ABORTION BY ASSAULT

Violence against Pregnant Women in Thirteenth- and Fourteenth-Century England

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According to medieval common law, assault against a pregnant woman causing miscarriage after the first trimester was homicide. Some scholars have argued, however, that in practice English jurors refused to acknowledge assaults of this nature as homicide. The underlying argument is that because abortion by assault is a crime against women, male jurors were loath to impose the death penalty. A reexamination of the material notes that while conviction rates for assault on pregnant women were low, the English believed such assaults were felonies. Moreover, the role played by husbands as plaintiffs makes it clear that this was not merely a women's issue. Abortion by assault was never an easy judgment for jurors to deliver. In particular, the medical expertise required to pass judgment on such a case presented jurors with difficulties that may have prevented conviction of abortion by assault in many cases.

The recent signing of the Unborn Victims of Violence Act by President George W. Bush, passed by the Senate in March 2004 and signed into law on 1 April of the same year, in many ways is a dramatic departure from current western positions on the legal rights of a fetus. Since the famed American case of *Roe v. Wade*, law courts throughout the western world have generally refused to acknowledge a fetus as a separate legal entity capable of being victimized. The passage of this bill and its ratification by Bush both endows fetuses with legal life and champions their human rights. Thus, under federal law the death of a fetus, at any stage of development, resulting from a violent attack, is now recognized as homicide. It should be acknowledged, however, that this is not the first time western law has claimed rights for the unborn. As early as the Middle Ages, English common law courts adopted a harsh stance on the issue of abortion by assault, although it is important to note that medieval Englishmen defined abortion somewhat differently than we do today. Medieval legal treatises emphasized two pivotal moments. First, the quickening, meaning the earliest observance of fetal movement (roughly around 18 weeks), was significant because the medieval church believed fetal movement was a sign that a fetus had acquired its soul.¹ Second, the treatises highlighted the formation of the fetus, thought to have occurred some weeks earlier. Tampering with

the fetus before these two events (what we today would call "abortion"), although considered sinful, as was any act that interfered with the natural process of "childbigetyng,"² was entirely licit. After formation and the quickening, in particular, medieval Englishmen categorized such an attack as both abortion and homicide.³

Nonetheless, studies of abortion by assault in the medieval period demonstrate that the actual prosecution of assailants was difficult, and suggest that jurors may have resisted such a straightforward explanation of the matter. Drawing their conclusions from the overwhelming tendency of jurors to acquit those accused of abortion by assault, modern critics have argued that, in practice, jurors disregarded legal prescription. In his 1971 discussion of abortion, legal historian Cyril C. Means, Jr. maintained that not only was an abortion not felonious in medieval England, it was not even criminal.⁴ In a more recent and dispassionate treatment of the subject, historian John M. Riddle has reminded us that we "must distinguish between legal principles as known by jurists and the principles of fact on which juries were willing to find people guilty." While medieval common law probably viewed abortion by assault as a crime, English jurors did not.⁵ One of the underlying arguments in much of the secondary literature has been that because abortion by assault, like rape, was a crime against women, medieval juries composed entirely of men were hesitant to send the accused to his death.⁶ This does not suggest that medieval men and women were oblivious to assaults of this nature. As Riddle has argued, "[w]ere the act not considered wrong, ... no one would have been brought to justice."⁷ However, jurors may have believed the crime did not fit the punishment, as death was the only penalty assigned for felony in medieval England. Thus, although medieval jurors may have recognized the seriousness of the crime, they were reluctant to declare it a homicide, a capital crime.

The goal of this article is to offer a more nuanced assessment of the medieval prosecution of abortion by assault, by examining forty-four such cases from primarily royal, but also ecclesiastical, court documents. The records themselves suggest that the beliefs of medieval jurors regarding abortion by assault may have been more complex than has been imagined previously. This article will endeavor to highlight a number of pertinent features. To begin, in light of Means's bold assertion, it is important to emphasize that there is little reason to believe that medieval men and women did not see this as a serious crime and, in fact, treat it as a felony. The role played by husbands as plaintiffs, in particular, makes it clear that this was not just a women's issue. Even so, the exceptionally low rate of convictions must be acknowledged and explained. Plaintiffs who alleged abortion by assault presented jurors with a difficult matter. Not only did jurors have to negotiate communal values, parental loss, and (often) a thorny situation of

her word against his; they were also required to pass judgment on a range of medical and legal issues that were not obvious to most medieval men. Particularly in the realm of obstetrics, a branch of medicine described by some as “women’s business,” male jurors may have felt that such a crucial decision, in which the life of the defendant lay in their hands, was simply beyond their knowledge or experience.⁸ An analysis of verdicts in this respect, then, tells us less about whether jurors believed it to be a felony than about levels of confidence and education concerning women’s bodies.

Ultimately, this article hopes to propose some of the reasons why medieval jurors often found themselves incapable of implementing the law to its fullest, with the loftier aspiration of suggesting that American courts pay heed to this medieval precedent. Some of the same difficulties encountered by medieval jurors may still be present as obstacles for modern jurors and justices.

Finally, it is important to clarify that the phrase “abortion by assault” was coined for this article; medieval authorities would have referred to this simply as abortion or, often, a miscarriage by force. Since the word “abortion” today carries such strong moral and political meanings, it seemed misleading to employ this term exclusively. However, because an assault of this nature is so closely tied in with medieval conceptions of abortion, it seemed inappropriate to give up the term altogether. “Abortion by assault,” then, is a modern hybrid that best captures the medieval spirit, while at the same time providing some distance from today’s construction of abortion.

The Theory of Law

John Riddle has suggested that assault causing a miscarriage was the basis of England’s legal definition of abortion and that this principle is founded on a passage from Exodus 21:22–25: “If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman’s husband will lay upon him; and he shall pay as the judges determine. And if any mischief follow, then thou shalt give life for life. Eye for eye, tooth for tooth, hand for hand, foot for foot. Burning for burning, wound for wound, stripe for stripe.”⁹ Although the Biblical account is perhaps more graphic and explicit than the legal treatises of medieval England, its depiction captures the spirit embraced by both the church and the major works of medieval law such as Bracton’s *On the Laws and Customs of England* and *Fleta*. In its discussion of abortion, the thirteenth-century treatise *Bracton* assumed an unequivocal position on the felonious nature of the act: “If one strikes a pregnant woman or gives her poison in order to procure an abortion, if the foetus is already formed or quickened, especially if it is quickened, he

commits homicide."¹⁰ The treatise does not leave much room for debate. *Fleta*, an anonymous legal treatise written during the time of Edward III (1271–1307), espoused a similar approach. It declared that any person who "has pressed upon a pregnant woman or has given her poison or has struck her in order to procure an abortion or to prevent conception, if the fetus was already formed and quickened," was guilty of homicide.¹¹ *Bracton* and *Fleta* between them thus constructed a solid case for viewing abortion by assault as not only an illegal act, but also a felony.

The difficulty, of course, lies in discovering whether these treatises accurately reflected contemporary court practices. The harsh stance adopted by both these treatises does not find resonance in other contemporary (although admittedly less respected) works, such as Andrew Horne's *Mirror of Justices* (1290s) or the thirteenth-century treatise *Britton*. On the surface, Horne's *Mirror of Justices* seemed to contradict his contemporaries. The *Mirror* stated: "Of infants killed ye are to distinguish whether they be killed in their mother's womb or after their births; in the first case it is not adjudged murder; for that none can judge whether it be a child before it be seen, and known whether it be a monster or not." Here, it is important to note that Horne's statement may have spoken to a very definite variety of abortion. Medieval tradition interpreted monstrous births as a sign from God; the infant's deformity was a physical representation of the moral depravity of the parent(s). A woman who conceived outside of marriage or within the bounds of an adulterous relationship might expect to give birth to a monster, and thus have her immorality exposed publicly.¹² Given the association of monsters with dishonest conception, Horne was probably referring here to the stereotypical abortion: the mother-to-be independently pursuing a course of action intended to expel the fetus and thus prevent the birth of an illegitimate child. Horne may have shared similar beliefs about abortion by assault and its legitimacy in a court of law, but without more context for his statement, this is simply not possible to discern.

Britton, by contrast, took a definitive stance against all "appeals" (the medieval term for private criminal charges) of abortion: "For an infant killed within her womb, she may not bring any appeal, no one being bound to answer an appeal of felony, where the plaintiff cannot set for the name of the person against whom the felony was committed."¹³ It is striking that *Britton's* concern very much reflects modern western practice since *Roe v. Wade*: because the fetus is not a distinct legal entity (that is, a person with a name), the law cannot recognize it as a victim. It is difficult to discover what bearing, if any, *Britton's* firm statement had on legal practice. Given the presence of appeals for abortion by assault in medieval English courts, the standpoint of *Bracton* and *Fleta* inevitably presented the most persuasive argument for actual legal practice. At the very least, both plaintiffs and

royal justices considered forced miscarriages of this nature to be felonies. However, the value in *Britton's* perspective might have been to provide insight into jurors' mentality: it was entirely possible that jurors felt uncomfortable passing sentence in a case where a legitimate (that is, *breathing, named*) victim simply did not exist.

The Records

Abortion by assault was never a common appeal. Thus, any attempt to examine cases of this nature must inevitably employ a wide variety of sources. For the purposes of this article, cases have been drawn from three main types of legal documents. A small number are drawn from coroners' rolls, which record the judgments of the county coroner and his jury of local inhabitants summoned first to investigate the scene of the crime.¹⁴ The majority are taken from eyre, assize, and gaol delivery rolls, those documents that record the formal indictments and trial enrollments of these cases, and sometimes record the final verdicts on the case after a trial before royal justices.¹⁵ Finally, a very small number of cases from ecclesiastical act books, which record the disciplinary cases from the ecclesiastical courts, have been employed for this study. In total, I have uncovered forty-four instances of abortion by assault.

Admittedly, this is a small number of cases. Perhaps the first question to ask is, why so few? There are a number of possible explanations relevant to the medieval period. First, many women, particularly first-time mothers who experienced a slow rate of growth and had little familiarity with symptoms of pregnancy, simply may not have realized that conception had taken place until the pregnancy was quite visible (possibly well into the second trimester). At a time when malnutrition or poor health might have led to irregular menstrual cycles for many women, a missed period simply was not a reliable indicator of pregnancy. Second, because medieval common law required that the assault take place after the first fetal movement, many women in the early stages of a pregnancy might not have believed that the assault upon them constituted felony. Third, and perhaps more importantly, it is entirely possible that medieval Englishmen and women had a powerful respect for the taboo of striking a pregnant woman. The surviving records attest that medieval writers viewed pregnancy as a horrendous experience for women to undergo. Bartholomew the Englishman's thirteenth-century proto-encyclopedia, *On the Properties of Things*, summarized best the dangers a woman might experience: "[m]others have nausea and vomiting and are heavy and cannot work. In labor, they are compelled to cry and are easily killed, especially young women with small and narrow members."¹⁶ It was a common belief that "childbirth made a woman

especially vulnerable to [demonic] possession."¹⁷ At the very least, suffering had its rewards: "[a]mong the reasons given to children for honoring their parents was the agony and danger that their mothers underwent in pregnancy and labor."¹⁸ Believing that pregnant women were frail and in some distress (physically and, in particular, spiritually), it is possible that the vast majority of medieval Englishmen and women, even when angered, refrained from striking a pregnant woman.

Here, it is also worthy of note that the king's courts were not the only legal recourse for victims of such an attack. A study of the records of the late medieval province of Canterbury takes notice of at least two cases of abortion by assault. In the first, John Wren was cited to appear before the Commissary court of the diocese of London in the year 1487. The court accused him of having beaten his pregnant wife so severely that he killed the child in her belly.¹⁹ The second case, taken from a Canterbury act book of 1416, was very similar in nature. In this instance, however, the accused successfully underwent canonical purgation to establish his innocence in the matter.²⁰ The register of the Dean of Salisbury, 1404–17, also includes a case of abortion by assault. John Warham of Frome was accused of having beaten his wife so that she gave birth to a stillborn child. He also denied the charges and was purged.²¹ It is important to note that these cases were exceptional. A cursory examination of act books and archbishops' registers from both York and Canterbury strongly suggests that the church rarely addressed matters of this nature.²² Nevertheless, the appearance of these few cases before ecclesiastical rather than royal officials demands some explanation. In each of these three cases, the husband stood accused of the crime. Because domestic violence usually fell within the purview of the English church, it is not surprising that the church's officials should have felt assaults of this nature best belonged to ecclesiastical jurisdiction.²³ These few cases do not undermine the felonious nature of abortion by assault, but they do suggest that the royal records cannot give us the whole picture in terms of abortion by assault. Even if abortion by assault appeared rarely in the records of the English church, clergymen may have felt compelled to intervene privately in such cases where domestic violence was the cause.

Although small in number, this sample of forty-four cases is capable of demonstrating much about popular and legal perceptions of an uncommon and unfortunate crime.²⁴

Was Abortion by Assault a Medieval Felony?

Contrary to Means's bold statement that, in medieval England, abortion by assault "simply was not an offense of any kind, no matter at what stage of gestation it was performed," there is very little reason to believe

that medieval Englishmen did not consider abortion by assault a felony.²⁵ The reactions of royal officials confirm that they considered abortion by assault a matter of felonious proportions. The very fact that justices of assize tried cases of abortion by assault, however rarely, reminds us of the seriousness of the matter. Men and women accused of assaults of this nature were imprisoned until their trial and then brought before royal justices to defend themselves, just like any other felon. Not only did many of these cases appear in records of gaol delivery (felony trial records), but the term itself materializes in a number of these indictments. In 1242, when William Bertone appeared in court to respond to allegations of abortion, he referred specifically to the act as a "felony."²⁶ Plaintiffs also commonly alleged that an abortion was carried out "feloniously."²⁷ For example, when Maud, wife of William Buck, and her daughter Stanota were indicted for allegedly assaulting Sarah, wife of Aubyn the porter, causing her to give birth prematurely to a male child, the record notes that they did so "wickedly and feloniously." Maud and Stanota appeared in court to respond to the allegations, "wholly deny[ing] the felony and whatever is against the king's peace."²⁸ More important still, jurors often described assaults of this nature with censure. When Ralf of Sandford was appealed for causing the abortion of Sybil, daughter of Engelard, the indictment notes that he did this "in the peace of the lord king and wickedly and in the peace given her in the shire court by the sheriff."²⁹ Many other records of abortion contain similar examples of this formulaic language, conveying both a sense of the seriousness of the crime and the jurors' aversion for the act.³⁰ Indictments alone, then, suggest that there is very little reason to believe that abortion by assault was not treated as a serious, if not reprehensible, crime by royal justices, plaintiffs, jurors, and defendants, male and female alike.

This conclusion is supported by a case of defamation from the year 1341 or 1342, appearing in the register of John Kirkby, Bishop of Carlisle. Thomas Lengleys, a knight, complained of being slandered maliciously. Noting that his reputation has "been gravely harmed," the mandate states that several unknown persons allege, among other acts of domestic violence, that "when [his wife Alice] was pregnant, he so injured her that he killed the child in her womb."³¹ Whether fact or pure fiction, this "malicious" rumor offers important insight into popular perceptions.³² Clearly, Sir Thomas believed that medieval Englishmen considered abortion by assault to be of such a grievous nature that it was worth paying the high costs of litigation to initiate a suit of defamation and clear his name.

A Woman's Issue?

Of the forty cases of abortion by assault that appear specifically in royal

records, the rolls record fourteen as appeals, or private criminal accusations. It is striking that of these fourteen cases, six were appealed by women (at all times the victims themselves), six by men (often their husbands), and two by husband and wife jointly.³³ Although it is usually difficult to determine accurately the social status of plaintiffs from the information provided by medieval appeals, all of these women and men probably belonged to the middling to lower ranks of medieval society. It has long been recognized that the upper ranks of medieval society mostly bypassed the king's courts and resolved their problems in alternative ways; while the poorest in society were probably unable to afford the cost of a writ (the court order required to initiate the legal process).³⁴

If, as the secondary literature on the matter hints, abortion by assault was, in fact, a woman's issue, why did so many men appear as plaintiffs? Here, it is remarkable that jurors themselves sometimes claimed only women should appeal in a case of abortion. For example, when Alice, wife of Geoffrey of St. Albans, was beaten by Stephen Tulbuche in March of 1234 and subsequently miscarried, her husband found pledges³⁵ to prosecute him. The verdict of the jurors demonstrates that, in part, the wife's reluctance to pursue her abuser herself cast a shadow of doubt over the case. In their determination of a false appeal (a decision by the court that the plaintiff's claim was groundless), they state specifically that it is "because his wife is still living and takes no action."³⁶ Similarly, a Cornwall case from 1284 notes that when Mabel de Trethys was beaten by John Boleheved so that she aborted a male child, John Hobba, whose relationship to Mabel was not specified, brought the appeal forward. The judgment of the jury was that no one ought to appeal in such a case except the woman herself.³⁷

Observations of this nature lend some insight into how jurors understood the crime. Abortion by assault, in essence, was composed of not one, but two offenses: personal injury against the woman, as well as homicide. Because medieval common law restricted women's right to pursue an appeal at law to the death of their husbands or personal injury (usually interpreted as rape), in theory, women should not have been capable of appealing abortion by assault, just as they were (theoretically) prohibited from appealing the homicide of a live child.³⁸ That they did confirms historian Patricia Orr's conclusion that, although operative, the limiting rule "was flouted widely enough to make the appeal available to women."³⁹ The statements of these two juries, however, suggest that some confusion may have existed among medieval Englishmen about the legal position of such a crime. Both Alice and Mabel's juries ostensibly defined abortion by assault only as a personal injury, choosing to ignore the larger implications of the crime. Because these women were "most nearly affected by the offense," the commonly accepted requirement for an appellant within medieval courts,

in practice they were the most logical ones to lodge a complaint in a case of assault (if not homicide).⁴⁰ This leaves us with the question, if all jurors interpreted abortion by assault as, primarily, injury to the woman herself, why were more cases not quashed on these grounds? Conversely, if jurors generally understood abortion by assault as homicide, why did the courts permit so many women to bring appeals of this sort? In all likelihood, the dual nature of the crime encouraged royal justices to grant some leeway in appeals of abortion by assault.

Regardless of how jurors or justices understood the crime itself, it seems clear that men were eager to involve themselves in cases of abortion by assault. Over half the appeals were brought by men (individually or jointly with their wives). Concern for the welfare of their wives surely provides a partial explanation for their involvement, as well as demands for retribution for the possibility of future infertility resulting from the attack. A strong sense of loss probably motivated many of these appealers also. Although historians often depict childbirth as an entirely feminine moment, involving only women and valorized by women alone, men's recollections of purification rites demonstrate that fathers also delighted in the birth of a child.⁴¹ For them, it was "a public event celebrating paternity and lineage."⁴² They took advantage of this moment to organize lavish feasts, with both parents donning new robes and distributing tokens to everyone in attendance. Moreover, purification feasts allowed husbands to take pride in their masculinity. "[T]he presence of both the infant heir and its mother [at the feast] proclaimed to all gathered the potency of their host. A woman's purification not only marked her return to church, but also signalled her return to the conjugal bed. The infant heir testified to the activity therein."⁴³ Being deprived of such an auspicious and prestigious event of communal celebration, as well as the loss of a potential heir, was probably not taken lightly by most husbands.

Why such a high rate of acquittal?

While jurors recognized the felonious nature of abortion by assault, they were reluctant to punish defendants for this offense. In seventeen out of forty royal records of abortion, the case did not proceed through to completion, or a final verdict was not recorded. Of the remainder, the records report twenty-one acquittals and two convictions. The two cases in which the jury yielded an unfavorable verdict are not particularly instructive. A Middlesex Eyre⁴⁴ from 1320 or 1321 records the indictment of Maud de Haule, who pushed Joan de Hallynghurst and caused her to fall, aborting her unborn child. The roll reports that Maud was hanged for her actions. Maud's indictment provides no other details to illuminate its exceptional

nature, although it may be significant that Maud was one of the few female perpetrators.⁴⁵ In the second case, taken from the Hampshire eyre of 1236, John the Breton was indicted for beating Matilda Dunning, a pregnant woman, so that he killed the child in her stomach. The record states that the jury declared him guilty of the death. Because he had fled immediately after the crime, he was outlawed.⁴⁶

Such a high rate of acquittal for abortions by assault demonstrates that juries encountered some difficulty convicting alleged assailants. If jurors had difficulty judging an abortion suit, we should not be surprised, given they so rarely had an opportunity to do so. Not only were appeals or indictments for abortion by assault rare, it was even more unusual for a defendant to stand trial. Of the forty cases of abortion by assault appearing in the royal courts, ten defendants fled and two died before their cases were even brought to justice.⁴⁷ Clearly, medieval juries had little experience passing judgment on this matter.⁴⁸ Here, it is important also to remember that medieval jurors were inclined to acquit in most cases of felony, not just abortions by assault.⁴⁹ Jurors seem to have considered indictment itself a punishment, "since it necessitated either a costly stay in gaol while awaiting trial or the expense of a trip to the county gaol for the trial," a much more fitting punishment than death for most crimes.⁵⁰ Such a reluctance to convict may well explain a good number of these acquittals.

A better answer to this query, however, may be that jurors lacked the necessary confidence in their evidence to condemn a man or woman to death. Even a cursory glance at the cases offers some support for this conclusion. As mentioned above, ten defendants fled and two died before their trials. In another nine cases, the prosecution's key witness (that is, the victim) also died before the case could come to court.⁵¹ Thus, in only nineteen cases of abortion by assault were all parties available for trial. Given that assaults of this nature were most often the result of fairly private encounters, the success of a case likely relied on the presence of both litigants. The absence of witnesses on its own may have led to the dismissal of many cases. For example, a Somerset appeal from the year 1415 recounts the allegations levied by a woman named Elizabeth against John Cokkes. While the jurors confidently proclaimed his guilt in a number of offenses, they stated that they "in no wise know whether or not he beat and wounded the said Elizabeth." The testimony of a single witness might have gone far to strengthen her appeal.⁵² Many jurors, confronted with cases of her word against his, must have felt similarly frustrated.

The medical dimensions of abortion by assault may have presented some obstacles to even the most diligent of jurors. With a case of abortion by assault, the crux of the issue was to demonstrate competently the causal connection between a beating and a subsequent miscarriage. This was no

easy task. Even today, with higher levels of education and a more comprehensive knowledge of female anatomy, most men and women would be hard-pressed to determine the level of violence required to produce a miscarriage. If a woman could provide evidence of bruising or bleeding in the abdominal region, the injuries would probably weaken the defendant's case substantially. The 1202 appeal of William Burel in the beating of his wife Margery certainly highlights the importance of visible evidence of abuse, in this case blood and wounds.⁵³ But what was a jury to do if the blows were "bloodless," as one deceased victim's father alleged?⁵⁴ When William Ammory supposedly broke into the home of Emma de Whitewell, threw her down and beat her so violently that she gave birth to a stillborn child, the plaintiff reported that she was confined to her bed for a period of seven weeks after the incident; and yet, the jury chose to acquit.⁵⁵ It is possible that bed rest was good evidence in a case of assault, but not necessarily enough to convict William of homicide. At the very least, it seems clear that neither jurors nor plaintiffs were prepared to argue that a woman miscarried from a simple slap or jab to the belly. In at least two cases, one from the year 1280, the other from 1361 or 1362, the attacks were of a particularly brutal nature. The rolls report that both victims aborted due to beatings during the course of a rape.⁵⁶ Unfortunately, none of these records tells us whether the attackers were aware of their victims' pregnancies at the time of the beating; not that ignorance justifies violence, but foreknowledge of a woman's pregnant state meant that they knowingly engaged in a felony, again a crime entailing a much greater penalty than the trespass of assault.

A number of cases underscore the difficulty of creating a link between a beating and a subsequent abortion. For example, the jury trying Stephen Tulbuche of London appeared confident in their decision that although Stephen did beat and ill-treat Alice, wife of Geoffrey of St. Albans, "it was not from that cause that she miscarried."⁵⁷ Similarly, jurors in the 1249 appeal of Cecily, wife of Robert the merchant, against Philip of Andevere also argued that he struck Cecily with a small rod, "but they say on their oaths that she did not miscarry through the blow." Thus, they acquitted Philip of abortion, but the court ordered him arrested for assault.⁵⁸ Maud, wife of Walter Buk, and her daughter provided an even more reasonable defense for themselves against allegations of abortion. While they both denied whole-heartedly that they had beaten Sarah, wife of Aubyn the porter in June of 1238 as accused, their defense centered on the implausibility of the plaintiff's account. Sarah argued that the attack brought on an early birth fifteen weeks after the incident; the child was born living, but survived only three days, just long enough to be baptized. In their defense, Maud and Stanota claimed that even if they had beaten her, such a long interlude between the attack and the supposedly premature birth negated any pos-

sible connection. Moreover, the child was born living. If the abuse were as vehement as alleged by the plaintiff, would the child have survived another fifteen weeks? The finding of the jury, that Maud and Stanota never beat Sarah nor did she give birth before her time, reveals the persuasiveness of their explanation.⁵⁹

In some cases, the corpse itself afforded evidence of violent attack. In the year 1260, when Alice, daughter of Richard Baldewin of Swaffham Prior, aborted a male child, the boy was born with one shin broken.⁶⁰ Alice daughter of Thomas of Northlegh's son allegedly was born with a rock imbedded in his head, supposedly the same rock thrown by Emma, wife of Reginald the mercer.⁶¹ Before the London Eyre of 1244, Isabel, wife of Serlo of London, brought a witness who claimed her baby was born "with its head crushed and its left arm broken in two places and its whole body blackened by that beating."⁶² In the first two cases the defendants fled, and thus no evidence can be gleaned about the reliability of an injured corpse as evidence. In the third, royal justices reasoned that the evidence was of such a damning nature that the defendant could not possibly hope to clear his name by the verdict of the mayor and citizens of London. Rather, he was required to defend himself thirty-six-handed, that is, with eighteen compurgators (character witnesses) chosen from one side of the Walbrook and eighteen from the other.⁶³ Although the record offers no conclusion to this case, the reader is left with a powerful impression that the defendant's future was bleak.

While the records provide evidence of only a few juries who openly questioned the correlation between violent encounters and subsequent miscarriages, it is not hard to imagine that this link posed problems for many (male) jurors. Once again, it is essential to remember that medieval English society viewed pregnancy and birth as "female preserves."⁶⁴ This does not suggest that medieval men were entirely uninformed on the subject of pregnancy. As husbands and fathers at a time when most women spent the majority of their childbearing years pregnant or nursing, many men might have claimed a measure of knowledge through simple observation. Would an all-male jury have had enough confidence in their familiarity with women's bodies and miscarriages in general to condemn a man or woman to death? Given the complexity of the issue, this kind of poise and self-belief may have evaded most jurors.

Because the quickening was central to determining whether a felony had taken place, jurors were required to extend their knowledge of pregnancy even further. Accordingly, some plaintiffs were quick to emphasize the presence of fetal movement. At least four plaintiffs described the attack as resulting in the slaying of the child or infant "living in her womb," while another five noted that the beating had caused the death of an unborn child.

Only one case makes it explicit that the jury was asked to pass judgment on this issue. In the 1292 beating of Christine wife of William Treweman by John of Wyntercote, a Hereford jury was asked “whether the aforesaid abortive child ever had life in his mother’s womb before she gave birth.” Although the record provides no response to this query, nevertheless it is significant that the question was put forward by a royal justice.⁶⁵ Only one case offers evidence to suggest that juries estimated the age of the fetus. When Walter Gode, Richard the potter, his brother Stephen, and Herbert Carpenter raped Alice, wife of Adam Prest, with such violence that they caused her to abort, jurors reported the age of the aborted infant as having been roughly one month. Although the record from the Southampton eyre of 1280 notes that the four men were charged with homicide, they were acquitted of the crime. The indictment, probably the work of an overzealous grand jury, was open to dismissal. At one month of age the quickening could not possibly have taken place, thus the abortion, while sinful, was not criminal. Even so, the court ordered the accused committed to prison for the assault (presumably, of the woman).⁶⁶ The indictment of these four men stands out as an exception. For the most part jurors offered no indication of the age of the aborted fetus.⁶⁷

The significance of the quickening to a successful suit of abortion may have presented some worries for jurors. Many medieval men may well have been ill-informed about the various stages of pregnancy and thus unaware at what point a woman should be able to sense fetal movement. Moreover, the observance of fetal movement is a very subjective experience; a jury had to rely almost exclusively on the testimony of the plaintiff. In a world where women’s voices carried little weight in courts of law, some jurors may have been reluctant to stake a man’s life on the word of a woman. If the disgraceful history of rape in the Western courts can teach us anything, when a man’s word is pitted against a woman’s, rarely is she capable of swaying a jury in her favor.⁶⁸

Who were the defendants?

Certainly, the most shocking and well-publicized cases of abortion by assault today are those in which domestic violence features largely.⁶⁹ Medieval society was no stranger to violence of this nature. In at least nine of the forty-four cases (both royal and ecclesiastical) under examination, pregnant wives allegedly lost their babies at the hands of their husbands. In four of these cases, the wives also lost their lives. Most of these cases probably represent situations of maltreatment in which a domestic dispute escalated out of control. The ambiguity of the common law where spousal abuse was concerned, however, may have afforded some husbands immunity from

punishment. Both common and canon law supported a husband's right to discipline his wife with a reasonable and moderate degree of physical force. While a man almost certainly found it difficult to justify his wife's death, an abortion might be explained away as the unintentional outcome of a "well-intended" blow. In this respect, the credibility of the accused's defense relied on the nature of the beating; evidence of blows directed to a woman's uterus or lower back probably made such a defense unsustainable. A push or shove, on the other hand, left the motive open to interpretation.

In the absence of effective contraception, some medieval husbands may have felt justified in the abuse of their pregnant wives. The frequency with which extra-marital affairs led to unwanted pregnancies may have stirred feelings of mistrust and economic concerns. Few men in this period were content to raise a child they knew was not their own, let alone allow such a child to inherit family land. While the records rarely permit us insight into motivation, in at least one case from this sample the husband's actions suggest that he suspected dishonesty on his wife's part. Allegedly, in the year 1348 William of Garton of Newsome in Rydale feloniously slew his wife Ellen "with an infant living in her womb." After killing his wife and her unborn child, William took his servants with him to slay an unnamed man, referred to only as a stranger to the community (presumably his wife's lover—how else might these two deaths be related?). He drowned the man in the river near the mill, although the body did not surface for another six months. When William appeared before the court to respond to these allegations, he pleaded not guilty; the jury decided to acquit.⁷⁰

At first glance, the decision of the jurors to acquit in this case may seem rash, even foolhardy. Nonetheless, their decision must be examined in context. If William's second victim was indeed his wife's lover, an acquittal may have seemed particularly appropriate. Medieval law "almost universally granted a husband the right to kill his wife and her lover when caught *in flagrante*."⁷¹ Even medieval sermon stories, intended to teach parishioners good Christian morals, sometimes supported the killing of a wife and her lover.⁷² In the minds of many medieval men and women, a transgression of this nature, which defied both gender and social hierarchies, justified homicide.

At times, jurors may have suspected that some husbands consciously assaulted their wives with the intention of causing an abortion. Certainly, the medical literature and practices of the time endorsed physical force as a means of abortion. Some medical writers, such as Soranus of Ephesos in his *Gynecology*, advocated the violent shaking of a pregnant woman to induce a birth.⁷³ Soranus intended his advice primarily to aid physicians in the removal of a dead fetus; however, it is no great leap in logic to conclude that even healthy pregnancies might be terminated by similar

activity. Avicenna's *Canon of Medicine*, available in Latin after 1150 and the standard textbook used by European medical schools, included a wide variety of abortion techniques, from excessive exercise and baths to violent jumping.⁷⁴ Pressing heavily on the abdomen to hasten delivery was a common practice of medieval midwives, indicating that manual force was a well-known trick of the trade and those wishing to procure an abortion might have exploited this knowledge.⁷⁵ While husbands generally did not have ready access to this information, a shrewd man would have known where such knowledge might be bought. None of the records in this study makes it clear that intentional abortion is what the defendant had in mind when he initiated the beating; and yet, in some cases, jurors probably imagined this was a possibility. Husbands, suspicious about paternity, may have believed abortion a better solution than infanticide; lovers fearing an impending suit for child support may have come to the same conclusion.⁷⁶ The only record to hint at this possibility is the 1279 indictment of Master Thomas, a surgeon from Kent, who supposedly struck Agnes le Deyster so that she aborted a female fetus.⁷⁷ A surgeon should have been well aware of the damage beating a pregnant woman might incur. The fact that Agnes's case landed in court, however, would strongly suggest that the surgeon had not acted under her specific direction.

More often than not, there was no known relationship between the victim and her attacker(s). In some of these cases it seems clear that the victim was simply in the wrong place at the wrong time. For example, in 1279 when several men beat Agnes, wife of William de Pekerringe, so that she aborted a child, her husband claimed the beating occurred while they were robbing his home.⁷⁸ Similarly, in December of 1273 when Isabel, wife of Robert le Gras, and Isabel, wife of John de Benteley, were so ill-treated by Richard Taillhehaste that both women gave birth to still-born boys, they, too, argued that robbery was the motivation for breaking into Robert's home.⁷⁹ Sybil, daughter of Engelard, allegedly beaten by Ralf of Sandford, also claimed that her abortion occurred while Ralf was breaking into her home and carrying off her chattels.⁸⁰ Other cases of assault may conceal similar situations of burglary; without some success, however, a court scribe would not have considered it a point worthy of note in an indictment (that is, it was simply a background detail, rather than an additional trespass or felony).

Disagreements that became physically violent account for the majority of abortions by assault. In these cases, the records leave no doubt that physical assault was the primary offense, not an afterthought to another felony altogether. For example, a Middlesex case from the year 1320 or 1321 notes that Agnes wife of Thomas Aleyn's abortion resulted from an argument with Thomas de Cobbeham, in which Agnes so enraged him that

Thomas threw her out of his home where she fell upon a rock, then aborted four days later.⁸¹ In the year 1326, when Agnes Houdydoudy supposedly struck Lucy, wife of Richard de Barstaple, in the stomach with her fist and knees, causing the death of not only her unborn child but also Lucy herself, the attack was reported to have grown out of a quarrel.⁸²

The overwhelming conclusion to be drawn about the perpetrators of abortion by assault, however, is that it was a crime committed by men. In total, men stood accused in thirty-eight of the forty-four cases (in the remaining, five were committed by women, one by a crowd).

Conclusion

Abortion by assault was not an easy issue for the courts of medieval England to resolve. Assaults of this nature brought medieval jurors and officials of the court face-to-face with a wide range of complex concerns that may still present problems today for the prosecution of feticide. It is not hard to imagine that the discomfort felt by medieval jurors in passing judgments in favor of an unidentifiable victim, a concern expressed most eloquently in *Britton*, may present the greatest obstacle to many modern jurors. Where the victim is a dependent being, jurors today, like their medieval predecessors, might feel a conviction for homicide is inappropriate. Certainly, the issues at stake in this debate today vary tremendously from those of the medieval era. The National Right to Life Committee has brought all attention to bear on whether or not legal life and rights begin at conception or birth. Medieval authorities certainly would not have contested this point. However, today's jurors, much like medieval ones, may hesitate to equate an abortion resulting from a violent attack with homicide, a felony that is sometimes punishable by death.

The medieval records provide a useful index to instruct us on the difficulties we may encounter today when trying men or women accused of this crime. What is more, the medieval records suggest that the natural pattern of abortions by assault may present obstacles in terms of evidence. First, in the medieval sample, assault on pregnant women usually occurred in private (undoubtedly because of the antisocial nature of the crime). Even today, without witnesses, a physical attack is very difficult to prove. Second, in medieval England, men most often carried out abortions by assault. If this is a recurring pattern, modern prosecution of abortions by assault risks pitting men's legal voices against women's, a strategy that has proven repeatedly to be unsuccessful in providing equitable judgments in crimes against women.

The medical aspects of abortion by assault seem to have confounded medieval jurors most. Certainly, today's superior medical technology

and expertise should eliminate some of these difficulties, but they cannot eliminate them altogether. The causal connection between assault and miscarriage was the central problem of proof for medieval jurors; and yet, how would today's courts deal with the case of Sarah, wife of Aubyn, who claimed that an attack against her caused the death of her baby born alive fifteen weeks after the altercation? While medical technology is often able to provide sound theoretical explanations for damage done in the womb, it cannot always determine cause and effect with absolute certainty. In addition, the difficulty medieval jurors experienced in determining whether the quickening had taken place reminds us of the problems with establishing law based on a natural condition whose physical qualities vary so extremely from woman to woman. For example, a first-time mother might not be visibly pregnant until the fourth or fifth month; an experienced mother, on the other hand, would probably be visibly pregnant by the end of the second month. Should a man be condemned for a double-assault when he may not even have realized his victim was pregnant? For that matter, was the victim necessarily aware that she was pregnant (a question that is very pertinent in cases of homicide where the primary victim, the mother, cannot speak for herself)? With such uncertainty, it seems plausible that jurors may often have trouble accepting that felonious assault was the intent. The medieval evidence makes it clear that, even in the Middle Ages, men and women believed abortions by assault should not be equated with simple assault; as a homicide, and thus with a much more damning punishment, medieval jurors found it difficult to pass judgment. The complexity of the issue, as suggested by the medieval evidence, may leave even modern-day jurors with little choice but to acquit.

NOTES

¹John M. Riddle, *Eve's Herbs: a History of Contraception and Abortion in the West* (Cambridge, MA: Harvard University Press, 1997), 94–95.

²Carole Rawcliffe, *Medicine and Society in Later Medieval England* (London: Sandpiper Books, 1995), 203. For a good, brief discussion of the church's perspective on abortion, see John T. Noonan, "An Almost Absolute Value in History," in *The Morality of Abortion: Legal and Historical Perspectives*, ed. John T. Noonan (Cambridge, MA: Harvard University Press, 1970), 1–59.

³It is important to note that medieval courts also recognized the possibility of self-induced abortion through abortifacients (that is, chemical abortions) and classified this as homicide. However, as Riddle notes, historians have to date uncovered no such cases in the records of the medieval common law courts. It seems likely that the difficulty of proving abortions of this nature, combined with unofficial community sanctions of the act, may well have prevented most women from being presented for this crime. Riddle, 100.

⁴Cyril C. Means, Jr., "The Phoenix of Abortional Freedom: is a penumbral or ninth-amendment right about to arise from the nineteenth-century legislative ashes of a fourteenth-century common-law liberty?" *New York Law Forum* 17, no. 2 (1971): 335–410.

⁵Riddle, *Eve's Herbs*, 100.

⁶On the ineffectiveness of rape prosecution in medieval England, see Ruth Kittel, "Rape in Thirteenth-Century England: A Study of the Common-Law Courts," in *Women and the Law: A Social Historical Perspective*, ed. D. K. Weisberg (Cambridge, MA: Schenkman, 1982), 2:101–16.

⁷Riddle, *Eve's Herbs*, 98.

⁸Monica Green, "Women's Medical Practice and Health Care in Medieval Europe," *Signs: Journal of Women in Culture and Society* 14 (winter, 1988): 434.

⁹See Riddle, *Eve's Herbs*, 95.

¹⁰Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge, MA: Belknap Press of Harvard University Press, 1968), 2: 341.

¹¹H. G. Richardson and G. O. Sayles, eds., *Fleta*, Selden Society, vol. 72 (London: B. Quaritch, 1955), bk. 1, ch. 23, 60–61.

¹²An association between birth deformities and moral stain goes back at least as far as Augustine's *City of God* and his discussion of Cain (see Stephen C. Bandy, "Cain, Grendel, and the Giants of *Beowulf*," *Papers on Language and Literature* 9 (1973), 238). See also Dudley Wilson, *Signs and Portents: Monstrous Births from the Middle Ages to the Enlightenment* (London: Routledge, 1993).

¹³Francis Morgan Nichols, ed., *Britton* (Oxford: Clarendon Press, 1865), bk. 1, ch. 25, no. 7, 95–96.

¹⁴Coroners' rolls belong to the class of documents referred to as Justices Itinerant 2, hereafter JUST 2, and housed in the Public Record Office in London, hereafter PRO.

¹⁵"Eyre rolls" refer to those documents that record the findings of the "eyre," a circuit court held by itinerant royal justices in medieval England. The general eyre fell into decline over the course of the late thirteenth century and was replaced by the courts of assize, periodic sessions of court held in each of the counties of England. These records are referred to as "assize rolls." Both eyre and assize rolls belong to the class of documents referred to as Justices Itinerant 1, hereafter JUST 1, and housed in the Public Record Office in London. "Gaol delivery rolls" are the transcriptions of a case made at the actual trial of the accused and thus often include the final verdict and outcome of a case. These records belong to the class of documents referred to as Justices Itinerant 3, hereafter JUST 3, and are also housed in the Public Record Office in London.

¹⁶Cited and discussed in Fiona Harris Stoertz, "Suffering and Survival in Medieval English Childbirth," in *Medieval Family Roles: A Book of Essays*, ed. Cathy Jorgensen Itnyre (New York: Garland Publishing, 1996), 102.

¹⁷Paula M. Rieder, "Insecure Borders: Symbols of Clerical Privilege and Gender Ambiguity in the Liturgy of Churching," in *The Material Culture of Sex, Procreation, and Marriage in Premodern Europe*, ed. Anne L. McClanan and Karen Roseoff (New York: Palgrave, 2002), 101.

¹⁸Stoertz, "Suffering and Survival," 102.

¹⁹Act book MS 9064/2, f. 179r, Guildhall Library, London. As cited and discussed in R. H. Helmholz, "Infanticide in the Province of Canterbury during the Fifteenth Century," *History of Childhood Quarterly* 2 (1975): 380–81.

²⁰"Canonical purgation" was the act of clearing one's name when accused of some offense in the presence of a number of persons worthy of credit who would swear they believed the accused. Canterbury Act book Y.1.3, f. 12v, Canterbury Cathedral Archives, Canterbury, hereafter Canterbury. See Helmholz, "Infanticide," 381n10. Helmholz mentions a third case that does not fall into the category of assault but is similar in nature. In 1471 Thomas Deneham of Minster was prosecuted for imposing such inordinate labors on his wife that she aborted. See Canterbury Act book Y.1.11, f. 126r, Canturbury, discussed in Helmholz, "Infanticide," 381.

²¹T. C. B. Timmins, ed., *The Register of John Chandler Dean of Salisbury 1404–17* vol. 39 (Devizes: Wiltshire Record Society, 1984), 10.

²²During the course of the research for my book manuscript, "The Language of Abuse: Marital Violence in Later Medieval England," I examined an extensive collection of instance and *ex officio* records relating to the northern and southern ecclesiastical provinces, as well as the dioceses of York and Canterbury. I kept notes on related cases, among others, abortions by assault. These cases very rarely made an appearance in ecclesiastical records under my examination.

²³For a discussion of the canonical perspective on spousal abuse, see James A. Brundage, "Domestic Violence in Classical Canon Law," in *Violence in Medieval Society*, ed. Richard W. Kaeuper (Woodbridge: Boydell Press, 2000), 182–95. It is noteworthy that rape, another form of physical assault against women, was sometimes brought before ecclesiastical officials for resolution even though it, too, was considered a felony. This cross-jurisdictional approach to crimes against women might explain the presence of cases of abortions by assault before the courts Christian.

²⁴Crimes against women were rarely pursued in the king's courts. In her analysis of the gaol delivery courts in fourteenth-century England, Barbara A. Hanawalt notes that very few rapes were prosecuted, only seventy-eight for the eight counties under examination during the period 1300–1348. See Barbara A. Hanawalt, *Crime and Conflict in English Communities, 1300–1348* (Cambridge, MA: Harvard University Press, 1979), 101.

²⁵Means, "The Phoenix of Abortional Freedom," 342.

²⁶Helena M. Chew and Martin Weinbaum, eds., *The London Eyre of 1244*, vol. 6 (London: London Record Society, 1970), 62–63.

²⁷For example, see Martin Weinbaum, ed., *The London Eyre of 1276* vol. 12 (London: London Record Society, 1976), 73–74, indictment of Richard Taillhehaste; and C. A. F. Meekings, ed., *Crown Pleas of the Wiltshire Eyre, 1249* (Devizes: Wiltshire Archaeological and Natural History Society, Records Branch, 1961), 257, appeal of Philip of Andevere.

²⁸Chew and Weinbaum, *The London Eyre of 1244*, 50.

²⁹Doris Mary Stenton, ed., *Pleas before the King or his Justices 1198–1212, Part III: Rolls or Fragments from the Years 1199, 1201 and 1203–1206*, Selden Society, vol. 84 (London: B. Quaritch, 1967), 72.

³⁰The suggestion that the act was performed “wickedly” appears in at least four of these records. Other formulaic phrases that suggest the attack was a “pre-meditated assault,” or that it was carried out with “staves and swords” also appear in the records. Medieval jurors typically used phrases of this nature to indicate the heinousness of a crime. See S. F. C. Milsom, *The Historical Foundations of the Common Law* (Toronto: Butterworths, 1981), 283–313.

³¹R. L. Storey, ed., *The Register of John Kirkby I, Bishop of Carlisle, Canterbury and York Society*, vol. 79 (Woodbridge, UK: Canterbury and York Society, 1993), 113.

³²Although it is difficult to appraise the credibility of these charges, there is good reason to believe that Lengleys was a violent man. The *Calendar of Patent Rolls* records that in March of 1339, the king granted him a pardon for all homicides, and by 1342 his wife had initiated a suit for a judicial separation on the grounds of cruelty. *Calendar of Patent Rolls, 1338–40*, 332; and Storey, *The Register of John Kirkby*, 135 and 137.

³³The role men played as plaintiffs distinguished abortion by assault from other crimes against women. Rape, the quintessential crime against women, in this period was left generally to the woman to appeal. As Ruth Kittel has noted, it was rare for a parent or husband to bring charges on behalf of a woman; moreover, the courts expected women to appeal personal injuries themselves. See Kittel, “Rape in Thirteenth-Century England,” 101–103.

³⁴Even a bill (an oral complaint, a less costly and informal version of a writ) cost 3 shilling, 4 pence. Such an expense would have been beyond the reach of the very poor in medieval England. Marjorie Blatcher, *The Court of King's Bench 1450–1550: A Study in Self-Help* (London: Athlone Press, 1978), 135.

³⁵At common law, a “pledge” is a person who guaranteed that another would meet a legal obligation. In this context, Geoffrey's pledges were promising that he would show up in court to pursue this case and pay the required court costs.

³⁶Chew and Weinbaum, *The London Eyre of 1244*, 36.

³⁷PRO JUST 1/112, m. 9d.

³⁸For a discussion of the limiting rule, see Patricia R. Orr, "Non Potest Appellum Facere: Criminal Charges Women could not—but did—bring in Thirteenth-Century English Royal Courts of Justice," in *The Final Argument: The Imprint of Violence on Society in Medieval and Early Modern Europe*, ed. Donald J. Kagay and L. J. Andrew Villalon (Woodbridge, UK: Boydell Press, 1998), 141–62.

³⁹*Ibid.*, 142. Orr discovered that the courts actually permitted women to appeal a wide array of felonies. She concluded that "[i]n practice, there was no limit on who might bring an appeal; at no time did the court dismiss an appeal out of hand on the grounds that it had been brought by a woman," 146.

⁴⁰*Ibid.*, 144.

⁴¹Becky R. Lee, "Men's Recollections of a Women's Rite: Medieval English Men's Recollections Regarding the Rite of the Purification of Women after Childbirth," *Gender and History* 14 (2002): 224–41. See also Peter Rushton, "Purification or Social Control? Ideologies of Reproduction and the Churching of Women after Childbirth," in *The Public and the Private*, ed. Eva Gamarnikow, et al. (London: Heinemann, 1983), 118–31.

⁴²Lee, "Men's Recollections of a Women's Rite," 224.

⁴³*Ibid.*, 236.

⁴⁴"Eyre" here refers to a meeting of the royal circuit court, in which royal justices heard the presentments of jurors, and also proceeded to trial.

⁴⁵PRO JUST 1/547a, m. 20d.

⁴⁶PRO JUST 1/775, m. 23.

⁴⁷A defendant's flight after the crime was very common. As J. G. Bellamy has explained, "in the more lawless decades of the later middle ages, a felon could consider himself distinctly unlucky if he were captured by the authorities." J. G. Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London: Routledge, 1973), 201.

⁴⁸The flight of those nine accused assailants, once again, reinforces the felonious nature of the crime: if the courts did not consider abortion a crime worthy of death, there would have been little reason to flee. Perhaps most importantly, for those who did stand trial, the law courts of medieval England commonly treated them in much the same way as they dealt with any other alleged felon.

⁴⁹Anthony Musson, *Public Order and Law Enforcement: The Local Administration of Criminal Justice 1294–1350* (Woodbridge, UK: Boydell Press, 1996), 211, table 7.

⁵⁰Hanawalt, *Crime and Conflict*, 267.

⁵¹In some situations, the beating itself allegedly brought about the victim's death, while in others there is no reported connection.

⁵²*Calendar of Inquisitions Miscellaneous* (1399–1422), no. 423, 296, as discussed in Riddle, *Eve's Herbs*, 98.

⁵³Doris Mary Stenton, ed., *The Earliest Lincolnshire Assize Rolls A.D. 1202–1209*, The Lincoln Record Society, vol. 22 (London: The Lincoln Record Society, 1926), 111.

⁵⁴Doris Mary Stenton, ed., *Rolls of the Justices in Eyre being the Rolls of Pleas and Assizes for Gloucestershire, Warwickshire and Staffordshire, 1221, 1222*, Selden Society, vol. 59 (London: B. Quaritch, 1940), 560–61.

⁵⁵A. H. Thomas, ed., *Calendar of Plea and Memoranda Rolls, preserved among the Archives of the Corporation of the City of London at the Guildhall, Rolls A1a–A9, a.d. 1323–1364* (Cambridge: The University Press, 1926), 253–4.

⁵⁶PRO JUST 1/789, m. 1; and PRO JUST 1/527, m. 11d.

⁵⁷Chew and Weinbaum, *The London Eyre of 1244*, 36.

⁵⁸Meekings, *Crown Pleas*, 257.

⁵⁹Chew and Weinbaum, *The London Eyre of 1244*, 50.

⁶⁰W. M. Palmer, ed., *The Assizes held at Cambridge, A.D. 1260* (Linton, UK: The Eagle Printing Works, Ltd., 1930), 23.

⁶¹PRO JUST 1/705, m. 13d. A “mercier” is a medieval cloth seller.

⁶²Chew and Weinbaum, *The London Eyre of 1244*, 62–63.

⁶³This is an exceptionally high number of compurgators demanded by the court. Although there were no set rules to the number of compurgators a defendant might be required to bring forward in his defense, usually the courts asked for between six and twelve. Thus, at thirty-six, the court was making it very difficult for the accused to purge himself of the accusation.

⁶⁴Rawcliffe, *Medicine and Society*, 194.

⁶⁵Cited and discussed in Riddle, *Eve's Herbs*, 97.

⁶⁶PRO JUST 1/789, m. 1.

⁶⁷Only two other cases in this sample presented evidence about the ages of the fetus. Elizabeth de Albebarowe de Gerlethorp from Lincolnshire, supposedly raped and attacked by John Moundsoun, was said to have aborted a fetus around half a year in age. See PRO JUST 1/527, m. 11d. Also, when Agnes wife of Thomas Aleyn aborted a male child after an argument with Thomas de Cobbeham, she was said to have given birth fifteen weeks early. See PRO JUST 1/547a, m. 19d.

⁶⁸For a discussion of rape in the medieval context, see John M. Carter, *Rape in Medieval England: An Historical and Sociological Study* (Lanham, MD: University Press of America, 1985). For a more modern look at this problem, see Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880–1929* (Chicago: University of Chicago Press, 1993); and Jane Doe, *The Story of Jane Doe* (Toronto: Random House Canada, 2003).

⁶⁹For example, the 2002 death of Laci Peterson, allegedly at the hands of her husband, during the last stages of her pregnancy, has had a profound effect on American society. The Unborn Victims of Violence Act has been popularly renamed "Laci and Conner's Law" ("Conner" being the name she had allegedly chosen for her newborn son).

⁷⁰PRO King's Bench 27/354, m. 66.

⁷¹John M. Bowers, "Ordeals, Privacy, and the 'Lais' of Marie de France," *Journal of Medieval and Renaissance Studies* 24, no. 1 (1994): 17.

⁷²For example, see "The Roper's Falsewife," in *Devils, Women, and Jews: Reflections of the Other in Medieval Sermon Stories*, ed. Joan Young Gregg (Albany: State University of New York Press, 1997), 127–30.

⁷³Renate Blumenfeld-Kosinski, *Not of Woman Born: Representations of Caesarean Birth in Medieval and Renaissance Culture* (Ithaca, NY: Cornell University Press, 1990), 17.

⁷⁴Noonan, "An Almost Absolute Value in History," 21.

⁷⁵Rawcliffe, *Medicine and Society*, 202.

⁷⁶R. H. Helmholz, "Support Orders, Church Courts and the Rule of *Filius Nulius*: A Reassessment of the Common Law," *Virginia Law Review* 63 (1977): 431–48.

⁷⁷PRO JUST 1/359, m. 37d.

⁷⁸PRO JUST 1/369, m. 36.

⁷⁹Weinbaum, *The London Eyre of 1276*, 73–74.

⁸⁰Stenton, *Pleas before the King or his Justices 1198–1212*, 72.

⁸¹PRO JUST 1/547a, m. 19d.

⁸²Sharpe, *Calendar of Coroner's Rolls*, 166.