspaper reports of abortionists. As Knepper argues the criminal law could deal with each offender, in this case abortionists, as an individual, but it did not necessarily have sympathy for them.²¹⁰ Abortionists were sometimes portrayed as habitual offenders in the proceedings and in the press, using references to appearances in earlier trials.

For example, abortionists are shamed for multiple repetitions of carrying out abortion. As in pre-1861 cases many trials use the term 'again' if the prisoner has been charged multiple times'.²¹¹ There was also a suppression of support in the court. The *Essex Newman* (1895) states

²⁰⁸ Anna Clark, 'Female Sexuality', 67.

²⁰⁹ Knepper, *Doak, and Shapland, Urban Crime Prevention, Surveillance, and Restorative Justice: Effects of Social Technologies*, 10.

²¹⁰ Hostettler, *A History of Justice in England and Wales*, 179.

²¹¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), May 1889, trial of GEORGE HARE (56) LILIAN AYLIFFE (39) (t18890506-462) Further examples include: 'Essex Newsman - Saturday 23 March 1895', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000381/18950323/030/0003>; *Old Bailey Proceedings Online* February 1899, JANE WHITE (67) (t18990206-176); 'Islington Gazette - Tuesday 19 June 1866', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000438/18660619/012/0003>; Cheltenham Chronicle - Saturday 14 January 1899 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000517/18990114/030/0003>

there was [Applause, which was at once suppressed].²¹² This therefore demonstrates that attitudes were also static, as well as progressive.

Publicity was a vital element of this nineteenth century punishment. It was meant to act both as a deterrent and conversely to demonstrate innocence if acquitted to preserve reputation.²¹³ Therefore we can argue that abortionists' crimes and actions were reported in the press as punishment. Condemnation towards abortionists existed in the creation of stereotypes, as argued by Emma Jones²¹⁴, such as cold hearted reactions, or a lack of reaction, to sentencing and to the case, trial language and the use of emotive language in trial reports such as 'one of the great criminals of the century stands alone'.²¹⁵ The use of the term 'nefarious practices'²¹⁶ demonstrates wider public and legal ill-feeling towards professional and lay abortionists. The fact that cases were deemed as unfit for publication, as discussed in chapter three, demonstrates that the details of abortionists' trials were viewed as shocking by the Old Bailey publishers and again testifies to wider public opinion that abortion was shocking (and shameful) and therefore abortionists were as well.

This ill-feeling towards abortionists is reflected in the discussion and accusation of abortionists profiteering from abortion and exploiting women. This is evident in the references to whether the abortionist has carried out abortion multiple times, across a wide range of dates, between the 1870s and the 1890s, and locations (including Manchester, Birmingham, Devon, London) in both the Proceedings and the press.²¹⁷ Many newspaper reports refer to the

²¹² 'Essex Newsmen - Saturday 13 April 1895', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000381/18950413/042/0003>

²¹³ Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978*, 124.

²¹⁴ Jones, "Abortion in England, 1861-1967.", 208.

²¹⁵ 'The Referee - Sunday 23 October 1892', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0002310/18921023/021/0004>

²¹⁶ 'Hendon & Finchley Times - Friday 28 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001599/18980128/027/0002>

²¹⁷ See for example *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), January 1898, trial of JAMES CHARLES ADY (42) (t18980110-124); <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001599/18980128/027/0002>; 'East & South Devon *Manchester Courier and Lancashire General Advertiser* - Saturday 16 January 1886' <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000206/18860116/067/0006>

abortionists in phrases such as 'carrying out practices for some time',²¹⁸ 'carried on a regular system of improper operations'²¹⁹ and 'been in the habit'.²²⁰ These exploitative attitudes are referred to in the case of Edwin Lowe, a chemist convicted of practising illegal abortion, in June 1870, in which the sentence was death.²²¹ The *London Evening Standard* (1870)²²² and *Reynolds Newspaper* (1870) report that:

His offence was a very serious one, and in every case where a professional man took advantage of his position to act in the manner he appeared to have done, the Court felt imperatively called upon to pass a severe sentence.²²³

This demonstrates the importance placed by the medical profession on the professionalism of abortionists and their practices. However, sympathy may also have existed, in terms of the attitudes of the public (women) not the court, towards some abortionists for not charging for their services or for taking payment in kind.²²⁴

In order to illustrate the argument that sympathy and condemnation towards abortionists coexisted in the later part of the nineteenth century, I set out the case of Dr Haffenden, who committed suicide following his indictment for illegal abortion in the following 1883 trial. This case study demonstrates these conflicting sentiments and attitudes. He was tried for practising abortion on Julia Dean Hardie and committed suicide before the verdict. Hardie

²¹⁸ 'Advertiser. - Saturday 22 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001639/18980122/135/0006>; 'Woolwich Gazette - Saturday 20 February 1875', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001019/18750220/074/0004>; 'Globe - Thursday 19 September 1889' <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001652/18890919/073/0007>

²¹⁹ 'Hendon & Finchley Times - Friday 28 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000269/18980111/062/0005>

²²⁰ 'Globe - Thursday 19 September 1889' <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001652/18890919/073/0007>

²²¹ 'St James's Gazette - Thursday 12 April 1894', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001485/18940412/066/0011>

²²² 'Croydon's Weekly Standard - Saturday 29 October 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0002196/18981029/054/0003>

²²³ 'London Evening Standard - Friday 10 June 1870', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000183/18700610/035/0006>

²²⁴ 'Reynolds's Newspaper - Sunday 12 June 1870', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000101/18700612/001/0001>

²²⁴ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 114 – 118.

stated that he was innocent and ‘he could not live under the burden of suspicion’ (reported in the *Exeter and Plymouth Gazette Daily*, the *Worcester Journal* and the *Exeter and Plymouth Gazette Daily Telegrams*).²²⁵ This implies that there were strong criticisms levelled at practising abortion, and evidence of associated shame in the 1880s. However, conversely the press reports describe Dr Haffenden in extremely sympathetic ways that focus on the tragedy of the case, it is not reported as a ‘just dessert’ as outlined previously. This supports Kilday and Nash who argue that public opinion did not consider all abortionists to be shameful and exploiting women. They state there is evidence that individuals had sincere sympathy towards abortionists.²²⁶

4.4 Professional and Non-Professional Abortionists: Framed as Medical?

I argue, post 1861 much of the medical and legal profession criticised the practice of abortion, and tensions arose between different medical actors. Abortion and the trade in abortifacients were officially condemned by the Victorian medical profession in line with the 1861 act.²²⁷

‘Regular’ practitioners were supported changes to the existing abortion law as they regarded abortion a threat to female and foetal safety, and because criminalisation provided a source of employment for their irregular competitors.²²⁸ The formalisation of criminalising abortion in the 1861 act played a pivotal role in shifting classification by the medical profession and the state of abortion and, therefore, abortionists, as medical rather than domestic practices. The censure of earlier generations at the start of the nineteenth century contributed to shaping the criminalisation of regulated and irregular abortion in the later act.²²⁹ These changes in the law

²²⁵ ‘*Worcester Journal* - Saturday 27 October 1883’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000150/18831027/046/0006>; ‘*Worcester Journal* - Saturday 27 October 1883’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000150/18831027/046/0000>; ‘*Exeter and Plymouth Gazette Daily Telegrams* - Wednesday 24 October 1883’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000505/18831024/011/0003>

²²⁶ Kilday and Nash, *Shame and Modernity in Britain: 1890 to the Present*, 115 – 168.

²²⁷ Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, 146.

²²⁸ Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, 39.

²²⁹ *Ibid.*, 22 – 24.

affected the legal and medical culture towards abortion, and in turn affected perceptions, ideas and cultural norms towards abortionists, both professional and lay.

Some of these ideas about continued hostility and sympathy can be traced through the continuing tensions around regulating medical practices in the nineteenth century. Importantly, this was about who was willing to perform abortions, during this time physicians, obstetrician and surgeons were not seen as willing to engage in illegal acts, but midwives were.²³⁰ It was also tied up with issues of class and gender. The law operated to the advantage of those with money and professional status. It was much harder to prosecute a medical practitioner, usually male, than an 'amateur' operator, usually female.²³¹

Differences in the attitudes towards 'professional' and lay abortionists are evident in the representation of legal and medical professionals, and public opinion of professional and lay abortionists and in references to the medical training. The press reports towards these professional actors mainly condemn their actions. For example, George Dale and Agnes Dale are referred to as 'professional abortionists' in the *Globe* in 1889,²³² and are condemned for carrying out 'medical malpractices'.²³³ Abortionists are often referenced to as 'quack' doctors, shorthand for those with no professional training, for example 'she [name] had been to quack doctors and had been taking medicines.'²³⁴ Non 'regular' medics such as midwives, herbalists and folk remedies and fortune tellers²³⁵ are often referred to disparagingly.

²³⁰ See for example the Mrs. Nicholson case 'she replied that she knew that doctors would not deal with such a case, and that was the reason why she went to a midwife' *Essex Newsmen* - Saturday 23 March 1895', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000381/18950323/030/0003>

²³¹ Jones, "Abortion in England, 1861-1967.", 23.

²³² *Globe* - Thursday 19 September 1889', British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0001652/18890919/073/0007>

²³³ *East & South Devon Advertiser*. - Saturday 22 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001639/18980122/135/0006>

²³⁴ *Croydon's Weekly Standard* - Saturday 29 October 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0002196/18981029/054/0003>

²³⁵ *Woolwich Gazette* - Saturday 20 February 1875', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001019/18750220/074/0004>; *Woolwich Gazette* - Saturday 27 February 1875', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001019/18750227/073/0004> Old Bailey Proceedings Online May 1889, GEORGE HARE (56) LILIAN AYLIFFE (39) (t18890506-462).

Table 1. Male: Trials for Illegal Abortion (including indictments for murder, killing, theft and extortion where the charge was illegal abortion): No. of actors on trial.

Actor	1828 - 1836			1837 - 1860			1861 - 1899		
	Male	Guilty	Not Guilty	Male	Guilty	Not Guilty	Male	Guilty	Not Guilty
Abortionist	3	1 (33%)	2 (67%)	10	3 (30%)	7 (70%)	54	40 (74%)	14 (30%)
Boyfriend	2	2 (100%)	0	1	1 (100%)	0	8	3 (37.5%)	5 (62.5%)
Husband	0	0	0	2	1 (50%)	1 (50%)	2	1 (50%)	1 (50%)
Aiding and Abetting	0	0	0	0	0	0	2	2 (100%)	0
Connected to the Case	0	0	0	0	0	0	1	1	0
Boyfriend and Wife	0	0	0	0	0	0	Same Case as Below		0

Table 2. Female: Trials for Illegal Abortion (including indictments for murder, killing, theft and extortion where the charge was illegal abortion): No. of actors on trial.

	1828 - 1836	Guilty	Not Guilty	1837 - 1860	Guilty	Not Guilty	1861 - 1899	Guilty	Not Guilty
Abortionist	2	0	2 (100%)	3	0	3 (100%)	23	13 (56.5%)	10 (43.5%)
Woman Procures Abortion	0	0	0	0	0	0	2	2 (100%)	0
Boyfriend and Wife	0	0	0	0	0	0	1	1 (100%)	0

Additionally, as previously outlined, gender, in relation to crime, is a key factor to this thesis, and to discussion of differing attitudes towards lay (female) and professional (male healers). It is key to my discussion of abortionists' trials, as the gender of the abortionists often affected the outcome of the trial and how they were perceived.²³⁶ Table 1 and 2 demonstrate after 1861 56%

²³⁶ Peter King, "Gender, Crime and Justice in Late Eighteenth- and Early Nineteenth-Century England," in *Gender and Crime in Modern Europe*, ed. Meg Arnot and Cornelia Osborne (London: Routledge, 2002), 39.

of female abortionists indicted for illegal abortion at the Old Bailey for found guilty. This is compared to 74% of male abortionists found guilty. I argue this demonstrates leniency towards female, irregular offenders.

For instance, Helen Forester is referred to as a bad and unqualified midwife in the *Morning Advertiser* (1866) through statements such as ‘the painful particulars have been fully reported’, ‘the prisoner was midwife’, and ‘there appeared to be no doubt unfit.’ The reporting on the trial of midwife Mary Ann Baker in 1894²³⁷ the *Whitstable Times and Herne Bay Herald*²³⁸, the *Sheffield Evening Telegraph*²³⁹ and the *Nottingham Evening Post*²⁴⁰ all state that she committed ‘gross and criminal negligence and she [Mary Ann Baker] had caused the death of fellow creature’.²⁴¹ The implication is that a trained professional would not have carried out the same practices on the basis of greater expertise and experience. Medico-legal, legal, and public opinion towards professional and non-professional abortionists is therefore varied, these different groups held conflicting views on the levels of leniency that should exist towards these actors.

It can be argued that legal attitudes towards non-professional abortionists, someone procuring abortion, were more lenient than towards professional abortionists such as obstetricians and surgeons. For example, there are some cases of the boyfriends and husbands who have supplied abortifacients to their female partners being tried at the Old Bailey (as shown in table 2), in these cases they are most often found not guilty. The case of Edwin Sharp provides a clear example of how unregulated men were treated and can be compared to the more lenient

²³⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), January 1894, trial of MARY ANN BAKER (54) (t18940108-190).

²³⁸ ‘*Whitstable Times and Herne Bay Herald* - Saturday 20 January 1894’, British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000338/18940120/060/0006>

²³⁹ ‘*Sheffield Evening Telegraph* - Saturday 13 January 1894’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000275/18940113/015/0003>

²⁴⁰ ‘*Nottingham Evening Post* - Saturday 13 January 1894’, British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000321/18940113/026/0004>

²⁴¹ ‘*Whitstable Times and Herne Bay Herald* - Saturday 20 January 1894’, British Newspaper Archive, accessed July 11, 2018

<https://www.britishnewspaperarchive.co.uk/viewer/bl/0000338/18940120/060/0006>

and sympathetic approaches to professional medical men, such as Charles Warland were treated (the Edwin Sharp case and the Charles Warland case are connected):

The jury, after nearly an hour's deliberation, returned into court with a verdict of Guilty. Mr. Justice Kennedy said that, wicked as Warland's act was, and dangerous as it was society, he believed that his [Warland's] desire was sincere to the girl. He sentenced Warland to twelve months' hard labour. Evans, his case was the more serious because the proceedings of which he had been convicted appeared to have been his business. He sentenced him to three years' penal servitude.²⁴²

In this case, the radically different sentences reflect contrasting attitudes to abortionists depending on their professional medical status, as applied by the magistrate and the jury. This implies state attitudes towards the actions of lay and professional abortionists, in terms of the magistrate, and again public attitudes in terms of the jury.

Medico-legal attitudes towards medical men practicing abortion were also often severe in the late nineteenth century, and especially after the passing of the 1861 act. There are numerous examples of reporting of medical men struck from the register, as exemplified by Ady in 1898 and Edwin Lowe in 1870.²⁴³ In these cases professional incompetence is viewed as important to their continuing status. The men are accused of lacking vigilance and letting down the profession, and the established medical profession considered them unfit to continue their professional duty. For example, in the case of Adam Addison in 1879 (ultimately not guilty, at first sentenced to seven years' imprisonment) the judge (Mr Justice Grove) states that 'he has not done what an honest medical man would do and tried to save the life of the patient, but has

²⁴² 'St James's Gazette - Thursday 12 April 1894', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001485/18940412/066/0011>; *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), April 1894, trial of ARTHUR EDWIN SHARP EVANS (54) (t18940402-388).

²⁴³ 'The Evening Freeman. - Saturday 20 August 1870', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001312/18700820/023/0003>; 'Dundee Courier - Wednesday 19 January 1898', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000269/18980119/029/0003>

endangered her.²⁴⁴ 'Gross and criminal negligence'²⁴⁵ is often referred to, which demonstrates the importance placed on fulfilling medical duty, and avoidance of techniques considered malpractice. Which, despite the claims that medical advances made abortion safer and cleaner when practiced by trained medical men, the criminalisation of these practices classified them as misconduct. Significantly, in these cases of negligence, the conviction (or even if not found guilty) is usually manslaughter.²⁴⁶

4.5 Conclusion

To summarise, this chapter has demonstrated that mid to late nineteenth century cultural perceptions of abortionists were nuanced and did not always progress chronologically, as other scholars have argued. There were continued examples of both sympathy and condemnation of abortionists which remained apparent in the light of new legislation (the 1861 act). A close examination of abortionists' trials and press reports demonstrates that the passing of the Offences Against the Persons Act in 1861 had significant consequences for attitudes towards abortion, and abortionists. Discussion of professional and non-professional abortionists demonstrated that post 1861 much of the legal and medical profession criticised the practice of abortion, and that attitudes towards non-professional abortionists were often more lenient than towards professional abortionists. Trials and convictions increased as both professional and lay abortionists were condemned by both the medico-legal profession and the public. However, sympathy towards abortionists (both regular and irregular), as expressed and reflected in the press and the proceedings continued to exist up until the close of the century.

²⁴⁴ 'Leicester Journal - Friday 06 June 1879', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0000205/18790606/049/0008>

²⁴⁵ 'St James's Gazette - Thursday 12 April 1894', British Newspaper Archive, accessed July 11, 2018 <https://www.britishnewspaperarchive.co.uk/viewer/bl/0001485/18940412/066/0011>

²⁴⁶ *Old Bailey Proceedings Online* January 1886, WILLIAM TURNBULL (60) MARY NOTTAE (t18860111-212); *Old Bailey Proceedings Online* April 1894, ARTHUR EDWIN SHARP EVANS (54) (t18940402-388); *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), January 1894, trial of MARY ANN BAKER (54) (t18940108-190) *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 11 July 2018), November 1861, trial of ANNIE YALE (39) (t18611125-39).

Together these arguments show that cultural attitudes to abortionists in the nineteenth century were flexible, complex and contradictory, and did not shift in one continuous direction. Both sympathy and condemnation existed in parallel and were understood and expressed differently and different times and in different places, importantly in reference to different actors depending on medical training. This demonstrate the influence of abortion as understood as a medical act which needed to be controlled and regulated from the mid-century onwards.

5. Conclusion

This thesis has argued that the one impact of the criminalisation and medicalisation of abortion in the nineteenth century in the light of greater regulation of medical practitioners was on how abortionists were perceived, in the courts, in news reports, and as a broader cultural discourse. I approached these factors and events through the lens of the cultural turn of the history of medicine, and applied social constructionism to demonstrate how diverse actors had different ideas of what professional medicine was, of what abortion was, and how abortion was understood.

I demonstrated, as de Blécourt and Osborne theorise, how these perceptions were mediated through formal public domains. I also argue that both hostile and sympathetic attitudes towards regular and irregular abortionists were found in these public documents, and contribute towards shaping and reflecting cultural perceptions. Discussions of professionalism were important to this thesis, in particular, tensions between lay and regular, as analysed through Porter and de Blécourt and Osborne's discussions of alternative and professional healers. Importantly, I argue that professional medical men, such as physicians and surgeons, as well as lay practitioners, were also reported negatively in the press regarding trials of illegal abortion. The gender of abortionists affected how they were perceived, this is connected to ideas about regular and irregular practitioners.

I have shown how historians of abortion have argued that the criminalisation of abortion in the nineteenth century maps a shift from sympathy to shame in cultural perceptions of abortionists, which they argue resulted in the vilification of abortionists from the mid to late nineteenth century onwards. However, my analysis and the sources I have examined show this interpretation is too simplistic. Using the 1861 act as reference point to assess developments in cultural perceptions of abortionists has demonstrated that this act was significant and pivotal in shaping attitudes to abortionists, although not as pivotal as other scholars have assumed. In particular, while there are significant differences after the 1861 act, including a higher number of

convictions and a greater amount of public discussion of the fact that regulated abortionists were acting against a perceived moral and medical code, many sympathetic attitudes are still apparent in the late nineteenth century. Detailed analysis of these trials and press reports reveals that these attitudes are multi-vocal, changeable and nuanced and do not progress chronologically.

Methodologically, there was not as much information regarding abortionists in the trials as I would have hoped; due to the nature of the crime, many trials did not report the details of the case, however there was an overwhelming wealth of information in the newspapers reports. It is difficult to isolate these cultural perceptions, and public opinion as I discussed throughout the thesis. However, using Stoler's ideas around the spaces amongst the archives, and between the archives and the news reports, helped to isolate the hidden voices of what people thought about abortionists. For example, I reveal wider cultural perceptions, including the attitudes of men, not medical, and women, who were not procuring abortion. Greater focus on sentencing, convictions and the legal aspects in the news reports than expected, proved useful to understand state, court and legal attitudes and perceptions of abortionists, as well as to illustrate how newspapers provided scandalous stories to entertain and shock their audiences. More focus on economic dimensions, specifically regarding blackmail and extortion than I had anticipated, has highlighted interesting discussions around abortionists as profiteering and exploitative actors, again understood through concepts of professional medical boundaries. The sources I have analysed, court cases of illegal abortion and the corresponding reports, demonstrate how these ideas were divisive in the nineteenth century British context.

There are several ways in which the themes of this thesis could be extended. A recommendation for future research is more focus on the practices and materiality of these professional and lay abortionists. A more thorough and focused exploration of the procedures and techniques used by these providers using the same sources: trials and court cases. As Emma Jones achieved in her research on twentieth century abortionists, it would be valuable to see how distinctions between clean, surgical professionals, and unskilled irregulars were constructed

through these same debates. This would help provide a more detailed foundation to understand the nineteenth century contexts, but also to see how this provided a foundation for the turn away from medical towards moral definitions as argued by Moscucci. Further research could be approached through expanding the theoretical framework to include the work of new materialists such as Canning. These would approach the idea of the body as method, and would reveal new ways of understanding abortion. This would add to and build upon my research from a cultural-historical perspective of the history of medicine.

Valuable questions would concern the motivations and networks of abortionists as well as techniques and tools. It would also be valuable to explore the class and economic dimensions further, around procurers and providers. Money turned out to be a significant theme of this thesis, and it would be useful to follow up further research around transactions, to consider these changing ideas about abortion as a moral economy. There is a significant amount of information about costs, blackmail and extortion in these sources to explore these themes further.

Additionally, there are alternative questions about shame, not only around how outsiders view abortionists, but how the abortionists (lay and regular) state they are ashamed of practicing abortion and for charging money to perform it. Finally, as Lesley Hall has argued it would also be valuable to investigate the 'backstreet' world of abortionists²⁴⁷ to understand how these actors practised away from state and public scrutiny.

In summary, my research shows that while the act 1861 is pivotal, and convictions did increase, there is not the contingent progression of condemnation as hostility can be identified in earlier trials. At the same time, sympathy for the accused usually associated with earlier cases continues to be found after the 1861 act. To conclude, I argue that the cultural history of medicine helps to reveal the multi-vocal and fluid cultural perceptions of abortionists as traced through these sources.

²⁴⁷ Hall, *Sex, Gender, and Social Change in Britain since 1880*.6.

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7. Appendices

CHARLOTTE INMAN, Killing > murder; JOHN McFEDYEN, Killing > murder, 9th April 1829.

Charlotte Inman and JOHN McFedyen were indicted for the wilful murder of Sarah Ewen.

Outcome: Not Guilty

JOHN WEEKS, Miscellaneous > illegal abortion, 3rd December 1823.

John Weeks was indicted for wilfully and maliciously administering to Eliza Turner, certain medicines, drugs, and herbs, with intent to procure her miscarriage.

Outcome: Not Guilty

WILLIAM CHILDS, Miscellaneous > illegal abortion, 15th May 1834.

William Childs was indicted for that he, on the 26th of June, feloniously, wilfully, and maliciously did administer, to Mary Jane Wolfe

Outcome: Guilty, Judgment Respited.

NAOMI POORE, Miscellaneous > illegal abortion, 15th June 1835.

Naomi Poore was indicted for using a certain instrument with intent to cause the miscarriage of Mary Ann Preedy

Outcome: Not Guilty

JAMES COOK, Theft > extortion, 1st February 1836.

James Cook was indicted (8 Counts - 1 Abortion)

Outcome: Guilty

THOMAS PRIOR, Miscellaneous > illegal abortion, 19th September 1836.

Thomas Prior was indicted for unlawfully administering to Rhoda Mead a certain drug, with intent to procure her miscarriage, she being with child, but not quick with child to which he pleaded.

Outcome: Guilty, Transported for Fourteen Years.

WILLIAM HAYNES, Killing > murder, 23rd October 1843.

William Haynes was indicted for the wilful murder of Mary Haynes.

Outcome: Not Guilty (Poisoning)

WILLIAM HAYNES, Miscellaneous > illegal abortion, 27th November 1843.

William Haynes was indicted for feloniously administering to Mary Haynes, a large quantity of a certain noxious drug, viz., 2 ounces of sulphate of potass, with intent to procure her miscarriage.

Outcome: Guilty (Abortion), Confined Two Years.

SPENCER LINDFIELD, MARY ANN DRYDEN, RICHARD ORPIN, Killing > murder, Killing > murder, Miscellaneous > illegal abortion, 23rd October 1848.

Spencer Lindfield, Mary Ann Dryden, and Richard Orpin were indicted for the wilful murder of Eliza Wilson, by procuring her miscarriage with the use of a catheter (ABORTIONISTS)

Outcome: Not Guilty

JOHN WAKEHAM EDWARDS, Miscellaneous > illegal abortion, Miscellaneous > illegal abortion, 25th November 1850.

John Wakeham Edwards, feloniously attempting to procure the miscarriage of Elizabeth Hobbs, by the use of a certain instrument

Outcome: Not Guilty

HENRY SMITH, ROBERT DENN CHRISTMAS, Miscellaneous > illegal abortion, 23rd February 1852.

HENRY SMITH and ROBERT DENN CHRISTMAS, feloniously administering a certain noxious thing to Ann Hoby, with intent to procure her miscarriage. (ABORTIONISTS)

Outcome: Not Guilty

CHARLES CUNNINGHAM, JAMES THOMPSON CURRIE, GEORGE THOMAS, Miscellaneous > illegal abortion, 4th July 1853.

Charles Cunningham, James Thompson Currie, and George Thomas, feloniously using a certain instrument upon the person of Eliza Mardon, with intent to procure her miscarriage.

Outcome: Guilty, aged 48, Transported for Fifteen Years.

WILLIAM LONGMAN, Miscellaneous > illegal abortion, 9th April 1855.

William Longman, feloniously administering to Elizabeth Eldred Astins, 10 grains of a noxious thing called savin, with intent to procure miscarriage.

Outcome: Guilty, Six Year's Penal Servitude.

WILLIAM GAYLOE, Killing > manslaughter, 27th October 1856.

William Gayloe was indicted for feloniously killing and slaving Elizabeth Gaylor.

Outcome: Guilty - aged 28, Judgment reserved

THOMAS SMETHURST, Killing > murder, 15th August 1859.

Thomas Smethurst (48), was indicted for the wilful murder of Isabella Bankes; he was also charged upon the Coroner's Inquisition with the like offence.

Outcome: Guilty, Death.

ANNIE YALE, Miscellaneous > illegal abortion, 25th November 1861.

Annie Yale (39), Feloniously administering to Ann' Home, on. 6th October, a certain noxious drug, with intent to procure her miscarriage.

Outcome: Not guilty

ANNIE VALE, Miscellaneous > illegal abortion, 25th November 1861.

ANNIE VALE was again indicted for a similar offence on 26th September.

Outcome: No evidence - Not Guilty

HELEN FORESTER, Killing > murder, 11th June 1866.

Helen Forester (60), For the wilful murder of Ann Venables alias Sloman, by using an instrument to procure abortion

Outcome: No Evidence - Not Guilty

JOHN WILLIAM WELLS, Miscellaneous > illegal abortion, 10th Jan 1870

John William Wells (40), Feloniously using an instrument upon Ann Jessie Eales, with intent to procure her miscarriage.

Outcome: Not Guilty

EDWIN LOWE, Miscellaneous > illegal abortion, 6th June 1870.

Edwin Lowe (59), Feloniously administering to, and causing to be taken by, Mary Emily Harris, a certain drug, with intent to procure miscarriage.

Outcome: Guilty, Five Years Penal Servitude

CHARLES DE BADDELEY, Miscellaneous > illegal abortion; SARAH DE BADDELEY, Miscellaneous > illegal abortion, 10th July 1871.

Charles De Baddeley (41), and Sarah De Baddeley (37), Unlawfully supplying a certain noxious drug, to wit, Ergot of Rye, knowing that it was intended to procure the miscarriage of a woman.

Outcome: Guilty, 12 months' imprisonment

ANN EMERY, Miscellaneous > illegal abortion, 1st March 1875.

Ann Emery (46), Feloniously administering to Mary Ann Stanley certain noxious drugs, with intent to procure her miscarriage.

Outcome: Guilty, 12 months' imprisonment

JOHN O'CALLAGHAN, Miscellaneous > illegal abortion; PHILIP SHRIVES, Miscellaneous > illegal abortion; WILLIAM STROUD, Miscellaneous > illegal abortion; MARTHA DIFFEY, Miscellaneous > illegal abortion, 13th December 1880.

John O'Callaghan, Philip Shrives, William Stroud, and Martha Diffey, were indicted for unlawfully by false pretences and representations attempting to induce Thomas Titley to commit an indictable misdemeanour. Second Count for attempting to induce him to contravene the law of the land with intent that he should be convicted and punished. Third Count for inciting him to commit a criminal indictable offence. Fourth Count for Inciting him to supply a noxious thing, knowing the same was intended to be unlawfully used, with intent to procure the miscarriage of a women.

Outcome: Not Guilty – Fault

JULIA DEARN HARDIE, Miscellaneous > illegal abortion, 10th December 1883.

Julia Dearn Hardie was indicted for feloniously using certain instruments, with intent to procure her miscarriage.

Outcome: Not Guilty

WILLIAM TURNBULL, Killing > murder; MARY NOTTAE, Killing > murder, 11th January 1886.

William Turnbull (60) and Mary Nottae (X were indicted for the wilful murder of Charlotte Eliza Clifford.

Outcome: Guilty of manslaughter. Turnbull, Nottae – Guilty, Turnbull— Ten Years' Penal Servitude, Nottae— Eighteen Months' Hard Labour.

GEORGE HARE, LILIAN AYLIFFE, Killing > murder, Miscellaneous > illegal abortion, 6th May 1889.

George Hare (56) and Lilian Ayliffe (39) were indicted for the wilful murder of Rhoda Fayres. Messrs Charles Mathews, Horace Avory and Tickell Prosecuted; Mr. Purcell Defended.

Outcome: Guilty —Hare—, Ayliffe— Guilty, Hare— Ten Years' Penal Servitude, Ayliffe— Five Years' Penal Servitude.

GEORGE DALE, AGNES DALE, Miscellaneous > illegal abortion, 16th September 1889.

George Dale (36) and Agnes Dale (30), Feloniously using an instrument upon Annie Elizabeth Smith, with intent to procure her miscarriage.

Outcome: Guilty. There were five other indictments against the prisoners for like offences upon other persons. George Dale, Ten Years' Penal Servitude, Agnes Dale, Five Years' Penal Servitude.

THOMAS NEILL, Killing > murder, 17th October 1892.

Thomas Neill (38), Indicted for, and charged on the Coroners Inquisition with, the wilful murder of Matilda Clover. The Attorney-General (Sir Charles Russell, Q.C.), the Hon. Bernard Coleridge, Messrs. Sutton And C.F. GILL Prosecuted; Messrs. Geoghegan, Warburton, Luxmore Drew, And Scratton Defended.

Outcome: Guilty, Death

MARY ANN BAKER, Killing > murder, 8th January 1894.

Mary Ann Baker (54), was indicted for the wilful murder of Edith Olive Bannister.

Outcome: Guilty of Manslaughter, 2 years' penal servitude

HAROLD WOOD, Miscellaneous > illegal abortion; ANNIE BOWYER, Miscellaneous > illegal abortion; EMMA NICHOLSON, Miscellaneous > illegal abortion, 25th March 1895.

Harold Wood (30), Annie Bowyer (24), and Emma Nicholson, unlawfully conspiring to procure the abortion of the said Emma Nicholson by using certain instruments.

Outcome: Not Guilty

JAMES CHARLES ADY, Miscellaneous > illegal abortion, 10th January 1898.

James Charles Ady (42), Unlawfully conspiring with Leoni Tomasso to procure the miscarriage of Marguerite Baron.

Outcome: Guilty, 6 years' penal servitude

JOHN LLOYD WHITMARSH, Killing > murder, 24th October 1898.

John Lloyd Whitmarsh (58), was indicted for and charged on the Coroner's Inquisition with the Wilful murder of Alice Bayly.

Outcome: Guilty, strongly recommended to mercy by the Jury, Death

JANE WHITE, Killing > murder, 6th February 1899.

Jane White (67) was indicted for and charged on the Coroner's Inquisition with, the wilful murder of Alice Birmingham, otherwise known as Alice Angelinetta.

Outcome: Guilty, Death