Abortion in Late-Renaissance Italy

by

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Abstract

What did abortion mean in late-Renaissance Italy? This dissertation investigates conceptions and practices of abortion in Italy from 1550-1650. It aims to historicize abortion by recovering and joining together, from a broad base of sources, as many contemporary representations and images, points of view and voices on this subject as possible. I argue that abortion was a contentious and ambiguous event that had several meanings and that generated many seemingly inconsistent responses from ordinary individuals and institutional authorities. Abortion was a complex physical and medical event that carried heavy moral load. It was discussed in numerous contexts and had bearings on a variety of socio-historical domains.

Drawing on a variety of sources, (including archival materials, legal codes and civic proclamations, works of theology, jurisprudence and medicine, letters and trial documents), and interdisciplinary in its method (utilizing the methodologies of social and cultural history, gender studies, history of ideas, the law, medicine and the body, and microhistory), this dissertation offers the first focused analysis of conceptions of abortion in the early modern period by examining meanings and practices in relation to broader social, political, medical, and religious
developments in Counter-Reformation Italy. While detecting and analysing changes in institutional responses towards the practice over the course of the sixteenth and seventeenth centuries, this dissertation argues that culturally pervasive discourses of ambiguity and uncertainty persisted and that this shaped the way abortion was processed at the situational level. Examining the multiple and contradictory ways in which abortion was represented in various discursive contexts, this study throws light on some of the broader social, sexual, and gender imbalances that bore directly on perceptions and experiences of the female body and that shaped the ways in which institutions and individuals processed abortions. Far from being black or white, early modern Italian attitudes and responses to abortion were always complex and multifaceted.
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When I started grad school, I was told to prepare for a long and lonely journey. The last seven years have been long and tough, but they have certainly not been lonely. Since arriving in Toronto, I have been surrounded by brilliant, kind and generous students, teachers and friends. I could not have written this thesis without the advice and support of many people and it is with great pleasure that I acknowledge them here.

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Chapter 1

The Meanings of Abortion in Late Renaissance Italy

1. Introduction

In his *Popular Errors of Italy* (1603), a polemical work intended to expose the moral errors, false beliefs and dangerous habits of the so called ‘lower classes,’ the Dominican friar, physician and author Girolamo (Scipione) Mercurio expressed a concern that Italians did not fully comprehend the meaning of abortion. He undertook to teach that abortion was not an inconsequential practice women do to themselves to avoid the inconveniences of generative sex, to conceal “foul [acts] of dishonour” and out of fear of being caught and punished for their “carnal fragility [*fragilita* carnale].” Rather, abortion was the “killing of an innocent creature,” not only the “killing the body but also the soul” for, stained with original sin and not having received the holy waters of baptism, an aborted foetus was “deprived forever of the vision of God.”¹ To cover up one sin, illicit sex, women commit another that is “four times worse.” A woman who has an abortion, Mercurio wrote, “should not be called mother but ‘shrew,’ fury of hell in human form [and] murderer.”² Mercurio’s harsh rhetoric on abortion reflects what we might expect from a cleric writing at the turn of the seventeenth century. For Mercurio, abortion was murder, it was a woman’s crime, and it was practiced to hide sexual dishonour.

¹ “[...] uccidere una creatura innocentissima, che mai l’offese, ne mai danneggio alcuno, e non solo la uccide nel corpo, ma nell’alma [sic, anima], poiche nascendo morta senza Battesimo, resta per sempre priva del veder Dio”Mercurio, *De gli errori popolari d’Italia* (Venice, 1603), bk. 2, ch. 26, fols. 107v-108r ; bk. 5, ch. 14, fol. 254r.

² Mercurio, *De gli errori*, bk. 2, ch. 26, pp. 107v-108r.
The Florentine jurist and senator Anton Maria Cospi’s less overtly polemical treatise *The Criminal Judge* (1643) offers a different account. This influential work of jurisprudence, meant to guide judges’ practice, delivers more complicated and perhaps less expected attitudes towards abortion. “Abortion is a crime and not a crime,” Cospi cryptically wrote. When caused by “medicines studiously procured to cause abortion” or by violence done to the pregnant women, abortion is a crime that merits punishment. However, unlike fra Mercurio, judge Cospi taught that it was only in very specific situations that abortion might be considered homicide and that, from a legal perspective, the unborn was not unequivocally held to be a ‘human being.’ The nature of the crime, Cospi wrote, depended on the gestational ‘age’ of the foetus in utero and, most importantly, its causes and on the intentions of the woman. Determining either of these with the certainty necessary to convict someone of procured abortion and sentence them to corporal punishment, as homicide required, was a “matter of great controversy [*materia molto controversa]*.”

Distinguishing between abortion caused by “weakness [*debolezza*], the disposition of the pregnant woman, or by disorders and disturbances done without thought of wanting to abort” and abortion “studiously procured” was very difficult and often impossible. Even cases where women admitted to aborting from the consumption of medicines were open for negotiation. Cospi drew attention to the ambiguity of women’s bodies and the uncertainties inherent in pregnancy and its termination. Women and their healers often fail to detect pregnancy altogether and misinterpret the signs of pregnancy as signs of illness; women sometimes consume purgative medicines believing they are healing their bodies when they are actually terminating the lives of their unborn children. In Cospi’s analysis, abortion was a highly contested and slippery event. Ambiguous women’s bodies misled physicians, judges, and even

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3 Anton Maria Cospi, *Il giudice criminalista* (Florence, 1644), p. 496.
4 Ibid., p. 504.
women themselves. All were hard pressed to determine with certainty what was in a woman’s womb and how and why it had been emptied. In real life situations, abortions were complicated and multifaceted events that elicited varying interpretations.

Mercurio and Cospi’s discussions demonstrate an institutional concern and anxiety over abortion in both Church and state, but also indicate that abortion was a contentious and ambiguous event that had several meanings and that generated many seemingly inconsistent responses. In Renaissance Italy, abortion was a complex physical and medical event that carried heavy moral load. It was discussed in numerous contexts and had bearings on a variety of socio-historical domains. The termination of pregnancy, either accidental or voluntary, comprised an important meeting ground for religious thought, natural knowledge, medicine and healing, law and criminal justice, political ideology, and popular belief. It is a useful lens through which to observe contemporary social, sexual and gender dynamics. Drawing on a variety of sources and interdisciplinary in its method, this dissertation explores some of the meanings abortion had in late-Renaissance Italy, how abortion was conceptualised, understood, discussed, perceived, practiced and experienced by Italians. While detecting and analysing changes in institutional responses towards abortion over the course of the sixteenth and seventeenth centuries, this dissertation argues that culturally pervasive discourses of ambiguity and uncertainty persisted and that this shaped the way abortion was processed at the situational level.

Charged with moral, religious, gendered, racial and economic resonances, abortion now often dominates political discourse and news headlines. Current concerns make historical investigations into this subject appear timely and pressing. A study of abortion in another time and place cannot help but be influenced by present-day concerns and might appear to offer suggestions for current debates. Some of the issues discussed by early moderns and analysed in
this dissertation appear familiar: when does ‘life’ begin and what legal status is afforded to the unborn? Is terminating pregnancy a crime and/or a sin, and if so, what kind? Why do women have abortions and what role do men play in the process? How is abortion accomplished? What role do and should authorities (medical, secular, ecclesiastical) have in matters pertaining to procreation? These questions are recognizable and seem timeless. However, as we will see throughout this study, abortion is not trans-historical or trans-cultural. In early modern Italy, aborto was a word used to describe a failed pregnancy, but the particular meanings and significances ascribed to this physical event were produced by individuals operating within specific social, political and religious contexts and within distinct cultural fields. This dissertation aims to historicize abortion by recovering and joining together, from a broad base of sources, as many representations and images, points of view and voices on this subject as possible. It privileges variety and contention in order to better recover some of the complexities that abortion posed for late-Renaissance Italian individuals.

2. Language and Meanings of Abortion

A historical study of abortion in pre-modern Italy is difficult for several reasons. Aside from the fact that abortions took place in private and were kept secret, and therefore are hard to access in the historical record, historians have to contend with the linguistic ambiguity of the word aborto. Previous studies of abortion in pre-modern Europe have largely neglected considerations of the language and meanings of words used to describe generation, pregnancy
and its termination, the aborted foetus, and the processes of women’s bodies. In Renaissance Italy, the vernacular word *aborto* and the Latin *abortus, aborsus* were used to cover what we nowadays hold to be several distinct events and practices. These words could mean both *abortion* and *miscarriage*, premature delivery, procured and accidental. They could also be used as nouns to describe a *foetus* that was delivered before term dead or “not yet alive.” There were many regional and colloquial words used to mean “losing or terminating pregnancy,” “imperfect or unfinished pregnancy,” and “getting rid of an unborn,” both voluntarily and involuntarily: synonyms commonly used in print and spoken include *disertare, disgravidare, disperdere, dispregnarsi, scipare, sconciare, sperdere, and spregnare*. This linguistic ambiguity also extended to the foetus: the unborn in utero and a foetus delivered prematurely were sometimes called *aborto, abortus, concetto, conceputto, feto, feto abortive, foetus, partus immaturus* and *sconciatura*, but most often *creatura* and *putto*. All these words may have had subtle differences (some of which were discussed in learned medical and legal treatises) but were also largely used synonymously. For the sake of clarity and to signal distinctions significant to my analysis, this thesis uses modern terminology: the terms *procured abortion, termination of pregnancy, miscarriage*, and *foetus* and *unborn* are used and often accompanied by the Italian original as used in the primary sources.

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6 Other words were also used to describe products of the womb that might potentially have turned into foetuses and children, such as *effluxione* and the more common *pezzo di carne* (piece of flesh).

7 See definitions of these terms in early modern Italian dictionaries such as: Antonio Bevilacqua, *Vocabulario volgare et latino* (Venice, 1569); Girolamo Ruscelli, *Vocabolario delle voci Latine dichiarate con l’Italiane* (Venice, 1588); Benedetto Varchi, *Lezizioni di M. Benedetto Varchi* (Florence, 1590); Filippo Venuti da Cortona, *Dizionario volgare, & Latino* (Venice, 1590); Thomasso Porcacchi, *Vocabolario Nuovo* (Venice, 1593); Pietro Galesini, *Dizionario overo tesoro della lingua volgar, Latina* (Venice, 1606); *Dizionario Toscano Compendio del Vocabolario della Crusca. [...] Compilato dal Sig. Adriano Politi* (Rome, 1614); *Vocabolario degli Accademici della Crusca* (Venice, 1623); Bartolomeo Castelli, *Lexicon medicum graecolatinum* (Venice, 1626).
The definitional categories that appear in Renaissance contexts and frameworks allow us to separate and distinguish between different practices and events encompassed in the word *aborto* and its cognates. Here, four specific types of abortion are discussed: 1. Unintentional, involuntary or spontaneous miscarriage: pregnancy terminated on account of anatomy, illness, or unknown circumstance; 2. Miscarriage caused by violence: the termination of pregnancy accidentally or unintentionally caused by assault or some form of trauma; 3. Procured abortion: consuming a product or doing certain activities with the intention of terminating pregnancy; and 4. Abortion induced for health reasons or miscarriage as side-effect of medical intervention on the pregnant body.

Ranging from least amount of deliberate intervention to most, these four types of abortion were distinguished by human intention and action. Involuntary or spontaneous miscarriage was, of course, not an offense or a sin but rather was described as something common and unfortunate that happened to women. Miscarriage could be dangerous for the woman, but also could have significant social and economic consequences for her and her family, and therefore elicited expressions of fear, sadness and sympathy. Causing a woman to miscarry by assaulting her was an offence for which the assaulted woman or her husband could demand reparations – compensation for the loss of the unborn and the danger to her life. Abortion procured with the intention of terminating an unwanted pregnancy was regarded as a sin and in many places a crime as defined by ecclesiastical and secular authorities. Procured abortion was the intentional termination of a potential life. The precise nature and gravity of this offence, however, was open for debate and remained controversial throughout the period. The fourth type of *aborto*, ‘abortion for health related reasons’, was much discussed in medical as well as theological and jurisprudential literature; pregnancy could turn minor illness serious and
potentially fatal,\textsuperscript{8} and so, induced abortion was an accepted yet controversial form of therapeutic intervention.

In theory, these different contexts of abortion could be neatly separated: intentions rendered some forms of abortion offenses that required discipline. In real life situations, determining the intention and the specific actions that lead to the termination of pregnancy were very difficult. The linguistic ambiguity of words like \textit{aborto} reflected the pervasive cultural uncertainty underlying issues of generation, pregnancy and its termination.\textsuperscript{9} In early modern Italy, the language used to describe abortion was ambiguous because abortion was itself a very ambiguous event that elicited numerous interpretations.

3. Histories of Pre-Modern Abortion

While scholars have not shied away from the history of abortion in pre-modern Europe, most have approached the topic from a somewhat positivist and often anachronistic perspective, taking abortion to have the same meanings in past societies as it does now, with scholars tending to look for historical antecedents to current practices and debates. Few historians have attempted to recover pre-modern conceptions and practices of abortion in specific socio-cultural contexts.

Historians John Noonan, John Riddle and Angus McLaren have produced the most influential studies of abortion in pre-modern Europe and their work has done most to set the stage for current research on this topic. Analysing different types of sources and traditions, these scholars have drawn attention to long and complex discussions regarding the morality of


\textsuperscript{9} As McClive notes: “Not only did the [female] body conceal its ‘truths’, but also the language used to voice the physical condition was itself unsure” “The Hidden Truths of the Belly,” p. 226.
abortion and the circumstances surrounding its practice, as well as the methods used by pre-moderns to control generation and fertility. Surveying the writings of theologians, canonists and popes, from the Church Fathers to the twentieth century, John Noonan has demonstrated that, while the Catholic Church has consistently opposed the voluntary termination of pregnancy, Catholic thought on abortion and contraception has not been static. Theologians and popes continuously reassessed issues relating to the soul and the nature of the unborn foetus, and also debated the sinfulness of pregnancy termination in relation to the situations and contexts in which women and men found themselves. These issues were regularly debated and theological positions often modified.10

John Riddle has approached the subject from a pharmacological perspective. In his two influential books on the subject (1992 and 1997),11 Riddle has demonstrated a continuous literary tradition, from the ancient to the modern worlds, that identified herbs believed to prevent conception and terminate pregnancy. Drawing on modern chemical analyses of some of the botanical pharmaceuticals he has found in ancient and medieval herbals, Riddle has suggested that many pre-modern medicines did have abortifacient properties. Since they might be effective at preventing conception and terminating pregnancy, Riddle has argued that pre-modern women, to greater or lesser extents, were capable of controlling their fertility.

Though very influential, Riddle’s approach and conclusions are also historically problematic. While welcoming Riddle’s research into pre-modern pharmacology, some scholars have expressed caution over what appears to be a positivist attempt at using modern scientific standards to evaluate past practices. Doubts arise over the ability of ancients and medieval to


extract the quantity of active agents from plants and over the methods of consumption in order to get the desired effect. Aside from scientific claims over efficacy, historical criticism has been levied on Riddle’s understanding of the nature of women’s bodies and medicine in pre-modern Europe. Historians Helen King and Monica Green and historical demographer Etienne van de Walle have taken issue with what appears to be a recurring conflation in Riddle’s work of ‘emmenogogue,’ medicines intended to stimulate menstruation, with ‘abortifacient,’ medicines intended to terminate pregnancy. As these scholars have demonstrated, within the humoural system of medicine and models of the female body, regulating menstruation and purging or cleansing the womb were essential for good health but also for fertility – the consumption of menstrual stimulators and purgatives cleaned the womb by expelling impurities, which was key for good health and for conception. Therefore, pennyroyal, rue and savin could indeed have been used to terminate pregnancy but were also and more frequently intended to promote health and aid in conception (more on these points below).

In contrast to Noonan and Riddle, Angus McLaren has produced the most focused study of abortion by recovering ideas and attitudes within the context of the reproductive rituals of early modern British and colonial Americans. Surveying a range of sources, such as medical and theological treatises, works of morality, literature and diaries, from the sixteenth to the nineteenth centuries, though with a clear focus on the eighteenth, McLaren has demonstrated that contraception and abortion were practiced in early modern England and were matters of great interest and concern for religious, secular and medical authorities. Like Noonan, McLaren finds a distinction held in various layers of society between abortion pre- and post- ‘quickening’, that is,

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the motion felt by the mother that signalled the start of a new life. In early modern England and
Colonial America, pre-quicking abortion could be relatively guilt free from a religious
perspective because a soul was not being destroyed. Furthermore, McLaren argues, the
subjective nature of quickening where women alone were the judges of when motion first
occurred, protected women’s control over their own fertility. Like Riddle, McLaren suggests that
knowledge of fertility and birth control was primarily within the female sphere and thus remains
difficult to recover. McLaren’s larger thesis, in terms of abortion, is that women and men,
made and single had numerous motivations and a variety of products at their disposal with
which to control fertility.  

Following these seminal studies, historians have recently begun to pay more critical
attention to abortion in pre-modern Europe by rooting ideas and practices in more precise
contexts and by examining abortion at the situational level. For Italy, Adriano Prosperi’s rich and
multifaceted study of a 1709 case of infanticide in Bologna does much to recover contemporary
theological and medical ideas about abortion in relation to infanticide, notably conceptions of the
unborn foetus, the nature of the human soul and human identity, and the importance of baptism.
Analyzing testimony given in the investigation, Prosperi has shed precious light onto how
women and men may have thought about these delicate issues, including unwanted pregnancy
and problematic delivery. Other historians of Renaissance and early modern Italy have drawn
attention to some of the complex meanings abortion had in specific social, communal, and

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13 Angus McLaren, Reproductive Rituals: The Perception of Fertility in England from the Sixteenth to the
14 Adriano Prosperi, Dare l’anima. Storia di un infanticidio (Turin, 2005), esp. pp. 150-299; see also
“Battesimi, anima, identità in era moderna,” Storica 31 (2005): pp. 163-174 and the important study by Vincenzo
Lavenia, “‘D’animal fante.’ Teologia, medicina legale e identità umana. Secoli XVI-XVII,” in ed. Adriano Prosperi,
institutional settings.\textsuperscript{15} Joanne Ferraro has added much to the subject by analyzing several cases of abortion and infanticide tried in Venetian criminal courts from the sixteenth to the eighteenth century. Ferraro has found many unmarried women who, pregnant by means of incest or from sexual relationships with priests, concealed their pregnancy, sought abortions and even resorted to infanticide in order to avoid the hardships of illegitimate children. Aside from illuminating some of the social circumstances that led women to these solutions, Ferraro also demonstrates that abortion and infanticide were men’s crimes as much as women’s, and also that the Venetian authorities approached these cases inconsistently, and not always with the full vigor of the law.\textsuperscript{16}

Similarly, as part of his study of the Florentine Casa della Pieta, a troubled charitable shelter for abandoned girls located in the Florence’s red-light district, Nicholas Terpstra has suggested that abortion by means of purgative medicines may have been widely available to vulnerable young women subjected to sexual assault and prostitution. Through the analysis of fifteenth and sixteenth-century medical, theological, literary and archival sources, Terpstra, like Ferraro and Prosperi, demonstrates that abortion was a somewhat easily accessible solution for dealing with the consequences of illegitimate sex, but he also expands the discussion by arguing that abortion had several meanings in Renaissance Italy, not all of which were considered crimes or mortal sin.\textsuperscript{17}

These studies have shown that abortion was practiced – and possibly practiced widely – by women and men in order to avoid the consequences of illicit sex. Their behaviour elicited wide ranging and apparently inconsistent responses from Italian civil and religious authorities.

This dissertation follows these leads. It offers the first focused analysis of conceptions of

\textsuperscript{15} Along with the studies listed in the next two notes, see Tomasso Astarita, \textit{Village Justice: Community, Family, and Popular Culture in Early Modern Italy} (Baltimore, 1999), and for the nineteenth century, Emmanuel Betta, \textit{Animare la vita: Disciplina della nascita tra medicine e morale nell’Ottocento} (Bologna, 2006).


\textsuperscript{17} Nicholas Terpstra, \textit{Lost Girls: Sex and Death in Renaissance Florence} (Baltimore, 2010), ch. 4.
abortion in the early modern period\textsuperscript{18} by examining meanings and practices in relation to broader social, political, medical, and religious developments in late-renaissance Italy, 1550-1650.

4. Sex, Gender and Unwanted Pregnancy in Counter-Reformation Italy

The era under investigation here, roughly 1550-1650, has been often described as the ‘Counter-Reformation’ or as ‘Post-Tridentine.’ These terms are used to denote the Catholic Church’s sustained and multifaceted campaign against Protestantism and range of related religious reform movements and its efforts at establishing Catholic orthodoxy as articulated at the Council of Trent (1545-63).\textsuperscript{19} A large part of the program of reform was aimed towards changing behaviours deemed immoral, deviant, illicit and problematic through institutional involvement in the lives of the laity.\textsuperscript{20} Most pertinent to this study were attempts, both ecclesiastical and secular, to combat a perceived proliferation of deviant and illicit sexual behaviours with increased catechetical education, legislation and discipline. Alongside efforts at regulating behaviours such as sodomy, adultery, defloration, rape, incest, clerical fornication,

\textsuperscript{18} To the best of my knowledge, similar studies do not yet exist for other pre-modern European contexts.


\textsuperscript{20} For influential recent studies on these themes, see: David Gentilcore, \textit{From Bishop to Witch: The System of the Sacred in Early Modern Terra d’Otranto} (Manchester, 1992); Angelo Torre, \textit{Il consumo di devozioni: Religione e communita nelle champagne dell’Ancien Regime}, Venice, 1995; Adriano Prosperi, \textit{Tribunali della consienza, Inquisitori, confessori, missionari} (Torino, 1996); ; Wietse de Boer, \textit{The Conquest of the Soul: Confession, Discipline, and Public Order in Counter-Reformation Milan} (Leiden, 2001); Elena Brambilla, \textit{Alle origini del Sant’Uffizio: Penitenza, confessione e giustizia spirituale dal medioevo XVI secolo} (Bologna, 2000); ibid., \textit{La giustizia intollerante. Inquisizione e tribunali confessionali in Europa (secoli IVXVIII)} (Milan, 2006).
concubinage, and prostitution, abortion received increased attention by authorities. Of course, the ideals and prescriptions of ecclesiastical authorities were not always the same or equally applied over the Italian peninsula, nor were reforms consistently applied in specific dioceses. Furthermore, attempts at reform through increased ecclesiastical power were not easy to impose and were often resisted and challenged by secular authorities; new definitions of what constituted deviant and sinful behaviour were also ignored, challenged, and transformed by laity and clergy to suit local needs, desires, and moralities. Historians have come to describe the systems of early modern religious reform more in terms of negotiation and accommodation than of top-down and center to periphery imposition. Nevertheless, the official rhetoric on procured abortion communicated by Italian Church and states converged and intensified in the second half of the sixteenth century and this, by and large, resulted in increased moralising, harsher rhetoric, and an uptick in legislation.

Women’s sexuality was at the heart of Counter-Reformation Italian representations of abortion. Historians of gender have observed that patriarchal control over women’s bodies and reproduction increased as the Tridentine program of moral reform tightened between 1560 and 1660. Religious ideals converged with secular anxieties over familial honour, reproduction and the control of patrimony. Church and states strongly reaffirmed the importance of marriage and

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motherhood and condemned sex outside of marriage as sinful and dangerous. Ecclesiastical authorities exalted chastity and celibacy and encouraged enclosed monachisation of women. Women who could not afford the dowries needed to enter a nunnery, who were not and would not be married or whose husbands had abandoned them, and women who did not have a father, brothers or other male protectors around to safeguard their bodies and sexual honour, were vulnerable to predatory men. Charitable institutions multiplied during the sixteenth and seventeenth centuries with the stated purpose of safeguarding young, abandoned and destitute women. Conservatories (“keepers of virtue”) such Santa Caterina in Rome fed the bodies of “poor little virgins,” but more importantly tried to preserve “the innocence of those bodies from wicked men.” Some of these institutions provided women at risk with a dowry to marry or to enter convents. Women who refused enclosures and who lacked male protection were at special


risk of being seduced, of giving up their virginity on a false promise of marriage or of losing it in a sexual assault, of becoming pregnant, destitute, losing employment and of turning to prostitution for subsistence.

Post Tridentine rhetoric on sexual morality was mostly geared towards regulating women’s bodies and behaviours, but male sexuality was also clearly problematic. As these representations suggest, men seduced and sexually assaulted “poor virgins” and were responsible for unwanted pregnancies. Late Renaissance Italian cities were full of sexually mature men who were prohibited from marrying and, therefore, theoretically prohibited from having sex. Restricting sex within marriage, delaying marriage (generally to the late twenties and early thirties) and restricting marriage generally to the first born in order to offset high dowry and to preserve and transmit property, led many men to pursue illicit sexual opportunities, such as assaulting women, taking concubines, generating bastards with lower order women, etc. Also, many clerics ignored their vow of celibacy and pursued sexual relations with a variety of


26 Pregnant domestic servants would almost certainly be thrown out of the household they served and would struggle to survive, but sometimes servants received dowries from their masters if they or someone close to them were responsible for the pregnancy; see Dennis Romano, “The Regulation of Domestic Service in Renaissance Venice,” Sixteenth Century Journal 22 (1991): pp. 666-67; Thomas Kuehn, Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy (Chicago, 1991), pp. 83-88; Ferraro, Nefarious Crimes.


women.Prostitutes were deemed tolerable to address men’s carnal needs and also to safeguard maidens and respectable women from men on the prowl, but of course this did not stop men from having with sex with women they were not supposed to. Men also engaged in sexual relations with women within the very enclosures that were intended to keep them abstinent: nuns had sex with confessors and girls in conservatories were prey to the men who lived and worked nearby. Enclosures were never sealed but remained porous.

The social and economic implications of pregnancy outside of marriage could be substantial for men and very grave for women. Though never as high, impregnating women could have costs for men, too. For transient and itinerant men, such as soldiers, labourers, charlatans, evading the consequences of impregnating a woman in a city or town they passed through might not have been too much trouble. For men with roots and reputations, extramarital pregnancy could make scandal. Pregnancy could turn a clandestine sexual relationship or an instance of sexual assault kept secret into public knowledge. A man who impregnated an unmarried woman, another man’s wife, a widow, a nun, his domestic servant, or a relative, risked shaming himself and dishonouring his family. If caught, he might potentially be forced to marry or dower her, or even be punished corporally. For a woman, a sullied sexual reputation

30 The reforming Church desperately sought to clean up clerical conduct, but priests resisted and ignored the demands of celibacy. The laity tolerated clerical sexuality (in varying degrees), and, it seems, the Church expected and accepted a great deal of it. According to David Gentilcore, it is “difficult to know which is the rule, the licentious priest or the virtuous cleric,” From Bishop to Witch, p. 43. Generally, see Di Simplicio, Peccato penitenza perdono, pp. 111–21, 183–24; Prosperi, Dare l’anima, pp. 90–100; Fosi, Papal Justice, pp. 155–167; Ferraro, Nefarious Crimes, pp. 158–99.


32 In some cases, deflowered, assaulted and impregnated women and their families could force (in and out of court) the men responsible to either marry or dower them, but lower order women without male protectors were limited in the force they could exert. Most cases of defloweration were brought to court by a woman’s father, brother or other familial male protector, who sought compensation in the form of marriage or a dowry for the offense which marred familial honour. That is not to say that women could not and did not bring such cases to court by themselves or with the support of their mother or other women. However, such suits were very difficult for women to win. Without any witnesses, cases of defloweration, sexual assault and sex under the pretense of marriage would largely
and an illegitimate pregnancy severely would hurt her chances at marriage, diminish her
opportunities for employment and place her at the margins of society. If she kept the child, she
might struggle for the resources necessary to sustain it and herself. Both women and men,
therefore, had strong motivations for terminating unwanted and potentially scandalous
pregnancy. Women turned to female networks, often midwives and matrons, to access
knowledge, materials and services for abortion. Men turned to their own networks in order to
procure abortions. Male healers, from learned physicians to lower order practitioners such as
apothecaries, barbers and herbalists, were regularly consulted and provided materials and
services for abortion. Contrary to what we might assume, men knew a great deal about abortion
and participated in abortions in numerous ways.

According to civic and ecclesiastical authorities, a better solution to unwanted pregnancy
was abandonment of the newborn in a foundling home, which every major Italian city had and
which could be done in secret. However, this was not as easy or as unproblematic as its
ubiquity might lead us to assume. These institutions were a continuous strain on civic resources
and were chronically underfunded. For the pregnant woman, this option meant that she would
carry the child till full term and deliver; with every passing month of pregnancy, the chances of

have turned into a battle of ‘he said, she said,’ with the man likely claiming that she was not a virgin at the time of
intercourse and that she was a willing participant, that marriage was never promised, or that she was attempting to
ensnare him as a husband or extort him for financial gain. On ‘stupro,’ see Cavallo and Cerutti, “Female Honor and
the Social Control of Reproduction,” pp. 73-109; Lucrezia Troiano, “Moralità e confine dell’Eros nel Seicento
risarcimento nella casistica cattolica del XVI e XVII secolo,” Quaderni Storici 75 (1990): pp. 805-31; Elizabeth
Cohen, “No Longer Virgins: Self-Presentation by Young Women in Late Renaissance Rome,” in Refiguring
Woman: Perspectives on Gender and the Italian Renaissance, eds. Marilyn Migiel and Juliana Schiesari (Ithaca,
secolare,” in Trasgressioni coniugali: concubinaggio, adulterio, bigamia (secc. XIV-XVIII), eds. S. S. Menchi and
D. Quaglioni (Bologna, 2004), pp. 351-382; Giorgia Arrivo, Seduzioni, promesse, matrimoni. Il processo per stupro
nella Toscana del Settecento (Rome, 2006).

33 Gavitt, Charity and Children in Renaissance Florence; Nicholas Terpstra, Abandoned Children of the
Italian Renaissance: Orphan Care in Florence and Bologna (Baltimore, 2005).
being found out increased as did the potential for scandal and ruin. Women might try to conceal pregnancy for as long as possible and then travel to a nearby city to give birth in anonymity and to give the newborn to a foundling home, but this required help and money.\textsuperscript{34} It was especially difficult for rural women to travel to cities for this reason – their absence from local life would surely be noticed. For many single women battling trying circumstances, finding solutions to unwanted pregnancy was a matter of survival. If a woman could not make it to a foundling home, she might deliver in secrecy and potentially resort to infanticide. Recent studies have suggested that infanticide may have been common in Renaissance and early modern Italy and, perhaps due to high levels of infant mortality, easy to hide and perhaps even somewhat tolerated. Nonetheless, infanticide was a psychologically difficult step, involving considerable risk, especially for single women.\textsuperscript{35} Abortion, as early in term as possible, was an easier decision to make and, as we shall see, a less controversial solution to unwanted pregnancy.\textsuperscript{36} Procuring an abortion, however, could be dangerous, and the efficacy of abortifacient remedies was unreliable.

There were many reasons, then, for women and men to procure abortion and, despite the proliferation of legislation and moralising, available sources and scholarship suggest that it may

\textsuperscript{34} According to Joanne Ferraro, a pregnant woman set on abandoning her future child could tap into networks and informal industries in order to receive services that would help them deliver a child abroad in secrecy and for it to be taken care of afterwards. Ferraro, \textit{Nefarious Crimes}.


\textsuperscript{36} While this dissertation mostly investigates attitudes towards abortion stemming from illicit extra-marital sex, it does peripherally explore abortion in the context of marriage. There is good reason to believe that married couples, as well as men and women in socially accepted extra-marital relationships, regularly practiced abortion and other forms of birth control in order to limit family size – in these contexts, abortion was represented as being sought for reasons poverty and also as a means to control inheritance and to consolidate assets. Ecclesiastical authorities moralized against what appears to be the prevalent practice of abortion within matrimony; nevertheless, abortion in such contexts is harder to access in the early modern historical record.
have been a relatively common and sometimes socially tolerated practice. Behaviour and practices officially condemned by the Church and states could be interpreted differently, ignored and opposed at a local level by laity and also by clergy and municipal authorities. Even though Church and states officially forbade abortion, there were many reasons for authorities to ignore, not pursue and even forgive offenders. Most compelling of all was the avoidance of scandal. Authorities were well aware of the dangers inherent in investigating cases of illicit sexuality and of bringing a procurer of abortion to light. Investigation compromised the honour of all concerned: women, men and their families. If the offense involved a cleric or a nun, it would embarrass the Church. It could even result in violence towards the pregnant woman and her impregnator, and might even spark familial vendettas. Members of the elite classes might, in some occasions and in certain circumstances escape formal investigation. It is also important to recognise that members of the same classes as the secular and ecclesiastical authorities who attempted to implement moral reforms were engaging in officially illicit and deviant sex and, therefore, also sought to abort pregnancies stemming from their own transgressions.

Because abortion was so closely tied to notions of honour and shame, and had the potential to cause social disruption, cases were usually kept secret and hidden, and authorities would have been reluctant to pursue the matter. The danger of revelation was in many cases judged to be greater than the benefits of bringing the offender before a tribunal. On a more practical level, ecclesiastical and secular tribunals lacked the resources to actively police and punish all the behaviours Counter Reformation authorities deemed sinful and criminal. Only occasionally did cases of abortion make it to court, and this was generally for reasons other than enforcing strict moral discipline and punishing women and men who terminated fetal life.

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Generally, specific social circumstances and personal motivations dictated whether and how abortion was prosecuted. Most cases came to court by means of denunciation by someone who had a personal stake in the matter or when behaviours associated with the abortion disturbed neighbourhood life. Abortion could also be used as a pretense to air other unrelated grievances in court. Abortion trials reveal as much about attitudes and practices towards the termination of pregnancy as they do about social relations and neighbourhood and communal life. Cases were however investigated when abortion resulted from sexual relations that transgressed the norms and moralities that a neighbourhood or community was willing to accept and which became public knowledge.

5. Ambiguous Bodies, Uncertain Events

Investigating a case of suspected abortion and disciplining suspected procurers was also substantially hindered by the difficulties of distinguishing between causes of pregnancy termination and the intentions that lay behind them. In many cases, it was very difficult and often impossible for onlookers and authorities, both medical and legal, to determine with certainty whether a woman had suffered an unfortunate miscarriage, or whether an abortion had been sought. Intentions were very difficult to uncover, and the processes that brought pregnancy to an end were never certain and always open to interpretation.

At the center of this thesis is an exploration of contemporary anxiety and wariness about women's bodies, generation, pregnancy and its termination. Medical and cultural historians have increasingly turned to the physical body as a field of historical investigation. The chief insight utilized here is that the body is a biological entity that occupies physical reality, but its
expressions and significations are shaped by, interact with, and are understood within specific social, political, religious and intellectual contexts. Bodily experience and bodily semiology are not universal but culturally coded and historically contingent. Culture influences the ways in which bodies are perceived, used, operated on, experienced and represented. To recover some of the problems abortion posed to late-Renaissance Italians, it is essential to realise that the early modern female body was experienced and understood in very different ways than it is today.

In early modern Europe, the female body was an object of curiosity and was submitted to much scrutiny both by men and women. Historians of medicine have demonstrated that academic interest in women’s bodies exploded between the fifteenth and seventeenth centuries. In Italy, physicians and anatomists embarked on intense study of women’s anatomy, physiology and pathology in order to better understand and control fertility, generation and pregnancy, the so-called “secrets of women.” Sterility and the frequency of miscarriage were major concerns for elite and lower order families alike: both threatened patrilineal and inheritance strategies, and miscarriage put women’s lives in danger, which had financial as well as personal consequences for households. The capacity to intervene in generation and fertility and especially to minimize

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the risks in pregnancy and childbirth was of paramount importance. And yet, even under persistent probing, the female body resisted comprehension: the womb remained stubbornly opaque, generation occult and unpredictable, and pregnancy notoriously difficult to detect, especially its in early months.\textsuperscript{41} “No sign of pregnancy is certain, but at best conjectural and doubtful,”\textsuperscript{42} wrote the seventeenth-century Roman medical forensics expert Paolo Zacchia. The cessation of menstruation, a growing belly and the sensation of motion within it were both signs of pregnancy and symptoms of illnesses such as menstrual retention (ammenhorea), trapped wind, uterine swellings and untoward growths. These latter, if left untreated, could worsen, diminish fertility and turn life threatening. Problematically, the treatments used to heal women from such disorders and to encourage fertility – mostly purgatives designed to force the womb open and flush its contents – could cause pregnant women to abort. As early modern physicians knew well, what could harm could also heal and vice versa.

Surprises and unintended consequences of misdiagnosis were common and expected. A woman who appeared pregnant might deliver a great amount of wind, coagulated blood, an unformed piece of flesh, “false fruit” (parto falso) or even a monster. A woman might appear ill and suffering from swellings and suppressed periods only to deliver an immature foetus or a

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fully formed child, dead or alive. One never really knew what the belly harboured until it was emptied; one could never tell with certainty whether a woman was pregnant or ill until she delivered a child.43 Before this point, “pregnancy,” as Laura Gowing has remarked, was “to some degree negotiable.”44 So too were abortions.

Women accused of concealing pregnancy and of having abortions could and did claim, often on the authority of physicians, midwives, or other professional healers, that they were suffering from retained menses or dropsy of the womb. They insisted that they had no idea of being pregnant until they delivered.45 Authorities suspected women of duplicity, deceiving healers into thinking that they were ill in order to receive purgative medicines, and using the ambiguities of their bodies in order to pass off abortion as unintentional miscarriage. Women were also suspected of trying to pass off menstrual blood as miscarriage caused by violence in order to receive financial compensation from an alleged assaulter. At the same time, however, such defences could be genuine. Medical discourses influenced the ways in which onlookers interpreted the signs of women’s bodies and also shaped the way women experienced their own bodies and interpreted their somatic sensations.46 Women did not necessarily know when they

44 Gowing, “Secret Births and Infanticide in Seventeenth-century England,” p. 114. Gowing argues that unwed mothers who sought to hide their pregnancies and births made strategic use of the cultural uncertainties about pregnancy to deny it as long as possible. See also Common Bodies, ch. 4.
46 Susan Broomhall has noted, “[early modern women’s] sensory perceptions were as socially coded by contemporary discourses as were those of the learned physicians of the medical faculty, even if the discourses themselves were different. It would be simplistic to suggest that physicians drew their notions on the female body,
were pregnant, especially if it was the first time their bodies were experiencing the phenomena. This also depended on expectations, whether or not pregnancy was likely or even desired. In many cases, women could genuinely interpret pregnancy as illness.

It is well known that bodily sensations are not automatically meaningful. Through personal experience and instruction from others, people learn how to ascribe meanings and importance to sensations, how to ignore some and privilege others. Young women generally learned to identify the signs of pregnancy from experienced matrons: “I think I felt the baby because of what they said, but I am not sure because I do not know if I can recognize it,” wrote one young Roman noblewoman to her mother.47 Similarly, women knew well the dangers that could arise from retained menstruation. A young unwed woman of good sexual reputation who had missed a few periods, had a slightly distended belly, and experienced abdominal pains would likely have been diagnosed by matrons surrounding her and by healers (should she have consulted any) as ill and in need of a healing purge before they risked accusing her of sexual impropriety and of pregnancy. The presumed ubiquity, fear and danger of womb-related illnesses could allow unwed women, even if they had recently engaged in sexual relations, to believe that their sensations and bodily transformations signalled not pregnancy but rather something less socially threatening, at least for a period of time. In that interval they could seek to acquire purgative medicines which might cause abortion. In early modern Italy, as we will see, missed and misdiagnosed pregnancy was common and abortion was, in some cases, unintended and a real surprise.

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Some Italian states, in their criminal statutes, could allow the death penalty for procured abortion. However, most Italian jurists who discussed and investigated cases, recognizing the slipperiness of signs and the difficulty of uncovering intentions, were generally more laxist. Medical conceptualizations of the female body and of the causes of pregnancy termination influenced the theological and judicial casuistry of the day to accept that the mind can do one thing, the body another. Duplicity was expected in cases of abortion, but defences of ignorance – unknown pregnancy, unintentional miscarriage, or accidental abortion – were common and expected because these really happened. Women and men, professional healers and laypeople, accused of procuring abortions or causing women to abort by other means could and did deploy defences of misdiagnosis in order to belay accusations of crime and guilt. To be sure, such defences were generally self-serving and often fabrications, but they were not always lies or unrepresentative of experiences and circumstances. The uncertainties and ambiguities of women’s bodies did not allow for quick or simple understandings of abortion.

The uncertainties surrounding generation and pregnancy not only framed investigations into suspected abortions but also influenced the very definitions of what it meant to be considered a human being. Both criminal and canon law stood firm that procured abortion was a crime and mortal sin because it ended a potential life, that of the unborn. It was unanimously held that the severity of the loss of the unborn and therefore the criminality of abortion increased over the length of pregnancy just as knowledge about pregnancy could increase over its duration. In theory, the nature of the crime and the penalties to be meted out corresponded to the development or gestational ‘age’ of the foetus. According to theologians, the unborn was considered to be a *human being* once it had been “animated” or “vivified” with a rational soul, which was generally thought to be infused by God forty days from conception in male foetuses.
and eighty days in female foetuses. The secular counterpart to animation was “formation”, the moment the foetus was fully formed and equipped with all the organs and limbs needed for life outside the womb; physicians generally put this at sometime between the sixth and eight-month from conception, with male foetuses forming more quickly than female. Before the unborn was “animated” and before it was fully “formed” it was not considered to be a human being and abortion not homicide but a lesser crime.48

Although the markers of animation and formation were of great importance, to establish the precise status of the unborn within the depths of the female body was agreed to be impossible. No two foetuses were exactly alike – some were animated and formed sooner than others and this depended on a wide array of factors. Both animation and formation were commonly tied to quickening, the moment the woman herself perceived the foetus’ first movements. Yet this too was very subjective and hard to sustain in a court of law. The examination of an expelled foetus post factum could reveal the general level of development, for example its size, the presence of all the necessary limbs and their articulation. Nevertheless, certainty could not be had regarding the time the unborn perished or the reasons why it did. In most situations, jurists held that childbirth, rather than animation or formation, was the threshold between unborn and human being, and that killing a born child (infanticide) rather than one still in the womb ought to be considered homicide. Discussing these issues, the Piedmontese jurist Antonio Tessauro reflected a common yet theologically controversial position in stating that judges attempting to decide on a case of suspected abortion and on a penalty for the suspect by evaluating the state and nature of the unborn are better off accepting that “there is a difference

48 This position evolved toward locating animation closer to conception, but the debate would rage for a long time yet. Noonan, “An Almost Absolute Value in History”; Prosperi, Dare l’anima, pp. 248, 266; Lavenia, “‘D’animal fante’. For nineteenth-century debates, see Betta, Animare la vita.
between killing a child already born, and [killing] an immature one still in the womb.”

In the civil arena, an unborn could not affect the course of inheritance until after its emergence alive from its mother’s womb. Determining exactly what the unborn was and therefore what abortion meant remained controversial and heavily debated throughout the early modern period.

6. Sources and Chapters

In most cases, abortion took place in private and was kept hidden and secret. Most cases did not receive institutional attention and therefore did not generate traces in the historical record. While quantification and attempts at a numerical analysis of abortions in a given place and time are not possible, a qualitative discourse analysis of representations allows us to recover some of the meanings abortion had in sixteenth and seventeenth-century Italy. This study analyses a variety of sources (literary, theological, ecclesiastical, jurisprudential, medical, as well as witness testimonies in criminal court cases) drawn from all over the Italian peninsula to recover some of the complexities abortion posed in the early modern period.

Each chapter explores conceptions of abortion within a different discursive context. Chapter 2 examines religious ideas and ecclesiastical responses through the analysis of works of pastoral theology, instructional manuals for confessors and for penitents, synodal constitutions and decreals, episcopal and papal legislation, and supplications. It introduces the reader to the major theological positions on abortion and its relation to sexual sin, and investigates how these doctrines were communicated to the laity through the mediation of confessors. Inspired by the

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50 The lag time between the foetus’s ensoulment and its legal personhood could be very important in practice: see Park, “The Death of Isabella della Volpe,” for a case where the question of whether the infant had survived the mother, even if only by a few moments, had large financial consequences for the heirs.
Tridentine mandate to tighten morality through social discipline and direct ecclesiastical involvement into the lives of the laity, more and more clerical authorities, in the second half of the sixteenth century, attempted to suppress the practice of abortion through increasingly severe legislation. Bishops increasingly declared abortion an offense to be investigated by an episcopal tribunal and prohibited confessors from absolving its procurers. In 1588, Pope Sixtus V issued a papal bull officially equating abortion with homicide and reserving absolution to the papacy itself. Such policies, however, were regarded too radical and unenforceable. Deemed too severe, Sixtus’ bull was revoked less than three years later. While bishops still insisted formally on reserving cases of abortion to their office, most cases were, in practice, dealt with in the secret and less intimidating setting of the confessional. The social circumstances of exposing cases of abortion as well as the uncertainty that underlay the causes of pregnancy termination led ecclesiastical authorities to adopt a more measured and tolerant response to abortion than Post-Tridentine rhetoric and legislation might lead us to expect.

Chapter 3 examines views of abortion as a crime as defined in legal precepts and judicial commentary. Drawing on statutory legislation and municipal ordinances, codes of canon law, consilia, criminal jurisprudence, and collections of decisions made in canonical and secular tribunals, this chapter demonstrates that abortion was generally recognised by authorities to be a criminal offense deserving of punishment. Nevertheless, the nature of the crime and the penalty to be meted out to offenders was controversial and heavily debated. In the sixteenth and early seventeenth centuries, only a handful of Italian states criminalised abortion by including it as an offense in their criminal statutes; the precise criminal nature of the crime as codified, however, remained ambiguous. On the authority of physicians and medical authors, jurists acknowledged that no certainty could be had regarding the status of the aborted unborn or the actual causes of
the termination of pregnancy. Most agreed that, in practice, the unborn should not be regarded as a human being, that abortion should not be tried as homicide, and that capital punishment could not be imposed on a suspected offender. Most jurists thought significantly milder penalties more appropriate, calibrated to the gender and social status of the offender, and to the social circumstances and motivations with which the abortion was committed. Some jurists thought abortion was not an issue to be investigated by criminal tribunals at all, but rather ought to be handled by a confessor in the privacy of the confessional.

Ecclesiastical and legal responses to abortion were, in part, shaped by medical discourses. Chapter 4 explores medical ideas and practices surrounding abortion in relation to conceptions of women’s bodies, generation, pregnancy and its termination. In learned and popular works, medical authors enumerated the many bodily signs that might indicate that a woman had conceived and was pregnant, that might identify the gender of the foetus and its level of development, whether the foetus would survive till full term and the approximate time it would be born. Medical authorities, however, concluded that no certainty could be had regarding the events taking place within the depths of women’s wombs. Learned and lower order healers agreed that it was very difficult and often impossible to ascertain with certainty whether a woman was pregnant, whether the unborn would be delivered healthy and alive, whether, when and why a foetus had perished in utero. In terms of abortion, medical practitioners could not determine, with the certainty jurists required for prosecution, whether pregnancy was terminated on account of illness, anatomical deficiency, accidents (such as labours or violence), or procured with intention. Medical authorities also acknowledged that the sensations and bodily transformations associated with pregnancy were also known to be symptoms of common illnesses such menstrual retention and abdominal swelling. This caused concern and confusion
among medical practitioners and women themselves. Women and healers were often fooled into thinking that a woman was pregnant when she was actually suffering from a womb related illness; the opposite was also true: women, often on the authority of healers, might believe themselves ill only to discover that they were with child. Purgative medicines were common and well known therapies for addressing uterine blockages. For a pregnant woman, however, such therapy could cause abortion. Medical health boards officially prohibited healers and healer-merchants from selling purgatives to women or men who might use them to terminate pregnancy; however, the fact that purgative medicines were used to heal a variety of illnesses made the enforcement of such prohibitions very difficult. This chapter also challenges the assumption that women, especially midwives, were the primary providers of abortions and sources of information. Drawing on a range of medical and pharmaceutical works and on health-related legislation, I argue that male healers – physicians, apothecaries, surgeons, empirics, and herb peddlers – also knew a great deal about how to terminate pregnancy and were actively sought for these services.

Chapter 5 explores another quite different form of discourse where legal and medical views converged in specific situational and personal settings: testimonies given in criminal cases tried in the Governor of Rome’s criminal tribunal at the turn of the seventeenth century. Trial materials comprise another important context of discourse from which to recover other less accessible voices and perceptions on the subject. Here, witness testimonies are privileged as they are among the few sources currently available through which we can access some of the thoughts and experiences of ordinary men and women as they were communicated to judicial authorities. Witness testimonies in criminal trials also illuminate some of the social and political circumstances in which cases of abortion came to the attention authorities. This chapter is
divided into two parts: the first analyses two cases of miscarriage caused by violence where the accusers sought financial compensation from their assailters for the loss of their unborn and for injuries suffered, and the second, two cases of abortion procured to conceal illicit sex (defloration and incest) and illegitimate pregnancy. In both types of cases, the uncertainties of generation, pregnancy and its termination, as well as the ambiguities inherent in women’s bodies and illnesses, were deployed as legal strategies in making and challenging the cases. Because the physical evidence on which these cases depended was so uncertain, claiming that miscarriage had a different cause, arguing that intentionally procured abortion had not occurred, or giving different interpretations to the signs of the body and meanings of the products that were expelled from the womb, were all tropes of criminal investigations. Accusers, defendants, and lay and expert witnesses, including physicians, apothecaries, surgeons and midwives, gave multiple, conflicting, and imaginative explanations for alleged miscarriage, abortion and the appearances of the body. Although these positions may have been generally self-serving, they were not necessarily lies or unrepresentative of experiences. In all four cases considered here, judges were hard-pressed to find concrete evidence that would confirm or deny the accusations. Uncertainty and doubt in relation to specific social circumstances influenced the ways in which women and men processed the events in question.
Chapter 2
Abortion in the Confessional*

1. Introduction

In the spring of 1590, the Bishop of Lodi, Ludovico Taverna (r. 1579–1616), wrote to Pope Sixtus V (r. 1585–90) informing him that various women of Lodi had recently confessed to procuring abortions. Lodi’s confessors had reported that, in order to avoid “dishonour and infamy,” several unnamed women admitted to drinking certain beverages and using other means in order to impede generation and terminate their pregnancies.1 Taverna was not writing to draw the pope’s attention to a scandalous occurrence: there was nothing new or extraordinary about these events. Rather, the Bishop of Lodi communicated this common phenomenon to Sixtus with the hope of being granted special permission to personally absolve these women and their accomplices. Such permission was not required for other sexual transgressions, such as adultery or rape. In 1590, abortion was a special case that bishops and confessors were not permitted to absolve.

This was a fairly recent development. Less than two years earlier, Sixtus V had issued a papal bull making abortion, for the first time, unequivocally homicide and its procurers and any accomplices excommunicate, with absolution reserved to the pope himself. Sixtus, it seems, was attempting to eradicate what he described as a “detestable,” “abhorrent,” and “evil act” by

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*A version of this chapter has been published: John Christopoulos, “Abortion and the Confessional in Counter-Reformation Italy,” *Renaissance Quarterly* 65 (2012): pp.443-484.

imposing severe and radical punishments for its practice.\(^2\) And yet he granted Taverna’s request without hesitation. Sixtus did not order the bishop to send these women, of undisclosed age and status, to Rome to plead their case before him, nor did he wish these sinners to be tried as murderers. Sixtus’s only directive was that they be absolved by their own confessors — and not by the bishop or any other cleric — in order not to break the seal of the confession.\(^3\) While the pope sought to impose his authority over the practice and handling of abortion, he did not appear interested in enforcing the severe punishments decreed in his legislation.

This interaction suggests inconsistency between some ecclesiastical rhetoric and practice regarding abortion in Counter-Reformation Italy.\(^4\) On the one hand, ecclesiastical authorities condemned the practice of abortion, associated it with both sexual immorality and homicide, and tried to control and eradicate it through harsh legislation. On the other hand, it appears that ecclesiastical authorities wanted to deal with potentially scandal causing sins like abortion quickly and quietly in order to minimize disruption. This chapter explores and seeks to understand the inconsistencies between ecclesiastical rhetoric and clerical responses to abortion.

The secret and sacred space of the confessional provides a fruitful perspective from which to observe perceptions of abortion. Ecclesiastical authorities believed that the confessor, due to his unique and intimate access to the laity, was best placed to discover cases of abortion and to communicate theological teachings regarding its practice to his community. The use of confessional practices as a lens through which to observe contemporary attitudes toward abortion reveals that, in late-Renaissance Italy, abortion had many meanings and elicited various, wide-ranging, and apparently inconsistent responses from ecclesiastical authorities. Focusing on the

\(^2\) Sixtus V, *Contra Procurantes, consulentes, & consentientes, quocumque modo Abortum, CONSTITUTIO* (Rome, 1588).

\(^3\) ASV, Congr. Vescovi e Regolari, “Registra Episcoporum,” 19 (1590), 4 May 1590, fol. 149r–v.

\(^4\) For recent reviews of religious reform in Italy see Chapter 1, ns. 17 and 18.
second half of the sixteenth century, this chapter first considers the meanings of abortion as discussed in Latin and vernacular works on confession and pastoral theology, and second, explores some of the ways in which various ecclesiastical authorities handled cases of abortion. What emerges is a set of conflicting teachings, events, and practices.

In theory, abortion procured in order to avoid the consequences of sexual activity was considered to be mortal sin and potentially homicide, and therefore required ecclesiastical attention. In the 1570s and 1580s, bishops and popes increasingly attempted to eradicate the practice of abortion through confessional reform and legislation. But abortion was not straightforward. In certain cases, the voluntary termination of pregnancy could be deemed excusable, necessary, or even charitable. Numerous factors and circumstances influenced responses: the reasons for the abortion and its causes; the state and development of the unborn at the time of abortion; and the health of the pregnant woman. Above all, attitudes and responses were influenced by the social status and reputation of those involved. Post-Tridentine ecclesiastical authorities sought to eradicate the practice of voluntarily terminating pregnancy in order to hide a sinful sexual relationship. This was part of a broader campaign against what was deemed illicit sexuality. Increasingly heated discourse and severe legislation were meant to change mentalities. However, when it came to investigating and punishing procurers of abortion, ecclesiastical authorities had to tread carefully. The social status of those involved in a case of abortion had to be taken into account. Confessors, bishops, and popes were well aware of the dangers inherent in bringing a procurer of abortion to light: public knowledge of an illicit sexual relationship, be it defloration, rape, adultery, or incest, could cause scandal and social disruption. It would almost certainly result in loss of honour for the woman and her family as well as injure
the reputation of her impregnator and shame his family; it could strain political and financial relationships, and even result in violence towards the impregnated woman or her impregnator.

Clerics (as well as laymen and women) were well aware of the uncertain and potentially socially disruptive nature of abortion. Exploring some of the aspects that characterized the negotiations between theological pronouncements and ecclesiastical administration, this chapter attempts to demonstrate how the ambiguities inherent in contemporary conceptions of abortion led to inconsistent responses amongst Counter-Reformation ecclesiastical authorities.

1. Confessionalizing Abortion

Within the context of Catholic reform, materials to instruct confessors evolved through the sixteenth century. At the outset of the sixteenth century, a priest would find information on abortion in the tomes of the great medieval theologians.\(^5\) However, works of technical theology were not quick and easy reads. A priest who sought to learn Catholic doctrine in a simple and comprehensive manner — or a confessor who needed to refresh or increase his knowledge when confronted with a complicated case of sin — would be better off looking at a *summa* of cases of conscience. These were alphabetically arranged handbooks of doctrine and sin written especially for confessors. Summists (mostly canonists and theologians) simplified opinions and conclusions from canon law and theology and communicated them to clerics who needed answers to questions relevant to their congregations’ daily lives. Nevertheless, these texts were aimed at a learned and active clerical audience that sought to be up to date on current doctrine in a simple

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and easily implementable way. For quick and easy access to information on sin, *summae* were arranged alphabetically, and most were thematically cross-referenced. They ranged in length and sophistication yet were also highly formulaic.⁶ Works like the *Summa angelica* (1480s) of the canonist Angelo Carletti (d. 1495);⁷ the *Summa summarum* (1516) of Sylvestro Mazzolini (d. 1527), chair of theology at the University of Rome and Master of the Sacred Palace (1515–27);⁸ and the *Summula peccatorum* (1525) of the prominent Cardinal Cajetan (Tomasso de Vio, d. 1534),⁹ were very influential and went through many editions in the sixteenth and seventeenth centuries.¹⁰

Looking up *Abortion*, the confessor would learn that it is a mortal sin but with distinctions. Abortion is homicide if the unborn is animate, that is, infused with a rational soul. An *innanimatus*, an unborn that has not yet received the rational soul, is not an *homo*, and does not possess life; therefore, in this case, *homicidium* does not apply.¹¹ He would learn that abortion stems from the sin of lust. Married couples are prone to practicing abortion, including by the sexual stimulation of a pregnant woman that could cause her to bring forth an “unfinished unborn.” Pregnant women must therefore abstain from the “conjugal debt” and husbands must resist striking their pregnant wives.¹² The confessor would learn that physicians (*medici*) are

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⁶ On this genre, see Thomas Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1975), pp. 28–53. Tentler speculates that these Latin works would have been purchased by educated clerics who had a desire to keep up with recent developments in moral theology, perhaps indicating an attitude of reform. Indeed, it is probably not a coincidence that these texts rose in popularity alongside early Catholic reform initiatives.

⁷ Angelo Carletti [da Chiavasso], *Summa angelica de casibus conscientialibus . . . cum additionibus quam commodis R.P. FOL. Iacobi Ungarelli* (Venice, 1578).

⁸ Sylvestro Mazzolini [da Prierio], *Summae Sylvestrinae, quae summa summarum merito nuncupatur*, 2 vols (Venice, 1587).

⁹ Cajetan [Tomasso de Vio], *Peccatorum summula* (Venice, 1575).

¹⁰ Carletti’s *Angelica* saw twenty-four editions, Mazzolini’s *Summa* ten, and Cajetan’s *Summula* eleven: see Miriam Turrini, *La coscienza e le leggi. Morale e diritto nei testi per la confessione della prima età moderna* (Bologna, 1991), “Censimento.”


experts in abortion and are often its perpetrators. Women ask physicians for abortions in order to cover up their illicit sexual encounters. Physicians also administer abortions in order to preserve the lives of women who may not survive pregnancy or childbirth (so-called “therapeutic abortion”). The confessor should know that this last practice is licit and even charitable, but only if the physician acts on an inanimate unborn, for in this case he “will not be the cause of death of a human, but rather will be freeing [one] from death.” However, aborting an animate unborn, even to save the mother, is mortal sin and held to be homicide. In these works, a confessor would learn simplified and almost axiomatic teachings of doctrine on a most complicated and muddy subject. Of course, he could only learn these official doctrines if he could find a summa, if he cared enough to open it, and if he could read Latin.

By the time of the Council of Trent (1545–63), it was a widely held assumption within the upper echelons of the Church that many confessors, and clergy in general, were uninspired, uninspiring, unfit for their task of caring for souls, and that some were as immoral and as unorthodox as many of the penitents whom they were to shepherd. Post-Tridentine theologians, bishops, and popes were well aware of Protestant objections to the “science of conscience,” the command of regular confession regardless of whether or not the penitent truly felt remorse — the practice of lackluster, uneducated, and morally corrupt clerics and their abuse of sacerdotal powers. The reforming Church lamented the inadequacy of its confessors and blamed them for

13 Mazzolini, Summae Sylvestrinae, vol. 2, fol.171r, “De medico et infirmis.” Carletti and Cajetan include sections on physicians and warn them against ignorance, negligence, greed, experimenting on a patient with medicines, “giving noxious medicines” that can cause death, and especially against “healing the body at the expense of the soul.” Abortion may have been implied in some of these precepts, but it appears that Carletti and Cajetan did not think this was something that needed to be explicitly stated: Carletti, Summa angelica, vol. 2, pp. 125–27: “Medicus”; Cajetan, Peccatorum summula, pp. 322–23: “Medici peccata.”

14 The 1517 Synod of Florence characterized confessors as “ignorant, greedy, without charity, without zeal, and inclined to examine their penitents’ purses more than their consciences”: Statuta Concili Florentini (Florence, 1518), fol. 18v. For Catholic criticisms of the practice of confession, see de Boer, The Conquest of the Soul, chap. 1.

15 Carletti’s Summa angelica was famously burned by Martin Luther alongside the papal bull of his excommunication. For Protestant objections to confession and their influence on Catholic theologians, see Tentler, Sin and Confession, 349–63.
the ignorance of the faithful.\textsuperscript{16} Some, like Cardinal Carlo Borromeo, Archbishop of Milan (r. 1560–84), believed that penitents confessed their sins out of habit rather than out of knowledge of, and guilt over, their sins and without any intention of changing their ways; absolution, it seems, was too easily given by lax, uncaring, or ignorant confessors.\textsuperscript{17} In the hands of such confessors, the sacrament was not the soul-cleansing and transformative experience it was intended to be. Yet, even with all the confessional’s shortcomings in practice, the fathers of the Council of Trent deemed it an opportune arena from which to establish moral standards and ensure discipline and obedience.\textsuperscript{18} The confessor and the practice of the sacrament would have to be reformed in order to achieve such lofty goals. Tridentine reformers promoted confession as the sacrament \textit{par excellence} for the care, education, discipline, and salvation of souls.

According to reformers, the renewed sacrament would consist of the confessor disciplining and educating his penitent toward orthodox belief and moral conduct. By inquiring into all aspects of penitents’ lives, the confessor would take his community’s pulse and also teach the tenets of the faith: especially, what constituted sin and how to avoid it. In the privacy of the confessional and under the seal of confession, penitents would reveal to their trusted and competent confessor secret and shaming sins that weighed on their consciences and put their souls in jeopardy. The confessor would explain in a straightforward and authoritative way the gravity of specific sins, make his penitent understand how these sins harmed the soul, and assign

\textsuperscript{16} In his oration at the 1569 Synod of Florence, the Vicar General Guido Serguidi stated that “the ignorance of the faithful was a consequence of the inadequacies of the clergy in its pastoral mission”: quoted in Arnaldo D’Addario, \textit{Aspetti della controriforma a Firenze} (Rome, 1972), p. 199 and Kathleen Comerford, “‘The Care of Souls is a Very Grave Burden for [the Pastor]’: Professionalization of Clergy in Early Modern Florence, Lucca, and Arezzo,” in \textit{The Formation of Clerical and Confessional Identities in Early Modern Europe}, eds. Wim Janse and Barbara Pitkin (Leiden, 2005), pp. 349–368.

\textsuperscript{17} Carlo Borromeo, \textit{Avvertenze . . . a i Confessori nella Citta, e Diocese}, in \textit{Acta ecclesiae mediolanensis} (Milan, 1583), fol. 231v; de Boer, \textit{Conquest of the Soul}, p. 53.

fitting penance. The remorseful penitent would be forgiven by the merciful Church, which forgiveness must lead to a reformed life. The confessor was expected to instill in every penitent a confessional attitude. Successful confession would result not only in constant examination of one’s own conscience and the education of one’s family, but also in monitoring and influencing the conduct of one’s neighbours. Reform was to start in the confessional and in an individual’s conscience, and be maintained through social watchfulness.\(^\text{19}\) Clerical education and discipline, two of the major tasks of the Tridentine Church, were paramount in achieving a Catholic Reformation.\(^\text{20}\)

Ideally, all confessors would read the seminal works of moral theology and the \textit{summae} of cases of conscience in order to exercise their office competently: however, this was extremely unlikely to happen since many confessors could not read Latin.\(^\text{21}\) The \textit{Catechism of the Council of Trent for Parish Priests} (1566), commonly known as the \textit{Roman Catechism}, was composed to remedy this situation. Published in Latin but quickly translated into Italian (1567), the \textit{Roman Catechism} taught priests the standardized \textit{res necessareae} of the faith, which enabled them to teach their congregations. The confessional was an ideal classroom for such instruction.


\(^{\text{21}}\) Some \textit{summae}, like Carletti’s, were translated into Italian by the end of the century.
As it sought to teach the rudiments of the faith, the Roman Catechism did not give abortion the same treatment as did the summae on cases of sin. However, it is significant that abortion was mentioned at all in the Roman Catechism. Under the Sacrament of Marriage, the Roman Catechism taught the priest to “communicate to the faithful” that, aside from companionship and support, the reason for marital union was the generation of offspring and the propagation of the faithful. As the Apostle Timothy taught, “Woman shall be saved by bearing children.”

Therefore, the authors of the Roman Catechism taught that it was “a great wickedness that those joined in matrimony, [through the use of] medicines, impede the conception of children, or if they are conceived, kill the creatura in the stomach.” Abortion, the Roman Catechism warned, is a “conspiracy of two homicidal people.” Both husband and wife were portrayed as murderers, equally complicit.

In terms of a standard teaching, the Roman Catechism taught priests that abortion was a sin that could be “homicidal,” that it was committed by consuming “medicines,” and that it was directly associated with married couples, not young unwed women caught in illicit sexual relationships. This, however, was rudimentary teaching. The priest was expected to deepen his knowledge of the faith with other authorities in order to properly handle complex cases of conscience. The Roman Catechism was not an end in itself but a step toward higher education. This was how Carlo Borromeo, one of its authors, intended it.

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22 Catechismo, cioe istruttione secondo il Decreto del Concilio di Trento, a’ parochi . . . tradottopoi per ordine di S. Santita in lingua uolgare dal reverendo Padre frate Alessio Figliucci (Venice, 1567), p. 301. Following the theologians and canonists, the Cathecism reaffirmed that marriage is also a good in that it satisfies desire and eliminates the risk of fornication; however, couples should abstain from the conjugal debt to devote themselves to prayer and then return together “lest Satan tempt you by your incontinence”: ibid., p. 295.

23 Ibid. And yet the “conspiracy of two homicidal people” and the “kill[ing of] the creatura” are not mentioned under “you shall not kill.” Abortion is mentioned once in the exposition of the fifth commandment as an example of accidental death. If death follows from a man’s unlawful action, whether or not death was intended, he is guilty of homicide because the action leading to death was itself unlawful. The example used to illustrate this point is the classic one taken from Exodus: if a man strikes a pregnant woman and she aborts — that is, miscarries — he is responsible because he persecuted a pregnant woman, an act that in itself is unlawful: ibid., p. 365.
More than any other bishop, Borromeo believed that an educated and disciplined confessor was essential in establishing orthodoxy and in maintaining moral and social discipline. The confessor had to be able to assess all cases of sin as they arose in confession, to get the penitent to divulge all of his or her secrets, and also to communicate sins that they did not even know were sinful. In this most intimate and vulnerable of settings, the confessor was expected to “break down” his penitents, teach them the severity of their sins, and instill in them a moral awareness. If he was not properly trained in cases of conscience, he would be unable to care for souls. The confessor would lose the respect of the penitent and potentially throw his community into disarray.  

2. Abortion in “Good Books and Approved Authors”

To avoid such circumstances, Borromeo ordered his confessors to always have in their “hands a few good books and several approved authors of cases of conscience” to guide them through the difficult task of caring for souls. Italian bishops followed Borromeo and compiled lists of authors and works for their confessors to master because, according to the Bishop of Ferrara, Giovanni Fontana (r. 1590–1611), “ignorance is inexcusable in a parish priest.” At the

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top of most of these lists of required readings were the *Summa, aurea armilla* (1547) of the Dominican preacher and inquisitor of Piacenza, Bartolomeo Fumi (d. 1555),\(^27\) and the *Manuale de confessori et penitenti* (first Italian edition in 1569)\(^28\) of the Spanish Augustinian Martin Azpilcueta (d. 1586).\(^29\) These works of pastoral theology were popular and authoritative.\(^30\)

Seeking to prepare the confessor for his sacramental role, both authors focused on the will, intentions, and conscience of the penitent, though in different ways. Fumi composed an alphabetical Latin summist treatment of sin.\(^31\) Azpilcueta, on the other hand, proceeded thematically, discussing sin within a broader exposition of the Decalogue, the Seven Cardinal Sins, and the Sacraments. He also included a section on interrogations proper to the penitent’s *status vitae* — economic, civil, and professional grouping — alerting the confessor to different penitents’ specific needs. While Fumi’s *summa* was aimed at Latinate clergy, Azpilcueta intended his work for both confessors and penitents.\(^32\) Their comprehensive discussion of cases

\(^{27}\) Summa, aurea armilla nuncupata, causarum omnium ad animarum curam attinentes, breuiter complectens, (Venice, 1572).

\(^{28}\) The first Spanish edition, from which the Italian was translated, was published in 1554. The Latin editions were the most frequently printed, and the work would largely be known through its Latin title: *Enchiridion, sive manuale confessariorum et poenitentium*. The version used here is the Italian translation, *Manuale de’ Confessori et Penitenti* (Venice, 1569).


\(^{30}\) Fumi’s *Armilla* saw twenty-seven Latin and vernacular editions from 1549 to 1602. Azpilcueta’s *Manuale* went through at least twenty-nine Italian and forty Latin editions between 1564 and 1600 from all the major printing centers of Italy. See Turrini, *La coscienza e le leggi*, “Censimento.”

\(^{31}\) *Somma armilla . . . nuovamente tradotta in lingua volgare dal p. p. Maestro Remigio . . . et dal r. m. Giovannaria Tarsia fiorentini* (Venice).

\(^{32}\) Its sophistication and length would likely have put it beyond the reach of most literate lay people; however, Azpilcueta’s *Manuale* was the most published work on confession of the second half of the sixteenth century: see n. 30 above.
and their attention to conscience and intentions behind actions made their works required reading for priests and confessors, for all those whose work was the curatio animarum.\(^{33}\)

While the confessors of many Italian dioceses were officially required to learn from works like Fumi’s and Azpilcueta’s in order to better serve their congregations, in reality, many were lucky if they had ever seen these texts, let alone read them cover to cover. By the end of the sixteenth century, the ecclesiastical establishment had not yet been able to implement a standard, efficient, and widespread system of clerical education. The diocesan seminary was mandated at Trent (1563) for the precise purpose of training priests for the care of souls,\(^ {34}\) yet it too fell short of its aim, especially in the first four decades of its establishment. The socioeconomic realities of the late sixteenth-century Italian parish were that priests did not stand to profit much, in terms of better positions, higher salaries, and so on, if they were better educated. By the end of the century, the large majority of priests received little, if any, seminary education. Few, it seems, were better educated than their pre-Trent predecessors and there was little incentive to remedy this.\(^ {35}\)

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\(^{33}\) The Society of Jesus required all future curati of their order to carefully study all the cases Fumi and Azpilcueta presented before they entered service. This intense study was meant to prepare aspiring priests and missionaries in their daily tasks of hearing confession and guiding souls, but was also part of their own moral and religious formation: Giancarlo Angelozzi, “L’insegnamento dei casi di coscienza nella pratica educativa della Compagnia di Gesu,” in La “Ratio studiorum”: Modelli culturali e pratiche educative dei Gesuiti in Italia tra cinque e seicento, ed. Gian Paolo Brizzi (Rome, 1981), pp. 121–62 at p.143.

\(^{34}\) The institution of the diocesan seminary was established in the twenty-third session of the Council of Trent, 15 July 1563: Canons and Decrees of the Council of Trent, pp. 175–79.

\(^{35}\) Priests were ordained with or without completing seminary education. The lack of incentives, rewards, and penalties for not attending seminaries, coupled with the ineffectiveness of unpopular and weak bishops, led to the failure of many diocesan reform initiatives, especially those pertaining to clerical education, in the late sixteenth and early seventeenth centuries. This was the situation in Tuscany, as described by Kathleen Comerford, Reforming Priests and Parishes: Tuscan Dioceses in the First Century of Seminary Education (Leiden, 2006). Simona Negruzzo has, however, found more positive results in Lombardy, where seminaries and religious houses (such as those of Jesuits, Barnabites, and Somaschans), appear to have been more successful in the overall training of secular clergy than their neighbors to the south. This relative success was no doubt owed, at least in part, to the involvement of Carlo Borromeo, Collegi a forma di Seminario. Il sistema di formazione teologica nello Stato di Milano in età spagnola (Brescia, 2001). For the success of Jesuit educational institutions, see O’Malley, The First Jesuits (Cambridge, Mass., 1993). See Agostino Borromeo, “I vescovi italiani,” pp. 65–74; Black, Church, Religion and Society, pp. 86–129, for a general overview.
Another more popular, accessible, and perhaps more influential type of doctrinal education was available in the burgeoning print market of the second half of the sixteenth century. Clerics (mostly regulars who had better profited from educational reforms), inspired by their vocation and no doubt also seeking to supplement their incomes and raise their standing within the Church hierarchy, composed works on confession and devotional works on doctrine and sin in the vernacular. Authors were influenced by Fumi and Azpilcueta, but modeled their works on earlier manuals for confessors and the *Roman Catechism*. These vernacular works on confession and sin, especially those composed in the latter decades of the sixteenth century, were addressed to both clerical and lay audiences. Unlike confessors’ manuals, these were not merely instructions on how to hear confession, but also on how to confess. Authors consciously sought to attract both clerics and the laity, inviting them to examine their own consciences, to learn doctrine in a simplified vernacular way, and to prepare themselves for confession. The quantity of these works, in numerous editions, indicate that there was a considerable market for this type of literature, especially in urban areas. Sixteenth-century readers demanded them and, as Anne Jacobson Schutte has remarked, we should not assume that they were purchased to adorn bookcases or to impress visitors.

36 The following fifteenth- and early sixteenth-century works were very influential, and were continuously printed in the second half of the sixteenth century: Antonino, *Sammula confessionalis*; Bernardino da Feltre, *Confessione generale*; Cherubino da Firenze, *Confessionario*; Constantino da Novara (Campagna), *Confessionale interrogatorio*; Jacopo della Marcha, *Confessione generale*; Girolamo Savonarola, *Confessione pro instructione confessorum*.


38 This genre peaked between 1570 and 1610: 147 titles published in the 1580s alone. The large quantity of fifteenth-century confessors’ manuals continuously in print in the sixteenth century did not discourage authors from creating new ones or publishers from printing them. See Turrini, *La coscienza e le leggi*, “Tabelle e grafici.”

Through questions such as “Have you committed this sin or that action?” readers would have learned the precepts of the Decalogue, the Seven Mortal Sins, and the Sacraments, and have been introduced to the teachings of theologians like Fumi and Azpilcueta in a simplified way. The interrogative style of many of these texts not only taught the confessor what questions to ask but also taught the penitent what to ask him- or herself before confession and in everyday life. Doctrine was taught by drawing on relatable everyday situations. On the subject of abortion, authors of manuals of confession synthesized their predecessors’ analyses and repeated their condemnations, but with greater frequency and simplicity. As the intended audience was both priestly and lay, the message of these new manuals reached a broader audience than the more technical and learned ones, and were crafted with both groups in mind. While their works differed in format, Fumi, Azpilcueta, and authors of vernacular works of confession shared a similar focus on conscience and moral theology. They reached the same conclusions on various cases of sin, including abortion. In a good number of these works, confessors and lay readers learned, first and foremost, that procured abortion was mortal sin and that it could be homicide.

The rhetoric used in these works to describe the methods and the gravity of abortion was explicitly gendered. Men were depicted as causing abortion due to their passions, that is, through beating their pregnant wives and “treating [them] badly.” Authors agreed that such behaviour was mortal sin, though some specified only if the abortion was not accidental (senza mala

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40 On lust, sexual habits, sins of conjugal life, avoiding generation, abortion and the fifth commandment, and abortion and healers, see Antonino, Summula confessionalis (Florence, 1538), 58rv, 85r – 87v, and 95v–96r; Bernardino da Feltre, Confessione generale (Venice, 1573), “Del settimo vito capital cioe lussuria,” (unpaginated); Cherubino da Firenze, Confessionario (Florence, 1547), “De peccati che si commeteno nel matrimonio” and “Non fare omicidio,” (unpaginated); Constantino da Novara, Confessionale interrogatorio (Venice, 1535), “Settimo vicio e Luxuria,” (unpaginated); Jacopo della Marcha, Confessione generale (Venice, 1532), “Non occidere,” (unpaginated); Girolamo Savonarola, Confessione pro instructione confessorum (Florence, 1524), pp. 34–35.
intentione, non e mortale). Few believed it was truly homicide. Women, on the other hand, were portrayed as seeking abortion. The confessor was taught to be distrustful of women: he must know that women “seek” (cercanno) to abort through the acquisition and consumption of products, through activities chosen for this end, and “accidently” through their social habits. The confessor was told to ask a woman if she had ever attempted to abort (dispregnarsi), if she had procured abortion by “taking things by mouth” or by physical means such as dancing, jumping, dragging a long train on her dress, wearing too tight clothing, through (sexual) amusement (solazzare), or by carrying heavy weights. Even if she did not succeed in aborting, she still sinned against this divine precept if she had intended or desired to do so. Azpilcueta believed that even if she was “not seeking to abort [but did] various things [that put her in] danger of aborting,” such as lifting weights, doing tiresome things, dancing or jumping around, she still committed mortal sin. Negligence was no excuse: pregnant women were not to be careless with their bodies. Women were to realize that terminating pregnancy was against the fifth commandment and that even negligence could be mortal sin. Authors wanted pregnant women to constantly think of and do what was in the best interests of the unborn that they carried. These warnings were also meant to teach the confessor that women commonly blamed abortions on mundane physical activities with the hopes of not being punished or of avoiding scandal. Authors of works on confession targeted women as the primary procurers of abortion.

Male involvement in procured abortion was not always explicitly mentioned in these works, though it may be inferred from a few general statements. Counseling or showing favor to

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41 Fumi, Summa, aurea armilla, “De Aborsu,” pp. 6–7; Azpilcueta, Manuale de’ Confessori, “Del Quinto Precetto,” p. 166; Antonio Pagani, La Breve somma delle essamine de confitenti, per la necessaria riforma del huomo interior (Venice, 1587), p. 34; Paolo Morigia, Il gioiello de christiani (Venice, 1581), fol. 108r.

42 Fumi, Summa, aurea armilla, pp. 6–7; “De Aborsu”; Azpilcueta, Manuale de’ Confessori, p. 166; “Del Quinto Precetto”; Pietro Filomuso, Breue trattato di confessione (Florence, 1580), no. 4 (unpaginated); Morigia, Il gioiello, fol. 108r-v; Pagani, Breve somma, p. 34; Fabio Incarnato, Scrutinio sacerdotale, overo modo di essaminare tanto nelle visite de’ Vescovi, quanto nel pigliare gli Ordini Sacri (Venice, 1588), fol. 200v–201r.
a woman seeking to abort was condemned as a violation of the fifth commandment. “Anyone” and “others” who help or give a woman medicines to abort were deemed accomplices to homicide.\textsuperscript{43} It is unclear whether such statements targeted the man responsible for the pregnancy, or whether they were addressed to other women who assisted in the abortion. Most likely such statements were meant for everyone. These warnings were also meant to inspire watchfulness over pregnant women. Their actions were to be monitored, and in no way was anyone to take part in abortion by providing materials or knowledge to this end. Everyone was to take care of the way they treated a pregnant woman.

While abortion was predominantly discussed in relation to the fifth commandment (you shall not kill), authors of devotional works on confession also associated it with lust and sins committed within marriage. Here men were often implicated. A man was deemed to have sinned mortally against the “use and end of matrimony” if he purposefully used his wife outside of the “vaso debito” or in ways that she not receive or retain semen so that she might not generate.\textsuperscript{44} While these actions were grave, most authors did not consider them homicide. The Barnabite friar Antonio Pagani (d. 1587), however, believed that it was homicide when “she procure[ed] things in order not to conceive or to terminate her pregnancy.” The premeditated nature of “procuring things” for the purpose of avoiding and terminating generation, in contrast to the physical means used by men, rendered the act not only a sin against the sixth commandment against adultery or fornication, and the vice of lust (\textit{lussuria}), but also a form of homicide equivalent to suffocating an infant. The “married woman and mother of the family” had to learn that it was sin not to want to have children and that abortion (\textit{sgravidare}), like suffocating

\textsuperscript{43} Pagani, \textit{Breve Somma}, p. 34; Morigia, \textit{Il gioiello}, fol. 108r; Incarnato, \textit{Scrutinio}, fol. 200v–201r; Filomuso, \textit{Breue trattato}, no. 4.

\textsuperscript{44} Incarnato, \textit{Scrutinio}, fol. 154r-v; Vincenzo Bruno, \textit{Breve trattato del sacramento della penitenza} (Rome, 1586), p. 38.
“bambini,” was actual homicide. In these works, procured abortion was unanimously depicted as a woman’s practice: she committed homicide by taking and doing things to her body in order to terminate that which grew within it.

While authors did not directly implicate husbands and fornicators in procured abortion, most represented male healers as its perpetrators and facilitators. Fumi and Azpilcueta both taught that physicians were the experts when it came to abortion and that they were the ones who often administered it. On this point, all authors followed the opinions of the summists, and especially those of the great theologian St. Antoninus (Antonino Pierozzi, d. 1459): it was unequivocally a mortal sin to bring forth an unfinished unborn (bruta fetu); it was a mortal sin for a physician to give a pregnant woman “medicine” to abort an animated “figliolo.” However, it was licit to abort an inanimate unborn — for this would not be a “mortis hominis” — in order to spare a woman from illness or death. The physician was not to abort in haste. Acting without knowing the state of the unborn was a mortal sin. Authors of works intended for confessors taught their readers that a male unborn had a soul in-and-around (spatium) forty days, and a female in eighty. Authors of vernacular works aimed at a general audience were less detailed and more prescriptive. Physicians and surgeons were asked (and told to ask themselves), “Have you given anything or counseled her in ways to abort” or given her things “that will harm her unborn”? Apothecaries were to be asked if they had given or sold poisons or medicines with incorrect doses that could harm or kill the patient, that could cause abortion (disgravidanza), or if they had given such things to those who may have used them towards “evil ends” (mal fine) or

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45 Pagani, Breve somma, pp. 43, 85–86 (erroneously printed as “76”).
46 I have not found any mention of abortion in sections devoted to female healers, midwives, or wetnurses in manuals of confession.
47 Antonino, Summa theologica (Graz, 1959), vol. 3, p. 283.
“sad effect” (tristo effetto).\textsuperscript{49} One author specifically warned physicians and apothecaries that giving a “remedy” to make a pregnant woman abort, or even one that would impede pregnancy, was a grave sin. If the unborn was animate, the healer himself was guilty of homicide.\textsuperscript{50}

Confessors were to make sure to teach physicians never to counsel the sick to heal the body at the expense of their soul. A physician would not be excused if he told his patient “I do not counsel you to do this, but if you do it, you will be healed.”\textsuperscript{51}

The teachings on abortion found in these works on sin and confession are quite revealing. Many references to abortion directed to both clergy and laity were made in the last decades of the sixteenth century. Authors portrayed abortion as a serious social problem that was to be monitored, punished, and eradicated. Abortion was not unique in this respect. These manuals condemned a wide range of sexually transgressive actions and behaviours: adultery, rape, incest, sodomy, and prostitution all received significant attention, certainly more than the voluntary termination of pregnancy. Along with these other sexual transgressions, abortion, clerics taught, could be stamped out through a change in morality established through confessional education and discipline.

Through his intimate relationship with the penitent — man, woman, married, single, mother, healer — the confessor was best placed to discover cases of abortion, and also the best suited to teach penitents of its sinfulness. Within the secrecy of the confessional, the priest would communicate what abortion was and why it was a mortal sin. Ideally, the case of abortion would have been studied closely by priests, as it concerned both a commandment and a cardinal sin, and

\textsuperscript{49} Pagani, Breve somma, pp. 110, 111–12.
\textsuperscript{50} Giovanni Molisso da Sarno, Accorgimento de fidi intorno la sacramentale confessione conalaguanti salutiferi, e necessarii documenti al cristiano vivere (Naples, 1589), pp. 428, 430, 442–43 for apothecaries. Molisso da Sarno’s statements here are particularly interesting because he does not mention abortion in chapters on homicide, lussuria, and the sins of married couples. It seems that he directly and singularly associates abortion with healers, those who know the female body and the composition of medicines.
\textsuperscript{51} “Io non uelo consiglio, ma se tal cosa facesse, sanarebbe”: Azpilcueta, Manuale de’ Confessori, “D’alcune Interrogationi — De i Medici, & Chirugici,” p. 630.
was intrinsically tied to (at least) three important segments of society that required monitoring and discipline: fornicators, because they threatened moral and socioeconomic balance through the generation of bastards;\textsuperscript{52} married couples, because moral reform was to start in the household;\textsuperscript{53} and healers, because of their relationship with society and their intimate knowledge of and interventions with the body.

Through a proper confession and the confessional education provided by the priest and available in devotional works on sin, penitents would learn doctrine and adopt a “confessional attitude” themselves: they would question their actions and would scrutinize their consciences. Informed and moral penitents would also keep watchful eyes over their neighbors’ conduct for the welfare of their community. Confessional education would teach the layman and laywoman, married or single, that procuring abortion to hide the consequences of an illicit sexual relationship was a mortal sin and potentially homicide. A healer would learn that he implicated himself in mortal sin and potential homicide by giving abortifacient material to a woman seeking to terminate her pregnancy. The confessor and the confessional education propagated in these texts were expected to instill such awareness in the laity with the hope of reforming practices and behaviours. Yet, despite these aims and methods, the ecclesiastical establishment came to believe that confessionalization was not enough to eradicate the practice of abortion.

3. A Bishop’s Prerogative


As the Tridentine program of moral reform tightened through the late sixteenth century, the confessor was increasingly limited in his ability to absolve those who confessed to procuring abortion. “Atrocious and grave crimes,” as the fathers of the Council of Trent labeled them, sins that would cause scandal and notoriety in the public sphere, and that might influence others to commit similar sins, were to be “reserved” for “the highest priests.” In the 1570s and ’80s, abortion was increasingly deemed such a sin.

More and more bishops attempted to assert their control over “atrocious and grave crimes” by reserving the absolution for these cases to their office. The reservation of abortion was intended to impress the gravity of this sin upon the laity, but was also meant to ensure that abortion would not be easily dismissed or leniently handled by the confessor himself. In Milan, Carlo Borromeo forbade his confessors from absolving “procurers of abortion” from his first synod in 1565. Cardinal Paolo Burali d’Arezzo went further than Borromeo, reserving procured abortion and also procured sterility (contraception) while he was Bishop of Piacenza (r. 1568–76) and again when he was Archbishop of Naples (r. 1576–78). In 1580, the Archbishop of Ravenna, Christophoro Boncompagni (r. 1578–1603) put the case of “women, or others” who

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55 Reserving abortion was not unique to the Tridentine episcopate: several bishops in the fifteenth and early sixteenth centuries reserved it to their offices. Nonetheless, it seems that after Trent many more bishops were inclined to do so, most likely in emulation of Borromeo. For reserved cases before Trent, see Lea, A History of Auricular Confession; Brambilla, “Confessione, casi riservati.”

56 Borromeo included “Qui abortum procurarint” among sins and crimes of sexual violence such as the rape of virgins and incest; the crime of voluntary homicide, including the exposure of infants; heresy, magic, superstition; and “polluting the church”: Borromeo, AEM (Milan, 1583), 7v, 140r; Borromeo, AEM (Milan, 1599), pp. 11, 339, 992.

seek to abort (sperdere) their creatura on his list of cases reserved to his office, and published the list in Italian lest anyone misunderstand.\textsuperscript{58} In 1584, the Bishop of Viterbo, Carlo Montigli (r. 1576–94) also listed abortion among cases reserved to his office, but unlike his peers, he only reserved the abortion of an ensouled foetus.\textsuperscript{59} In 1587, the Bishop of Camerino, Girolamo Bovio (r. 1580–96), reserved any type of abortion to his office alone.\textsuperscript{60}

These bishops did not specify what abortion was: its meaning was taken for granted, as were the meanings of other reserved cases such as rape and incest, which could certainly evoke varying interpretations. Nevertheless, penitents in Milan, Piacenza, Naples, Ravenna, Viterbo, and Camerino who admitted within the secret confines of the confessional to procuring abortion could not officially receive absolution within this same space. The confessor had to persuade the sinner to take themselves to the bishop for the benefit of absolution.

Making the penitent go to the bishop for reconciliation with the Church and with God increased the sinner’s shame and made him or her realize the magnitude of their sin. Reforming bishops saw the system of reservation as a weapon in establishing moral conduct, effectuating reform, asserting their authority, and ensuring discipline within their diocese.\textsuperscript{61} The enforcement of this system, however, proved very difficult. Abortion was hidden, hard to uncover, and difficult to process. Willfully terminating pregnancy was considered a sin. But the category or gravity of the sin depended on the state of the unborn at the time of abortion. It was unanimously

\textsuperscript{58} Constitutiones et Decreta condita in synodo dioecesana Ravennatensi, quam illustrissimus, &reuerendissimus dominus D. Christophorus Boncompagnus Dei,… anno domini MDLXXX die quinta Maij (Ravenna, 1580), fol. 55v.

\textsuperscript{59} Constitutiones, et decreta Dioecesanae Synodi Viterben, p. 110.

\textsuperscript{60} Synodo Dioecesanae camerinensi quam illuvstris, et reverensissimvs Dominus Hieronymvs de Bobus . . . MDLXXXVII. die XXIII. Mensis Septembris (Camerino, 1588), p. 58.

\textsuperscript{61} Carlo Borromeo, Paulo Burali d’Arezzo, and Giovanni Fontana were particularly fond of the reservation of cases. See discussions in Ottavio Pasquinelli, “Peccati riservati a Milano dopo San Carlo (1586–1592),” La Scuola Cattolica 121 (1993): pp. 679–721; de Boer, Conquest of the Soul; Molinari, Il cardinale teatino, p. 143; Michele Mancino, Licentia confitendi. Selezione e controllo dei confessori a Napoli in eta moderna (Rome, 2000); Paliotto, Giovanni Fontana, pp. 257–60.
agreed that the abortion of an animated or ensouled foetus was graver than one involving an inanimate one. The Neapolitan penitentiary and renowned canonist Giacomo de Graffi (d. 1620) argued that the abortion of an *animatus* was rightly included in the Archbishop of Capua’s reservation of homicide; however, the abortion of an inanimate unborn was not, because this was not considered the murder of a human being.62 This was Carlo Montigli’s reasoning when he reserved only the abortion of an ensouled foetus to his office in Viterbo. Montigli, it seems, felt that pre-ensoulment abortion was not “grave and atrocious” enough — or possibly too common or ambiguous — to warrant reservation.63 While the Bishops of Milan, Piacenza, Naples, Ravenna, and Camerino did not explicitly distinguish between the abortion of an animate and inanimate unborn in their lists of reserved cases, it is likely that this is what they had in mind as well.

Enforcing the system of reservation was also problematic for other reasons. By reserving a case of sin, the bishop could in fact make a secret sin public knowledge, thus causing scandal within the community. Young unmarried women caught in reserved cases of carnal sin could not go to a bishop without attracting the attention of kin and community. Such a trip could result in the loss of a woman’s honour, a scandal for her family, strain or ruin of financial or political relationships with others, and could possibly result in violence and familial vendetta. It was unlikely that a woman could expose her seducer, rapist, or incestor without repercussions to her own or her family’s honour. Admitting to abortion before one’s confessor in complete secrecy was one thing; travelling to the bishop and reporting the details was quite another.

Bishops realized the repercussions of reserving sensitive cases like abortion. While the official rhetoric and law in several Italian dioceses demanded that procurers of abortion be

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63 *Constitutiones, et decreta Dioecesanae Synodi Viterben*, p. 110.
brought before the bishop, it was widely accepted that, for the common good, such cases were better absolved locally and in secret by a parish priest. Paolo Burali d’Arezzo thought it wise to allow his confessors in Naples to absolve women locally “from all carnal sins,” including those reserved, in order to avoid potential scandal. This also appears to have been the preferred practice even under as strict a regime as Carlo Borromeo’s in Milan. Because abortion was so closely tied to notions of honour and shame, bishops allowed those who confessed to be absolved in secrecy by their confessors. The danger of revelation was judged to be greater than the benefits of forcing the penitent to go before the bishop. While the reservation of cases was a serious tactic intended to influence conduct, in practice it appears to have been readily circumvented. Bishops, it seems, could not enforce their authority over sensitive cases such as abortion without causing scandal and possibly violence. Some bishops, such as Antonio Altoviti of Florence (r. 1548–73), Filippo Sega of Ripatrasone (r. 1575–78), and Fantino Petrignano of Cosenza (r. 1577–85), appear to have acknowledged this futility, and did not reserve cases of abortion at their provincial and diocesan synods of 1574, 1576, and 1579, respectively. Bishops had to rely on the confessional to reform this aspect of morality.

4. Transgressive Clergy

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64 See Mancino, *Licentia confitendi*, pp. 37, 71; de Boer, *Conquest of the Soul*, pp. 63–64, 228–33. The reservation of cases was also particularly difficult to enforce during Lent, when confessors heard many confessions due to its annual obligation. The system of reservation had to be significantly relaxed during this time. See de Boer, *Conquest of the Soul*, pp. 228–29.


The reservation of cases was also an attempt to discipline the confessor himself on the chance he might be too quick to absolve sexual transgressors or be too lenient to those who confessed to procuring abortions. More importantly, the oversight of a higher office could guard against priests procuring abortions themselves. It was common knowledge and the stuff of popular literature that clergy commonly, openly, and without remorse engaged in fornication, concubinage, sacrilege, and rape. What stopped a priest from absolving a woman whom he himself had seduced and impregnated from abortion? What kind of message would this send to the community the priest was supposed to serve?

Cases of clerics procuring abortion appear to have been common. The infamous case of the priest Giovanni Pietro Lion certainly made an impression on the ecclesiastical establishment. Lion was publicly executed in Venice in 1561 for seducing, raping, and violently harming his charges while confessor at the Convertite convent for reformed prostitutes, and for inducing abortions “through medicines and other arts” in the ones he had impregnated. This situation was not rare. Furthermore, there was a long tradition of canonical discussion of cases of priests

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69 Stephen Haliczer provides a wealth of material from early modern Spain that demonstrates the confessor’s power of seduction, and his ability to abuse his charges through the confessional. See Sexuality in the Confessional: A Sacrament Profaned (Oxford, 1996), pp. 124, 131 for priests providing abortifacient remedies. See Ferraro, Nefarious Crimes for eighteenth-century Venice.
procuring abortion. Canon law distinguished between abortion pre- and post animation, the latter constituting a form of homicide. A cleric who procured the abortion of an animated foetus would become irregular — he would be stripped of his clerical status and tried as a laymen.

Abortion pre-ensoulment was far less grave: if the foetus (conceptus) “was not vivified [the monk] could continue his ministry.”

Cases of priests who procured abortion to conceal their sexual relationships appear to have been common. An important ecclesiastical tribunal in Rome, The Sacred Apostolic Penitentiary, dealt with such cases. There clergy could appeal, seek dispensation, and receive absolution from a variety of transgressions, sins, and crimes. Martin Azpilcueta heard and gave his opinion on at least four cases of clerical abortion while he served as consulter and canonist to the Apostolic Penitentiary in the 1570s and ’80s under the pontificates of Pius V, Gregory XIII and Sixtus V.

70 The canonical position on abortion was derived from three medieval canons: Aliquando (contained in the first part of the Corpus juris canonici known as the Decretum (c. 1140) assembled by the Bolognese monk Gratian), and Si aliquis and Sicut ex both found in the Decretales (1234) compiled by St. Raymond of Penafort under Pope Gregory IX which constituted the second part of the Corpus. See Noonan, Contraception; idem, “An Almost Absolute Value in History,” pp. 20–1.

71 As a cleric incurred irregularity by committing homicide, (Decretales, 5.12.6) Sicut ex appeared to imply that pre-ensoulment abortion was not homicide, being as it was included in the Corpus juris canonici’s section on “Voluntary and Chance Homicide.” Decretalium collectiones [Decretales Gregorii P. IX., Liber Sextus Decretalium; Bonifacii p. VIII., Clementis P. V. Constitutiones, extravagantes tum viginti Ioannis P. XXII. tum communes] in Corpus Iuris Canonici, vol. 2, Decret. Gregor. IX, bk. 5, tit. 13, c. 20, p. 802.

72 The Apostolic Penitentiary heard and decided on numerous issues involving ecclesiastical censures and restrictions pertaining to both clergy and laity. The Cardinal Penitentiary, acting on behalf of the pope, granted dispensations from some of the requirements of canon law and absolutions for those who violated certain ecclesiastical canons. For the laity, the Penitentiary mostly decided on issues of marriage — whether people who were closely related could get married — and illegitimacy; for the clergy, the Penitentiary was mostly concerned with issues of irregularity. For the functioning of the Apostolic Penitentiary and its relations to other papal tribunals, see Niccolo Del Re, La curia romana. Lineamenti storico-giuridici (Rome, 1970); Fillipo Tamburini, “Per la storia dei cardinali penitenzieri maggiori e dell’archivio del Penitenziaria apostolic,” Rivista di storia della Chiesia in Italia 36 (1982): pp. 332–80; ibid., Santi e peccatori: Confessioni e suppletive dai Registri della Penitenziaria dell’Archivio Segreto Vaticano (1451–1586) (Milan, 1995); Kirsi Salonen and Ludwig Schmugge. A Sip from the “Well of Grace”: Medieval Texts from the Apostolic Penitentiary (Washington, DC, 2009); Elena Brambilla, “Penitenziaria Apostolica,” in Dizionario storico dell’Inquisizione (2010), vol. 3, pp. 1183–85.

73 Martin Azpilcueta, Consiliorum sive responsorum (Rome, 1595). For Azpilcueta’s career at the Penitentiary, see Lavenia, “Martin Azpilcueta: un profilo,” pp. 136-9, 144-45.

The Sacred Penitentiary is an appeals court granting absolutions and dispensations for cases in the internal forum but in sixteenth century also made decisions in matters pertaining to external forum. See Niccolo Del Re. La curia romana. Lineamenti storico-giuridici (Rome, 1970); Fillipo Tamburini, “Per la storia dei cardinali penitenzieri maggiori e dell’archivio della Penitenziaria apostolic,” Rivista di storia della Chiesa in Italia XXXVI (1982): pp.
We have seen Azpilcueta’s discussion of abortion in his work on confession. His posthumously published consilia (1590) differed in terms of their *raison d’être*, methods and audience. These were legal analyses and opinions on difficult cases produced to advise the Major Penitentiary as he prepared to render a decision. In their published form, his consilia were intended to guide canonists and ecclesiastical tribunals through difficult or extraordinary cases.

Before the Penitentiary, it was the priests, and not the women whom they impregnated, who were the primary seekers and procurers of abortion. They sought to cover up the products of their illicit sexual relationships. In all four cases, Azpilcueta found reasons to absolve and dispense the priests, or ways to repeal the charges of irregularity on the grounds of a lack of evidence.

Two cases heard before 1586 are exemplary. In the first, a priest admitted that, before taking orders, he impregnated a woman and then encouraged her to have an abortion. Forty days after their union, the woman said “she thought she was made pregnant.” “Forty days” meant that the unborn might have been animate. The man immediately counseled her to abort by means of letting blood — a common method of provoking menstruation and terminating pregnancy — but he never learned if this was successful. He then went on to take orders. Was his ordination in vain? Had his actions disqualified him from the priesthood? Azpilcueta believed that they did not. He pointed out that the priest did not know whether his lover was truly pregnant, but only “suspected it because she said she suspected it.” Could her testimony be trusted? Azpilcueta did not appear to give any authority to the woman’s suspicion of her own pregnancy. Perhaps she

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Azpilcueta served several Major Penitentiaries over his long career in Rome, these included Carlo Borromeo (1565-72), Filippo Boncompagni (1579-86) and Ippolito Aldobrandini, later Pope Clement VIII (1586-92).

Azpilcueta, *Consiliorum*, cons. 47, p. 455.
said this strategically in order to secure a marriage, a dowry, or other financial advantage. Perhaps she was mistaken. Perhaps she was suffering from menstrual suppression or other uterine illnesses that made her think she was pregnant. Furthermore, while it was indeed dangerous to bleed pregnant women, it was never certain that they would abort. Azpilcueta argued that because news of an abortion did not reach the priest, he could believe that nothing came of this. Either that the bleeding was not carried out or that she was not really pregnant. Because bloodletting was not a “sure thing,” because her suspicion of pregnancy was neither sufficient nor to be trusted, and because the priest did not hear of the results, Azpilcueta concluded that this priest “can set aside his scruples.”\(^{76}\) In this case, it did not matter that the priest sought the abortion of a potentially animate unborn. Doubt rendered this difficult to punish and easy to absolve.

Another case that Azpilcueta analysed concerned a priest who counselled a pregnant woman to abort and gave and taught her the means to do so. She refused to have an abortion, but after she delivered, she killed the child. The question at hand was what responsibility did the priest have for the infanticide? Azpilcueta conceded that issuing a verdict in such a case was impossible because of the lack of information. Hypothetically though, the priest ought not to be irregular if he did not impregnate the woman. After all, she did not do what he counselled, and this was not for his own advantage. “Truly separate are abortion and the killing of a child already well born.” Azpilcueta distinguished abortion from infanticide by its “gravity”, “method” and the “reason” for committing it: abortion was more likely for the “concealment of an offence,” whereas infanticide was perfectly murder. The person seeking abortion generally does so in order

\(^{76}\) Ibid.: “potest scrupulum suum deponere, & credere se no fuisse irregularem. & c.”
to conceal (occultationi) sin and avoid scandal. As the priest wanted her to have an abortion, Azpilcueta assumed he was responsible for the pregnancy. If he was the father, “it can be presumed that the woman was more moved to killing on account of [his counsel], since the concealment benefitted him.” While his counsel was not specifically meant for the killing of the newborn, he was certainly guilty of sin in the forum of conscience. Establishing irregularity from the evidence available was, however, not possible. Azpilcueta certainly suspected the priest of a lot of wrongdoing but there was not enough evidence to render him guilty for the infanticide and to revoke his clerical status.

Though their practical impact is still unclear, such cases offer a glimpse into life and the adjudication of abortion and infanticide by a leading canonist working in the center of the Tridentine Church. Contrary to works on confession, Azpilcueta’s consilia did not describe abortion as women’s secret knowledge. Here it was priests who were learned in abortion, teaching and giving their lovers the means to terminate their unwanted pregnancies. This was necessary to avoid the consequences of their illicit sexual activities. As many men entered, or were placed by their families, into the clergy for economic, political, and dynastic reasons, it is not surprising that many did not practice celibacy. The avoidance of offspring would necessarily have been a real concern, and abortion a practical (and perhaps easy) way to hide their sin. The pregnant body of a lover was the site of a priest’s sin and possible future scandal. However, there were ways to avoid punishment for such transgressions. The female body and pregnancy were

77 “[...] valde separata sunt abortio, & occisio filij iam bene nati, tum ratione graviatis delicti, tum ratione modi delinquenti, tum ratione finis delinquenti; quia abortio est aptior occulationi delicti, quam praetendebat consulens, quam occisio iam nati, vs palam est.” Ibid. cons. 59, p. 457.

78 “Maius dubium videtur esse, si mulier fuit facta pregnant ab ipso religioso; quoniam eo casu magis attinebat ad ipsum religiosum occultatio, quam in alio; quod praesumi posset, quod mulier magis fuisset mota ad occidendum proper consilium consultat, quam alias; quia magis expediebat ei occultatio,” ibid.

79 For example, being excluded from marriage in order to allow another sibling to consolidate family wealth: see Raffaella Sarti, Europe at Home: Family and Material Culture, 1500–1800, rans. Alan Cameron (New Haven, 2002), pp. 29, 55–61.
cloaked in uncertainty and suspicion. Single women were self-interested and therefore not reliable sources of information in such matters. The testimony of a single woman who engaged in fornication with a cleric neither carried much weight nor elicited much sympathy. Azpilcueta’s consilia suggest that cases of clerical abortion could end with the absolution of transgressive priests. If a case was not public or if it was full of doubt and uncertainty, ecclesiastical authorities would likely have suppressed it, leaving the priest unpunished to minimize scandal rather than clearing the priest’s soul.  

6. The Pope’s Bark

While bishops attempted to exert authority over priests and their flocks’ behaviour, in cases of abortion it seems that there were many reasons to excuse and even tolerate this practice. Frustrated with the relative ease with which “those who break the fifth commandment” could receive absolution, Sixtus V issued a papal bull Against those who Procure Abortion (29 October 1588), often referred to by its opening word Effraenatam. As an official piece of papal legislation, Sixtus’s bull was unprecedented. As God’s vicar on earth, Sixtus sought to bring justice to those “murderers” who had no fear “to kill most cruelly immature foetuses within the maternal viscera.” Sixtus believed abortion to be a common and socially accepted practice. He

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80 Alessandro Pastore, Crimine e giustizia in tempo di peste nell’Europa moderna (Rome, 1991), pp. 112–14 and Ottavia Niccoli, Il seme della violenza: putti, fanciulli e mammoli nell’Italia tra Cinque e Seicento (Rome, 1995), pp. 184–86 have drawn attention to the case of a Lucia Grimaldi of Bologna, who in 1626 was deflowered at the age of nine by a priest named don Lutio, canon of San Pietro in Bologna. Lucia’s mother appealed to the archbishop’s tribunal for justice but it “stifled the cause.” Lucia Grimaldi ended up earning a living as a prostitute.

81 Sixtus V, Contra procurantes … abortum. For an overview of the bull, see Noonan, Contraception, 362–63; “An Almost Absolute Value,” 1970, 33; Prosperi, Dare l’anima, The only English translation that I am aware of is the incomplete one by Padre Antonio Trimakas, available online, “The Apostolic Constitution “Effraenatam,” http://iteadjmj.com/aborto/eng-prn.html (accessed 28 November 2010). I have consulted Trimakas’s translation; however, as he takes many liberties with the text, I have relied on the Latin original.

82 Sixtus V, Contra procurantes … abortum, preface.
sought to “eradicate” it by unequivocally deeming all procured abortion homicide and its
procurer and any accomplice murderers, as defined by canon and criminal law. In the bull, Sixtus
disregarded considerations of formation and animation; his proclamations concerned both the
animate and inanimate, the formed and the unformed unborn.  

From the moment the bull was
issued, these distinctions in the unborn became inconsequential: all abortion was made actual
homicide. As a papal bull, *Effraenatam* was both a theological statement as well as canon and
criminal law. It was not meant to analyze ambiguities and the mysteries of generation, but rather
to set out doctrine and procedures that were to be unquestionably followed. As of 29 October
1588, all Catholics were to believe and observe that abortion was homicide.

By *abortion* Sixtus meant “to kill . . . immature foetuses in the maternal viscera”
accomplished through substances and physical means — medicines, poisons, violence, burdens,
and work imposed on a pregnant woman — that promote sterility, impede conception, or expel
the unborn before its time. There was no mention of “accidental abortion,” that is, miscarriage,
or how to differentiate it from procured abortion. Although Sixtus frequently alluded to
“medicaments,” he did not once explicitly mention healers. Rather, they were implicitly
included among “interposed third persons” who “help, counsel [and] show favor” to those
seeking abortion. According to Sixtus, accomplices (*sociae*) are murderers themselves, and must
be sentenced as such.

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83 Ibid. ch. 1. Sixtus does, however, make certain statements that seem to imply that he is primarily
concerned with the animated unborn. He unilaterally equates the termination of pregnancy with the murder of a soul.
He states that the “evil” and “abhorrent” act of abortion causes the loss of “not only the bodies but also the souls” of
the unborn; he asks, who will not condemn to a “grave punishment” the impiety of those “who will exclude a soul
created in the image of God . . . from the blessed vision of God [and the] heavenly mansions.” He charges those who
commit abortion with depriving “offspring of life before they could naturally see light”: ibid., preface.
84 Ibid., preface and n.1.
85 He uses the word *medicamenta* four times and lists both *potiones* and *venena* five times.
86 Sixtus V, *Contra procurantes ... abortum*, ns. 5, 7.
Unlike confession manuals, Sixtus’s bull did not focus on pregnant women: the bull was
directed at men. This is evidenced by grammar and explicit invocations. “Audacious,” “daring,”
“profligate,” and “unbridled men” (*hominum*) break the fifth commandment and get away with it. Impious men (*impiorum hominum*), full of lust and cruelty, seek the “violent and untimely
death of their own offspring.” “Who will not condemn . . . those men who with poisons, potions,
and evil deeds sterilize women or prevent them from conceiving and giving birth with evil medicines?”
Sixtus believed that it was primarily men who desired abortion and provided materials for it.

While the term *impious men* was used all inclusively, Sixtus singled out clerics as a
category of men who were particularly guilty and shamefully associated with this sin. He
certainly knew the case of Giovanni Pietro Lion: Sixtus was the Inquisitor General of Venice
until 1560, when the government requested his removal due to quarrels stemming from the
excessive severity with which he ruled. Sixtus would have been away from Venice about one
year when Lion’s story broke. He would have also been well aware of the decisions of the
Apostolic Penitentiary concerning cases of clerical abortion. Sixtus, it seems, was fed up with
such behaviour. In his bull, he declared that any clerics who sought or were involved in abortion
would automatically lose their current office and benefices, and would be barred from higher
orders and from the care of souls in perpetuity. They would forfeit their clerical privilege and be
“handed over to civil court and secular power in order to be punished as lay murderers.”
Sixtus tried to eradicate abortion through the punishment and reform of clerics and laymen.

He largely ignored the idea of pregnant women as active seekers of abortion. Sixtus portrayed

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87 Ibid., preface.
Ludwig von Pastor, *The History of the Popes from the Close of the Middle Ages*, vol. 21, *Sixtus V (1585–1590)*,
(London, 1932), vol. 21, pp. 33-34.
89 Sixtus V, *Contra procurantes ... abortum*, ns. 2, 4.
women as passive victims of male (clerical and lay) lasciviousness, ingenuity, and impiety. Women were being sterilized, impeded from conceiving and giving birth, given poisons and medicine to abort. Abortions occurred because violence, medicines, burdens, and labours were “imposed on pregnant women.” While the female body was the site and cause of the sin, Sixtus sought to control the practice of abortion by disciplining the men who put women in this situation.

Women were not, however, completely innocent. “The same women” who were given medicines, who suffered violence and were forced to carry heavy loads, also “knowingly do the aforementioned.” “Women who knowingly take” abortifacients were mentioned alongside the men who gave and prepared them. The adverb *knowingly* (*scienter*) is important: it modifies the only two statements in the bull directly addressing women who seek abortion. Nowhere did Sixtus mention a penalty (or the lack of one) for a woman who was forced to consume, or who unknowingly consumed, an abortifacient. Knowingly, that is, intentionally seeking and taking such substances for the purpose of terminating pregnancy, constituted murder. Would this mean that unknowingly taking medicines or performing actions that cause abortion did not? Sixtus did not say. That he only referred to women knowingly seeking abortion twice in his bull implies that he believed abortion was not primarily instigated by women, or perhaps that women could not seek or accomplish it without men’s involvement. In contrast to manuals of confession, the pope described abortion as a male thing, an act sought, managed, and dispensed by men in order to avoid the consequences of their unbridled lust.

Because abortion was usually committed secretly, Sixtus ordered all judges, both ecclesiastical and secular, to proceed against suspects by accusation and denunciation, but also

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90 Ibid., ns.5 and 1, respectively.
91 Ibid., n. 5.
by inquisition, with information solicited from all persons including those held “by law to be incompetent.” As a sign of his commitment to eradicate abortion, Sixtus supplemented earthly punishments with spiritual condemnations: not only were those who procured abortion and their accomplices to be punished as “true murderers,” but they were also “ipso facto automatically excommunicated” with absolution reserved to the papacy alone. Those who procured abortion could no longer receive forgiveness from their confessor, or even their bishop, except on the point of death. Sixtus revoked the powers of all judges, including the Apostolic Palace Auditors and the cardinals, to resolve abortion cases otherwise. Anything done “knowingly or by ignorance by any authority” contradicting this bull was now rendered “null and void.” All laws, constitutions, and apostolic ordinations that prescribed other regulations for abortion were to be disregarded. No secular or religious authority could infringe on this constitution.

Historians have not been able to determine what motivated Sixtus to issue such a declaration against procurers of abortion at this time. However, one thing is clear: this bull was

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92 Ibid., n. 6.
93 Ibid., n. 7.
94 “in articulo mortis”: if a penitent is near death, all priests may absolve them from all sins and censures, including reserved cases. See Canons and Decrees of the Council of Trent, session 14, chap. 7, p. 96.
95 Sixtus V, Contra procurantes ... abortum, ns. 9, pp. 10, 12.
96 Jean Delumeau, Vie économique et sociale de Rome dans la seconde moitié du XVIe siècle, Bibliothèque des Écoles Francaises d’Athènes et de Rome, vol. 184 (Paris, 1957–59), vol. 1, p. 430, thought the bull “a terrifying constitution” that may have been issued by Sixtus as part of an ongoing campaign to lessen the practice of prostitution in Rome. Noonan, Contraception, pp. 362–63, n.16; and John Riddle, Eve’s Herbs: A History of Contraception and Abortion in the West (Cambridge, Mass., 1997), p. 158, have followed this hypothesis. However, there is not much evidence to substantiate a connection between increased prostitution and the practice of abortion at this time. I am unaware of any studies that have investigated this issue further. For prostitutes and prostitution in early modern Rome, see Elizabeth Cohen, “Seen and Known: Prostitutes in the Cityscape of Late-Sixteenth-Century Rome,” Renaissance Studies 12 (1998): pp. 392-409; Tessa Storey, Carnal Commerce in Counter-Reformation Rome (Cambridge, 2008). Noonan, Contraception, p. 363, n.29, has also wondered whether the bull might have been issued in reaction to an increase in the practice of abortion, and birth control in general, caused by the repeated wheat shortages and famines that hit Rome in the last quarter of the sixteenth century. The famines and rising price of grain may indeed have “made the poor feel the burden of offspring”; however, here too, there is little evidence to corroborate this hypothesis. On grain prices and famine in Rome, see Delumeau, Vie économique, vol. 2, pp. 521–649.
issued by a reforming pope who targeted deviant behaviour among the clergy and the laity. He issued bulls against adultery, marital separation, pimping one’s children, and incest — all punishable by death. Sixtus sought to discipline both religious and laity through institutional force. Procurers of abortion and other sexual transgressors were to receive severe corporal and spiritual punishment. Coming from the highest religious official, this legislation was meant to deter others from such behaviour and to ensure that lower ecclesiastical authorities fell in line. 

*Against those who Procure Abortion* was the legislation of God’s universal vicar and a territorial prince. Its proclamations became theological precepts and laws for the faithful. Sixtus’s bull defined any and all abortion as homicide, and *aborters* — those seeking and those providing the opportunity through information or materials — as murderers deserving of excommunication and capital punishment. The only way the sin could be forgiven was by a shaming and dangerous trip to the pope himself.

7. The Pope’s Bite

With this bull, Sixtus was consciously dissolving the boundary between sin and crime, between “disobedience to moral and religious law” and “disobedience to civil and political law.” This was part of Sixtus’s campaign against immoral, transgressive, sinful, criminal, and socially

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97 In June of 1586, Sixtus ordered both the execution of a Roman woman who had prostituted her daughter — the daughter was made to watch the execution wearing her client’s gifts — and burned a priest and his boy lover for sodomy. For a brief description of Sixtus’s draconian politics and terrible penal laws, see Hubner, *Life and Times*, vol. 1, pp. 276–83; Pastor, *History of the Popes*, vol. 21, pp. 89–95; Delumeau, *Vie économique*, vol. 1, p. 430; Ombretta Fumagalli, “Sisto V e la ‘questione criminale,’” in *Sisto V. Roma e il Lazio*, eds. Marcello Fagiolo and Maria Luisa Madonna (Rome, 1992), vol. 1, pp. 85–94.

98 Sixtus V, *De temeraria tori separatione, ac publicis adulteriis, stupris et lenociniis in quibusdam casibus severius in alma Urbe puniendis* (Rome, 1586); ibid., *De incestis quibusdam casibus ultimo suplicio in Statu Ecclesiastico puniendis* (Rome, 1587). Both these bulls, however, were not universal but were for the Ecclesiastical States and the city of Rome itself.

disruptive behaviour. In this bull, and the many others he issued in his five year reign, Sixtus sought to exert authority over the entire Catholic world. Bulls like Effraenatam were not written for the average literate layperson on whom they were to be imposed, but were meant for the ecclesiastical establishment and secular authorities. Bishops and magistrates were expected to comply, and to relinquish their authority in such matters. By making the procurer of abortion go to Rome and by voiding the powers of all judges and officials to rule in such matters, Sixtus was consciously amplifying Roman centralization to the detriment of the episcopate and local tribunals.101

The force and implications of Sixtus’s bull did not go unnoticed. Being unable to secure local absolution, the souls of those seeking, performing, or aiding in abortion would remain in jeopardy. Bishops and confessors obeyed the pontiff’s ruling,102 but some were not prepared to close their door, relinquish their authority over such matters, and send their penitents to Rome. Travelling to the pope’s capital to have the Holy Father hear and deliberate their matter was a dangerous and expensive trip that only few could take. Refusing the trip meant that their souls would linger in limbo: procurers of abortion would be excommunicated from the faith, and regarded as murderers. This was unacceptable. Letters from ecclesiastical authorities from all

100 To the best of my knowledge, Contra procurantes... abortum has never been translated into Italian. A handwritten newsletter (avviso) of 3 December 1588 did, however, summarize its contents as follows: “With a new constitution, Our Lord has declared that those who make women abort, by whatever means, whether animate or inanimate, are understood [to have committed] voluntary homicide, and it is declared that those who commit or have in any way take part in such abortions are to be punished with capital punishment according to the order of the law”: Enrico Stumpo, La gazzetta de l’anno 1588 (Florence, 1988), p. 168.


102 The Bishop of Piacenza, Filippo Sega (r. 1578–96), stated in his 1589 synodal decretes that abortion was reserved to the pope alone: Synodus dioecesana sub admodum ill. et reverendiss.mo Domino Philippo Sega episcopo Placentiae . . . anno do. MDLXXXIX. V. No. Maii (Piacenza, 1589), p. 133.
over Italy were sent to the cardinals of the Congregation of Bishops and Regulars requesting permission to absolve their remorseful and now excommunicate penitents at home.\(^{103}\)

The Apostolic Vicar of Isernia appears to have been the first to question Sixtus’s bull in writing. On 17 June 1589, less than six months after the bull had been promulgated, this official asked the Congregation to clarify certain doubts (*dubii*) surrounding the pope’s new bull. Did Sixtus’s condemnations apply to those who gave and caused abortion, or only to those who sought and had it? What about those who aborted “unintentionally” from carrying “weights or [suffering] beatings”?\(^{104}\) Carrying weights could be part of daily work, and beatings, husbandly discipline. The vicar sought clarification on whether and how to apply the pope’s new bull to what appeared to be common events and behaviours. Could these people not be absolved in their diocese?

The spring of 1590 saw more letters from bishops and vicars from Northern and Southern Italy. As mentioned at the beginning of this chapter, the Bishop of Lodi, Ludovico Taverna (r. 1579–1616), wrote directly to Sixtus explicitly requesting permission to absolve procurers of abortion at home. He reported that various women of Lodi had contravened the pope’s bull in order to avoid “dishonour and infamy.” “Deceived and seduced by the Demon,” these women admitted to their confessors to drinking beverages in order to impede conception and terminate pregnancy. Others disregarded the bull by giving them aid and counsel. Lodi’s confessors informed these sinners that they must appeal directly to His Holiness for absolution. But it was impossible, Taverna stressed, to convince them to go to Rome. Because of honour, shame, and poverty, they could not and would not travel to Rome, and thus had no way to regain grace and

\(^{103}\) My thanks to Vincenzo Lavenia for alerting me to the holdings of the Congregation of Bishops and Regulars. See Lavenia, “*D’animal fante.*”

reenter the Church. The Bishop of Lodi sought some remedy and expediency around this matter in order to free these people from their sin, and to remedy the dangers to the health of their souls without increasing the chance of scandal.  

The Apostolic Vicar of Aversa felt the same way. On 14 April 1590, he wrote to the Secretary of the Congregation, the Cardinal of Sens Nicholas de Pellevé (d. 1594), that his confessor and penitentiary had recently informed him that there were “many penitents that have committed abortions of both animate and inanimate feti” within his diocese. The Vicar of Aversa requested a “remedy” from the pope on behalf of those who were principally concerned — the women who aborted and/or those who made them abort — and also for those who helped them (complici fauto ri et cooperato ri). In total, he sought permission to absolve twenty penitents guilty of this sin. The Congregation received similar letters from the Archbishop of Milan Gaspare Visconti, (r. 1584–95), the Archpriest of Siena (unidentified), the Bishop of Potenza Sebastiano Barnaba, (r. 1579–1606), and the Archbishop of Trani Scipione da Tolfa, (r. 1576–92), all around the same time, all seeking special permission to absolve their penitents for the sin of abortion locally because they could not, “for diverse reasons,” go to Rome.

The Congregation’s registry indicates that each of these requests was answered in the same way. Sixtus allowed all these procurers of abortion who could not, “for legitimate reasons,” come to Rome to be absolved locally (“per questa volta solamente”), not, however, by their bishops, but by their confessors. “Proceed with prudence” and “with appropriate confidentiality,”

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105 ASV, Cong. Vescovi e Regolari, “Positiones,” 1590, D-M, Il Vescovo di Lodi Franciscus Isella alla S. d. N. S. Papa Sisto Quinto, April 1590. Francesco Isella, canon at the cathedral church of Lodi and spiritual father of the Compagnia della misericordia di s. Maria del Sole, was sent to Rome in 1590 to deliver Bishop Ludovico Taverna’s relazione ad limina, his report on the state of his diocese, to the pope: Acerbi, 173. Evidently he also delivered this letter.


107 ASV, Cong. Vescovi e Regolari, “Positiones,” 1590, M-P, Archiv. di Milano alla Sacra Cogr; ibid., R-V and Siena alla Sacra Congr. I was not able to find an original letter or copy from Potenza or from Trani in the “Positiones” of 1590. The contents of these letters can, however, be discerned from the Congregation’s responses.
the pope warned, in order to avoid any “inconveniences”: take care that the confessor confides in you these cases without expressing the names of the penitents, that is, in a way that does not break the “secret and seal of confession.” Along with reprimanding and admonishing these sinners, confessors were to assign “salutatory penance” that their bishops and vicars would judge appropriate to the “quality of the case.”

These requests and responses give rise to several points. First, in order to avoid dishonour and scandal, women procured abortions of both animate and inanimate unborns, though the letters do not reveal how the state of the unborn was known. Singling out “women” in these letters could be a reflection of reality but also a strategy: mentioning women and not the men responsible for the pregnancies would ensure that the pope would recognise the risks involved in a trip to Rome and make him more inclined to grant the requests. Second, women had accomplices and counselors — though gender or any other identifying information was not given — who helped or perhaps forced them to abort. Third, clerical knowledge of these abortions came from confession, especially around Easter time, indicating that abortion was revealed by women to their confessors during the busy period of Lenten confession, and that, in these cases, confessors did not provide absolution but reported the cases to their superiors — bishops, archbishops, archpriests, apostolic vicars. Fourth, these ecclesiastical authorities recognised that sending procurers of abortion to Rome was not an option and so appealed to the pope on the sinners’ behalf. Fifth, Sixtus accepted this and allowed for absolution, not by bishops and vicars — which would break the seal of confession and likely make the case public knowledge — but by the sinners’ own confessors, with the stipulation that sufficient penance be done and that the case be handled discreetly. Nothing in the papacy’s replies suggests that these sinners and their

108 ASV, Congr. Vescovi e Regolari, “Registra Episcoporum,” 17 (1589), to Isernia, 4 Aug. 1589, fol.245r; ibid., 19 (1590), 4 May 1590, to Lodi, Siena, Aversa, Potenza and Trani, fol.140r-v It is unclear whether these responses (as recorded in the “Registra episcoporum”) are verbatim copies or summaries of the actual letters sent.
accomplices were to suffer capital punishment as “true murderers who have actually committed murder.”\textsuperscript{109} Sixtus’s handling of such cases appears to have been another example of the discrepancy between what Irene Fosi has called Sixtus’s “image of justice” and the “reality of its practice.”\textsuperscript{110}

These supplications showed the Cardinals of the Congregation of Bishops and Regulars that Sixtus’s bull created serious spiritual and administrative difficulties. They must have known that Aversa’s twenty and the others who confessed to procuring abortion, from Lodi in the north to Potenza in the south — not to mention those from France, Spain, and the New World — would not travel to Rome. Already in 1589, Cardinals Giulio Antonio Santori (d. 1602), Giovanni Antonio Facchinetti de Nuce (later Pope Innocent IX, d. 1591), and Costanzo da Sarnano (d. 1595) had tried to convince Sixtus to restrict the bull to the Ecclesiastical States — that is, to where Sixtus was the territorial prince — and to altogether remove the reservation for women who would not be able to go to Rome without scandal and danger to their lives. Sixtus, however, had his mind set on the bull being general for all places.\textsuperscript{111} He was unwilling to diminish the bull’s force and relinquish the authority that his legislation set out to acquire. At the end of his pontificate (August 1590), the bull remained universal and in effect.

The curia of Gregory XIV (r. 1590–91), Sixtus’s second successor, had to deal with similar requests from bishops and vicars. On 7 May 1591 the Congregation responded to another request from the Archbishop of Trani, and again granted his confessors the authority to absolve

\textsuperscript{109} Sixtus V, \textit{Contra prucurantes ... abortum}, n. 1.  
\textsuperscript{111} On Santori’s life and career as cardinal, inquisitor, and major penitentiary, see Saveria Ricci, \textit{Sommo inquisitore. Giulio Antonio Santori tra autobiografia e storia (1532–1602)} (Rome, 2002).  
\textsuperscript{112} Santori reported this in his diary, transcribed in G. Cugnoni, “Autobiografia di monsignor G. Antonio Santori cardinale di S. Severina.” \textit{Archivio della R. Società Romana di Storia Patria} 13 (1890): 151–207, at 186–87. Santori was apparently also skeptical about Sixtus V’s bull on adultery: ibid., 176.
procurers of abortion.\footnote{ASV, Cong. Vescovi e Regolari, “Registra Episcoporum,” 19, 1591, to Trani, 7 May 1591, fol. 311.} On 22 May the Congregation received a letter from the Archpriest of Altamura, Giangiacomo de Mansi, requesting the same permission, but this time to absolve a physician who had administered an abortion to a pregnant woman suffering from a fatal illness. Mansi reported that a year before in 1590, “in another city,” in order to save a pregnant woman from death, the physician (medico) had “ordered appropriate and ordinary remedies,” and administered them to the woman so that she might give birth even though she was not yet due. He had acted with the counsel of another physician who was “older and more expert in the art of medicine.” The “creatura was born alive,” Mansi maintained, “and [it] was baptized by the midwife,” which was common practice in emergency births. For his deed, the physician was made to pay a fine to the city: because of Sixtus’s bull, Altamura’s confessors and penitentiary refused to absolve the physician during Holy Week. Mansi judged this situation unfair, especially because this soul was, after all, saved through baptism. He sought permission to absolve the physician himself because the crime (delitto) was not done maliciously: “This poor physician and good Christian so longs for absolution.”\footnote{ASV, Cong. Vescovi e Regolari, “Positiones,” 1591, A-C, L’archiprete di Altamura, Giangiacomo de Masi al Cardinale di Sens, 22 May 1591.}

Mansi’s letter demonstrates that physicians were involved in abortion, in this case of a therapeutic nature, and that these could be done with “ordinary remedies,” as opposed to secret or magical ones. Confessors did indeed face situations where physicians prescribed medicines in order to heal women from various illnesses that might cause abortion. That the religious of leaders Altamura refused to absolve the physician suggests that the bull was enforced in some places by some confessors. Sixtus’s bull did have an effect: this physician lived excommunicate for about one year before the archpriest took on his case. The Congregation of Bishops and Regulars replied to Mansi on 18 June 1591, informing him that the physician, as well as anyone
else who procured or aided in abortion, could be freely absolved by a confessor. Mansi was not being given special permission: Gregory XIV had just revoked Sixtus’s bull.\footnote{ASV, Cong. Vescovi e Regolari, “Registra Episcoporum,” 19, 1591, to Altamura, 18 June 1591, fol. 331v.}

Mansi’s letter appears to have been the last straw. It was now clear that Sixtus’s bull was an ineffective tactic against abortion: it was not implementable and was in fact too radical and severe. With the advice of the Cardinals of the Congregation of Bishops, Gregory XIV issued a constitution (\textit{Sedes apostolica}) on 31 May of 1591 modifying Sixtus’s legislation.\footnote{Gregory states that he deliberated “this matter with our venerable brothers the cardinals of the Holy Roman Church, who are assigned over the business and considerations of the bishops, [and] according to their advice we thus consider that the aforementioned constitution should be moderated”: Gregory XIV, \textit{Constitutio moderatoria bullae fel. rec. Sixti pp. 5, contra abortum quouis modoprocurantes} (Rome, 1591), n. 2.}

It often happens, Gregory wrote, that the Apostolic See seeks to discourage “the audacity of the obstinate faithful with severe punishments.” However, he continued, the Church will forgive these same people if they are truly remorseful. Experience showed Gregory that the bull was too harsh and could not deliver its “hoped for fruit.” Not only had Sixtus’s bull “not diverted” the practice of abortion, but it had even provided the opportunity “for very many sacrileges and for the most grave sins and crimes.” People went on procuring abortions, and because travelling to Rome was not an option, they accepted or ignored their excommunication. Judging that the sword of ecclesiastical discipline should be wielded so that it “tends to the treatment and not the ruin of souls,” Gregory found it necessary to modify Sixtus’s bull, which “block[ed] the way of salvation.” This, Gregory believed, the Holy See could not allow, “no matter how gravely and enormously one sinned.” When abortion was neither “an issue of homicide or of an animate foetus,” Gregory thought it “more useful” to return to the less harsh penalties of the holy canons and profane laws.\footnote{These will be explored in the next chapter.} Those who abort an \textit{inanimatus} will not be guilty of true homicide because they have not killed a human being in actuality. Clerics involved
in abortions will have committed mortal sin but will not incur irregularity. Prelates and officials who are confronted with these cases are to act “as if [Sixtus’s] constitution had never been published.” Confessors were once again given “full and free means” of absolving those who confessed to procuring abortion. By reinvesting confessors with this power, Gregory rejected a central tenet of Sixtus’s bull, and its strongest deterrent. However, regarding the abortion of an animated unborn and the corresponding penalties for clergy, Gregory believed that Sixtus’s bull ought to “endure entirely in its own strength.”

Sixtus’s bull Against those who Procure Abortion was in force for less than three years. By 1591 Abortion was again no longer unequivocally homicide, and absolution could be unproblematically given by confessors within the secrecy of the confessional. At the turn of the seventeenth century, authors of vernacular works on penance ignored Sixtus’s bull and Gregory’s moderation in their discussions of abortion. The confessional was still believed to be the best place from which to reform minds and change behaviour. And yet bishops continued to reserve abortion to their office. The Bishop of Lodi, Ludovico Taverna reserved abortion at his 1591 synod. Not two years earlier, Taverna had faced an awkward situation in seeking permission from Sixtus to absolve procurers of abortion locally. Indeed, Taverna appended the entire text of Gregory’s Sedes Apostolica to his synodal decretals so all the priests of Lodi would

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118 Gregory XIV, Costitutio moderatoria, n. 3.
119 Ibid., n. 2.
120 Ibid., n. 4.
121 See, for example, those of Luca Pinelli, Del sacramento della penitenza, quando apparteine a sapere al penitente perconfessari bene, & della preparation alla Santa Confessione, & modo per farla confrutto (Venice, 1604) and Girolamo Sertorelli, Barchetta di penitenza, nella quale s’ingegna al penitente, quanto siappartiene sapere per ben confessarsi; & per saluarsi dal naufragio, che si fa ne’ scoglise’ peccati d’ogni sorte (Venice, 1609). Theologians and canonists did, however, discuss the recent papal legislations: see Tomas Sanchez, De sancto matrimonii sacramento (the Antwerp, 1614 edition is cited here), bk. 9, disp. 20, pp. 229-32; Martino Bonacina, Operum omnium de morali theologia (Venice, 1635), 1-2; Emanuel Sa, Aphorismi confessariorum ex doctorum sententiis collecti, (Antwerp, 1599), pp. 338-39; Antonio Diana, Svmma Diana, (the Venice, 1652 edition is cited here), pp. 8-14.
122 Decreta edita et promulgata in synodo dioecesana laudensi, Quam per Illustris, & Reuerendiss.D. Ludovicus Taberna Dei. . . . (Milan, 1591), p. 33.
see that Church legislation on this matter had changed. By the end of the century, Archbishop Gabriele Paleotti (r. 1566–97) reserved abortion in Bologna, as did Archbishop Giulio Cesare Riccardi (r. 1592–1602) in Bari, Bishop Giovanni Fontana (r. 1590–1611) in Ferrara, and Bishop Napoletone Comitoli (r. 1591–1624) in Perugia. While bishops returned it to their list of reserved cases, it is likely that confessors absolved those who admitted to procuring abortion, perhaps with the permission of their superiors, most likely during Lent, and with secret penance so as to avoid scandal. Young and unmarried women were likely given absolution with ease to avoid harming their honour and exposing the men who impregnated them, whether clerical or lay. Even if reforming bishops resisted such accommodations, by 1601, their hands were once again officially tied; the Congregation of Bishops and Regulars, under Pope Clement VIII Aldobrandini (1592-1605), directed bishops to empower their confessors to absolve penitents caught in secret carnal sins rather than force them to the diocesan centre in order to avoid scandal. This decree was re-affirmed by Urban VIII in 1624, likely as a result of tensions between bishops and regular confessors. Bishops seeking to reform the sexual morality of their dioceses were limited by the spectre of scandal and the long arm of Rome. The confessor remained the more appropriate mediator and the confessional the best forum for mediation between official Catholic doctrine and the ecclesiastical establishment and popular belief and behaviour.

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123 Ibid., pp. 77–80.
125 Clement issued this legislation in 1593 and again in 1601. Graffi, Practica quinque casuum, bk. 1, ch. 3, pp. 8-9; Text is printed in Andrea Bizzari, Collectanea in usum secretariae sacrae congregationis episcoporum et regularium (Rome, 1865), p. 246.
126 Text is printed in Bizzari, Collectanea, p. 246.
8. Conclusion

Ecclesiastical authorities portrayed abortion as a common and socially tolerated practice, and this appeared to offend their sensibilities. The confessional was held as an opportune arena in which to discover cases of abortion and also in which to teach and convince the laity of its sinfulness. However, confessors were not always fit for the task. Counter-Reformation bishops and popes attempted to eradicate abortion by imposing shaming and severe punishments on its procurers, but these initiatives were hindered by the social consequences of bringing these men and women to light. Judgment and punishment were further complicated by the ambiguities inherent in the practice of abortion.

This chapter has explored some of the concerns, genuine and rhetorical, of various ecclesiastical authorities. The tactics employed by ecclesiastical authorities to eradicate the practice of abortion — and their apparent failures — suggest that laymen and women, and some clergy, did not unequivocally hold abortion to be homicide and a mortal sin that damned their souls. In other words, the laity, as well as some priests, did not appear to entirely subscribe to the Tridentine rhetoric on abortion. These sinners appear to have negotiated with their confessors, resisted the involvement of their bishops, and challenged or ignored the decrees of their pope. It seems that, in many cases, they were accommodated. The harsh penalties that, in theory, were to be imposed on those who procured abortion were meant to deter men, women, and clerics from its practice by emphasizing the gravity of the sin. Yet it was almost immediately clear that these penalties were impossible to enforce. It is questionable whether they were in fact intended to be. Of course, a systematic study of ecclesiastical tribunals is needed to confirm whether or not procurers of abortion, lay and clerical, were brought before ecclesiastical authorities and whether
they received the harsh penalties that in theory were to be meted out. The current state of
research, however, suggests that this was not the case.\footnote{See n. 67 above for recent studies of early modern ecclesiastical tribunals.} The Counter-Reformation Church, as historians are increasingly suggesting, put more effort into persuasion and indoctrination than into harsh punishment.\footnote{Prosperi, \textit{Tribunali della coscienza}; Black, \textit{Church, Religion, and Society} and \textit{The Italian Inquisition}.} This appears to have been the case with behaviours and practices such as abortion. Given the murky conceptions of abortion, ecclesiastical authorities could only hope that increased moralizing and catechetical education would lead to changes in mentalities and behaviour. Nonetheless, it is clear, as we will see in the following chapters, that late-Renaissance Italian perceptions of abortion were under constant negotiation, both from above and from below.
Chapter 3
Abortion Law

1. Introduction

In his influential treatise *The Criminal Judge* (1643), Antonio Maria Cospi, secretary to the Grand Duke of Tuscany Ferdinand II de Medici and judge at the Otto di Guardia tribunal in Florence, began his discussion of abortion by highlighting its slippery and complicated nature:

“Aborto is considered a crime and not a crime,” Cospi wrote.

When it is caused by weakness [*debolezza*], the disposition of the pregnant woman, or by disorders and disturbances done without thought of wanting to abort, or from other accidents […] it should not be considered a crime [*delitto*]. […] Abortion, however, is an affair for the criminal judge when [it is caused] by medicines studiously procured to cause abortion, or by external violence.”¹

Cospi’s introduction to the subject suggests that it was not always easy to process terminated pregnancies and that this was reason for anxiety. In theory, the differences between the types of terminated pregnancies that he listed were simple and straightforward: the crimes required intention, scheming, injury and malice. Abortion procured with the intention to terminate pregnancy and miscarriage caused by assault were both punishable offenses; natural or spontaneous miscarriages were unfortunate and fact of nature. However, the criminal judge had a very difficult time distinguishing between these types of *aborto*: the causes that brought pregnancy to an end and the intentions behind the actions of the suspected offenders could in many cases not be determined with certainty.

Drawing on codified law, both statutory legislation and municipal ordinances, and works of criminal jurisprudence and penology, this chapter explores the complicated and contested

¹ Antonio Maria Cospi, *Il giudice criminalista* (Florence, 1643), ch. 33, p. 494.
nature of abortion in Renaissance and early modern Italian legal traditions. Abortion was
generally recognised by authorities to be an offense against religious and secular moralities and a
threat to public wellbeing that required regulation and discipline. Abortion had long been
considered a crime in western legal traditions. However, in the late sixteenth and early
seventeenth century it received substantial attention and renewed analysis from secular
authorities from all over the Italian peninsula. Abortion increasingly appeared in official codes of
law and civic legislation, and the most influential jurists of the period engaged in spirited debates
over its criminal nature and the penalties to be meted those who procured and administered
abortions.

Like ecclesiastical authorities, various secular authorities sought to curb the practice of
abortion and to discipline violence towards pregnant women in their states and cities by
including these as punishable offences in statute law and municipal ordinances. Following
orthodox theological doctrines, civic legislators and jurists appeared to have accepted that
procured abortion and miscarriage caused by assault were both forms of murder or killing. Both
were regarded as criminal because a foetus was deprived of life and of salvation. However, the
precise meanings of ‘abortion’ and ‘miscarriage caused by violence’ and their corresponding
penalties differed from state to state and authority to authority. Codified law represented abortion
to be a type of homicide but judicial commentaries indicate that this was not so clear. Jurists who
discussed these matters in works of jurisprudence and penology observed that the nature and
gravity of these offences were controversial and contested. In theory and in practice, jurists
resisted the equation of abortion and miscarriage caused by violence with homicide and rejected
capital punishment as a fitting and commensurate penalty for the offence.

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2 For the Middle Ages, see Wolfgang Muller, The Criminalization of Abortion in the West: Its Origins in
Medieval Law, forthcoming.
Legal attitudes towards abortion and miscarriage caused by violence were shaped by medical conceptions of pregnancy and its termination. Some jurists and judges were quite medically literate and medical uncertainties regarding generation, pregnancy and its termination (which will be examined in Chapter 4) surfaced in legal discussions over judges’ abilities to arrive at knowledge certain enough to prosecute cases of suspiciously terminated pregnancies. Distinguishing between causes of pregnancy termination, even with the help of medical practitioners operating in a forensic capacity, and discovering the intentions that lay behind them were very difficult. In most cases, jurists acknowledged that the processes that brought pregnancy to an end and the reasons behind them were ambiguous, never certain and always open to interpretation.

Most jurists agreed that, in practice, cases of abortion were generally too full of doubt to try as homicide and to impose capital punishment on suspected offenders. Penalties, therefore, could not be standardized but rather had to be selected by the judge according to the specifics of individual cases; judges were to calibrate their penalties according to the gender and social status of the offender and according to the motivations and the social circumstances in which the abortion or miscarriage occurred. Jurists were discouraged from applying harsh penalties in cases where the defendant’s intentions and therefore their culpability could not be discovered with a sufficient level of certainty. Milder penalties such as fines and punitive labour were preferred over corporal punishment. Some jurists even thought that most cases of abortion were too uncertain to be investigated by criminal tribunals and ought to be handled by a confessor in the tribunal of conscience. In sixteenth and seventeenth-century Italy, abortion was generally considered to be a crime, but it was a highly contested and controversial one.
This chapter begins with a survey of abortion laws as found in statutory legislation and in municipal ordinances (bandi). It continues with an examination of commentary on abortion from five of the most influential jurists of the late sixteenth and early seventeenth centuries. While Chapter 5 will sample the ways that abortion was represented and handled in practice in one criminal tribunal in Rome, this chapter is primarily concerned with legal prescriptions and ideas and qualifies and elaborates on these by drawing on evidence from studies of applied law. Drawing together these sixteenth and early-seventeenth century materials from all over the Italian peninsula, a comparative approach points up differences and similarities in legal thought on abortion.

2. Abortion in Codes of Law and Civic Ordinances

Sixteenth and seventeenth century Italian statute law addressed abortion, usually in its criminal corpus. Statutes were a standard and somewhat uniform type of state legislation issued by many Italian cities, towns, communes, republics and kingdoms regularly from the Middle Ages onward. The criminal section of statutes articulated actions or behaviours deemed illicit and illegal, which if committed, would be met with penalties enforced by the authorities. A strategy of state building, the reissue and elaboration of statutes in the sixteenth century gave legislators the opportunity to renovate, reform, and add to their existing laws. Many states published statutes in the sixteenth and early seventeenth centuries, and in some places, these remained the official codes of law unchanged for over a century. The overall trend in the

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3 On Italian statute law and statutes as historical documents, see Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge, 2007), pp. 84-94 et passim.
4 Early modern statutes have not been as extensively studied as medieval ones. Nevertheless, there is clearly continuity between the two. As Trevor Dean notes, statutes were rarely completely overhauled; legislators
sixteenth century, as historians of crime and jurisprudence have suggested, was one of increased
criminalisation. Sexual transgressions, various types of violence and numerous behaviours
deemed immoral, increasingly came under the purview of civic legislators and found their way
into criminal statutes. This was especially true of the Papal States, where ecclesiastical and
secular concerns increasingly converged. Abortion, however, was only rarely, yet increasingly,
included as a crime in sixteenth and early seventeenth century codes of law.

Abortion appears in a handful of Italian statutes as a form of homicide (included under
the laws for homicide) and also as a crime of its own (laws for aborto). Perugia (1523),
Senigallia (1537), Macerata (1553), Monterubbiano (1574), Fermo (1589), Genoa (1573 and
1590), Benevento (1603) and Milan (1545, 1562, 1574, and 1617) included abortion as a crime
within their criminal statutes, though not always as the same crime.

Several towns in the Papal States near Ancona – Senigalia, Macerata, and Monterubbiano
– had two statutes regarding the termination of pregnancy: one for causing a woman to miscarry

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mostly modified and added to existing laws; sometimes laws remained identical for over a century. The most
comprehensive list of Italian Statutes is the Catalogo della raccolta di statute, consuetudini, leggi, decreti, ordini e
privilege dei comuni, delle associazioni e degli enti locali italiani dal Medioevo alla fine del secolo XVIII, 8
volumes (Rome, 1943-1999), available in a digital format at the Biblioteca del Senato della Repubblica, Rome.

On increased criminalization of sexual behaviours in the sixteenth and seventeenth century, see Nicholas
Davidson, “Theology, Nature and the Law: Sexual Sin and Sexual Crime in Italy from the Fourteenth to the
Seventeenth Century,” in Crime, Society and the Law in Renaissance Italy, ed. Trevor Dean and K. J. P. Lowe
(Cambridge, 1994), pp. 74-98; Dean, Crime and Justice in Late Medieval Italy; Joanne Ferraro, Nefarious Crimes,

Some medieval statutes criminalised the practice of abortion by including it within laws on homicide
(Viterbo, 1469) and by making it a crime of its own (Biella, 1245; Siena, 1309; Castiglion Aretino, 1384),
395-528, at pp. 504, 506.

Perugia, 1523 – Statutorum Auguste Perusiae (Perugia, 1523); Senigalia, 1537 – Statutorum &
Reformation[u]m magnifice ciuitatis senigalie (Pessaro, 1537); Macerata, 1553 - Volumen statutorum civitatis
Maceratae (Macerata, 1553); Monte Rubbiano – 1574 Statuta seu leges municipales magnificae terrae, et hominum
Montis Rubiani (Ancona, 1574); Fermo, 1589 – Statuta Firmanorum (Fermo, 1589); Genoa, 1573 and 1590 –
Criminalium iurium ciuitatis Genuensis (Genoa, 1573) and Delli statuti criminali di Genoua (Genaa, 1590);
Benevento, 1603 – Statuta civitatis Beneuenti authoritate Apostolica condita, & a Sixto V. Pontifice Maximo
confirmata (Rome, 1603); Milan, 1562, 1574, 1617 – Constitutiones Domini Mediolanensis (Milan 1562);
Curtes Constitutones Domini Mediolanesis (Milan 1574) and Constitutiones provinciae Mediolanesis cum decrectis
ordinibs et declarationibus Senatvs hac novissima editione ampliatis et illustratis (Milan, 1617). These and other
statutes were consulted in Rome at the Biblioteca del Senato della Repubblica and Archivio di Stato di Roma.
by means of violence (_percussio_) and another for intentionally procuring and assisting in abortion. The first law punished behaviour such as “angrily throwing a pregnant woman to the ground” with a high fine;\(^8\) in Senigallia and Macerata the fine was 500 pounds; in Monterubbiano, 400 pounds. If the offender did not pay, the penalties were dire. For late payment, the assaulter in Senigallia might lose a hand; for default, in Macerata and Monterubbiano, the culprit risked decapitation. Nevertheless, the statutes included qualifications that modified these broad provisions. For example, the statutes of Monterubbiano did take account of intentions. They explicitly acknowledged that miscarriage by means of violence could be “accidental” in the sense that the assaulter did not intend to cause a miscarriage or that the injury to the pregnant woman was unplanned or a chance occurrence; even so, the law still demanded a payment of 100 pounds.\(^9\)

Though not explicitly stated, a portion of these fines would go the assaulted women (or to her husband) and a portion to the state to cover legal fees.

These laws established penalties for the assault of pregnant women by men or women who were not family members. These towns had different penalties for violence leading to miscarriage caused by a relative. If it was the woman’s husband, father, mother, uncle, aunt, brother, sister, any close male or female kin (cognatus) or other person related in the third-degree, who caused her to miscarry by means of rebuke (correctionis) or by other “sinister means” (_alio modo sinistro_, evil intent?), he or she would be fined 25 pounds.\(^10\) Underlying this significantly reduced penalty appears to be an acceptance that kin had legitimate reasons to physically discipline and even assault pregnant women. Could these laws also suggest that an

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\(^8\) “De poena percutientis feminam pregnantem, & facientis eam cadere in terram & si fecerit abortum”

\(^9\) Senigalia, _Statutorum_, bk. 3, rub. 33, p. 15; Macerata, _Volumen statutorum_, rub. 48, fol. 31r-v Monte Rubbiano, _Statuta_, bk. 5, rub. 75, p. 191.

\(^10\) “Excepto si talis persona fuerit maritus, pater uel mater, auus vel avia, frater soror, cognatus uel cognata uel alia persona. attines usq. ad tertium gradum per modum correctionis uel ludendo uel alio modo sinistro ut materiam habeat abstinendi condemnetur & puniatur in xxv lib. den.” Senigalia, _Statutorum_, p. 15; Macerata, _Volumen statutorum_, fol. 31r-v Monte Rubbiano, _Statuta_, p. 191.
acceptance or tolerance of abortion induced by a family member in order to terminate an illegitimate pregnancy? Is this what was meant by “sinister means”. When compared to the fine of 500 pounds to be imposed on a stranger who causes a woman to miscarry, fining a relative 25 pounds appears to be a slap on the wrist and not a significant deterrent from the practice. Even so, this law appears contradictory given the ever-present Italian concern for avoiding scandal and of dishonouring families. Rather, it was likely a rhetorical position and not necessarily an actively enforced law.

The second provision in the statutes of Senigalia, Macerata, and Monterubbiano sought to punish “abortionists,” those who provided substances and services intended to terminate pregnancy. Though the statutes of Macerata said nothing, those of Senigallia and Monterubbiano specified that it was only the abortion of “a woman three months pregnant or before birth” that was crime; an abortion before three months, it seems was not.11 In Senigallia and Macerata penalties for procured abortion were distinguished by gender: if the abortionist was a man, he would lose his head; if a woman, she would burn unless she pays 500 pounds within 15 days. However, by 1574, the authorities in Monterubbiano were apparently not willing to inflict corporal punishment on offenders but rather preferred to fine them (men or women) 400 pounds.12 In this context, the fine would have likely gone to the state coффers.

Other states that criminalised abortion by including it as a punishable offense in codified law did so by including it within statutes on homicide. The 1589 statutes of Fermo, also in the

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11 “Si qua persona alicui mulieri pragnanti dederit per tres menses ante partum,” Monte Rubbiano, Statuta, bk. 5. rub. 118, p. 212 and Senigalia, Statutorum, bk. 3, rub. 35, p. 15.
12 Senigalia, Statutorum, bk. 3, rub. 35, p. 15; Macerata, Volumen statutorum, rub. 50, p. 31v; Monte Rubbiano, Statuta, bk. 5. rub. 118, p. 212. If, however, beverages and foodstuffs are given to either a man or a woman in order to harm them [i.e. their fertility?] or to kill them, the culprit will be executed. If the victim does not die, the aggressors will be fined 200 lib. den. in Senigalia and Monterubbiano, and 100 in Macerata. Also, in Senigallia and Monterubbiano, though apparently not in Macerata, accomplices – anyone who knows, orders or consents to such activity – is also implicated and will suffer these penalties; in Monte Rubbiano, they may even be sentenced to death themselves.
Papal States near Ancona, and under the jurisdiction of Bishop Felice Perretti before he became Sixtus V, included procured abortion and miscarriage caused by assault within its law on homicide. However, a woman who had an abortion was not to receive capital punishment but would be fined the steep sum of one-thousand pounds; only if she defaulted could capital punishment be inflicted. The statute also acknowledged that the “death of a foetus” could happen “accidentally,” likely meaning caused by actions or behaviours without the intention of terminating pregnancy. Nevertheless, the person responsible could still be fined five-hundred pounds for their negligence. In suspicious cases, an official would have to proceed with an inquiry in order “to discover and to determine whether any other offenses were committed in previous years,” that is, to investigate the defendant’s reputation. This statute suggests that in Fermo abortion was considered to be criminal behaviour but also acknowledged that it was difficult to prove. The statute recognised the legal weight of the reputation and social status of the accused.

Some of the statutes that criminalised abortion distinguished penalties according to the foetus’ gestational age, that is, according to its level of development. The statutes of Milan (1545, 1562, 1574 and 1617), Genoa (1573 and 1590), and Benevento (1603) followed the canonical formulations and thought that the abortion of an animated foetus was far graver than that of an inanimate one. In these states, the abortion of an animate foetus was to be punished capitally; the statute of Benevento, another town in the Papal State, considered the abortion of an animate foetus to be equivalent to infanticide and specified that the “mother,” along with any accomplice, will receive capital punishment. The penalty for aborting an inanimate foetus,

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14 Milan, Constitutiones, bk. 4, pp.74v; and in the 1617 Constitviones, p. 140.
15 Genoa, Criminalium iurium, bk. 2, ch. 8, pp. 37-38 and Delli statute, bk 2, ch. 8, p. 39.
however, varied. In Benevento, a procurer of modest class (*viles personae*), would be beaten or sentenced to pay a fine of two *uncia*; if of better class (*melioris conditionis*), they could expect a fine five *uncia* or to serve a term of penance in a monastery at the discretion of the judge.” In Genoa, the offender could expect service in the galleys. All three statutes indicated that in most cases, the penalty would be decided according to the judgment (*in arbitrio*) of the judge, magistrate, the “Prince or the Senate” according to the specifics of the case.

Some states explicitly calibrated penalties for procured abortion and miscarriage caused by assault according to the gestational age of the unborn, and thereby acknowledged the difference in value between an animate and inanimate unborn. But these statutes said little regarding how investigators were to make these assessments. Perugia, Senigallia, Macerata and Monterubbiano did not distinguish between animate and inanimate but rather wrote visual cues into their abortion laws: in Perugia, an individual causing the death of an “obviously pregnant woman” was to be twice punished, once for causing the death of the woman, and once for the unborn; in Senigallia and Monterubbiano it was only if the woman was at least “three months pregnant” that abortion was a crime. The visual markers “obviously pregnant” and “three months pregnant” likely meant that the woman had to be showing, which also meant that the foetus was advanced in its development and likely animate. That these qualifiers were written into abortion laws suggests that pregnancy early in term was difficult to detect, that early term abortion was very difficult to investigate, and perhaps not deemed as serious as abortion later in term.

Some state and civic legislators officially held abortion to be a crime that required punishment. However, the force of these laws is difficult to assess and they are not easily

contextualized. For instance, we do not know when or why they were framed or who sought to include them in the statutes. Were Genoa’s 1580 abortion laws motivated by a pressing political circumstance or social issue? How did these differ from those preoccupying the authorities and legislators of Milan, Macerata, and Benevento? Though it is beyond the scope of this study, research into the particularities of local politics and judicial practice might reveal some answers to these questions. On the other hand, the occurrence of these laws in statutes might be simply a matter of inclusion (for instance, a legislator working on updating his city’s statutes might consult another city’s statutes and adopt some of their laws simply as a matter of course) rather than generated in response to specific social circumstances.

The cases just described are suggestive, but they are anomalous. An examination of numerous sixteenth and early seventeenth century statutes only turned up a handful that mentioned abortion. It is especially striking that the newly reformed statutes of Rome, issued in the midst of the Counter Reformation under the Pontificates of Gregory XIII in 1580, reissued in 1590 under Sixtus V, and again in 1611 under Paul V, made no mention of abortion in their laws on homicide, poisoning, parricide or violence, nor in sections on sexual offences such as rape

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19 The following statutes did not mention abortion: Marche-Ancona, 1507 - *Constitutiones Marchiae Anconitanae* (Forli, 1507); Padua, 1528 - *Statuta Patauina noviter impressa* (Venice, 1528); Luca, 1539 - *Lucensis civitatis statuta* (Luca, 1539); Spoleti, 1542 - *Statutorum Magnificae civitatis Spoleti* (Spoleti, 1542); Feltre, 1551 - *Statuta ciuitatis Feltriae* (Venice, 1551); Brescia, 1557 - *Statuta civitatis Brixiae cum reformationibus* (Brescia, 1557); Urbino, 1559 - *Statuta ciuitatis Vrbini* (Pisauri, 1559); Piacenza, 1560 - *Statuta et Decreta antiqua civitatis Placentiae*, Piacenza, 1560; Jesi, 1561 - *Statuta siue sanctiones, et ordinamento Aesinae civitates* (Macerata, 1561); Ancona, 1566 - *Constitutiones, sive statuta magnificae civitatis Anconae* (Ancona, 1566); Citta Nova, 1567 - *Statuta inclitae Terrae citanovae* (Ancona, 1567); Ferrara 1567 - *Statuta Urbis Ferrariae nuper reformata* (Ferrara, 1567); Osimo, 1571 - *Magnificae et Vetussimae civitatis Auximi [...] Leges, Statuta, Constitutiones & Decreta* (Osimo, 1571); Treviso, 1574 – *Statuta prouisiones q. Ducales ciuitatis Tarvisii cum additione* (Venice, 1574); Cremona, 1578 – *Statuta civitatis cremonae* (Cremona, 1578); Verona, 1582 - *Statuta magnificae civitatis veronae* (Verona, 1582); Reggio, 1582 – *Statuta magnificae Regii* (Reggio, 1582); Cagli, 1589 - *Statuta ordinationes atque decreta ciuitatis Sancti Angeli papalis alias Calii* (Pisa, 1589); Pavia, 1590 - *Statuta civitatis et principatis Papiæ* (Ticino, 1590); Modena, 1590 – *Libri quinque statutorum inclytae civitatis Mutinae cum reformationibus* (Modena, 1590); Parma, 1590 – *Statuta magnificae civitatis parmae* (Parma, 1590).
and defloration, incest and adultery. What could these omissions mean? Might they suggest that most states simply did not consider abortion to be a punishable offense? Or, was the criminality of abortion so obvious to contemporaries that it did not need to be explicitly included in statutes? The fact that most statutes did not have abortion laws does not mean that it was not a punishable offence or that its criminality and corresponding penalties were obvious; courts certainly investigated and punished more actions and behaviours than were officially criminalised in codified law. The paucity of abortion laws contained in statutes might be due to the relative simplicity of this type of literature. Often lacking nuance, most criminal statutes needed interpretation and analysis. Homicide statutes were especially simple. They did not distinguish types of homicide or circumstances and motivations behind actions that resulted in death and imposed a blanket penalty: he who kills, will be killed (*si quis occidit occidetur*). Was abortion implicitly included in most homicide laws? In his annotations to the statutes of Bologna, the jurist Annibale Monterenzi (d. 1586) stated that it was a widely held assumption that abortion was a form of homicide even though the laws for homicide made no mention of it. Monterenzi clarified the matter by stating that it was only if the foetus was animated that abortion might be considered homicide, but he did not explain how a judge was to apply this

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20 Rome, *Statuta alma urbis Romae ... reformata, et edita* (Rome, 1580 and 1590); *Statuta Albae Urbis Roma ... cum glosis Leadri Galganetti* (Rome, 1611). Abortion is mentioned once in the Roman statutes as a *castibvs per inquisitonem*, specifically the abortion of a vivified foetus (*foetu iam uiuificato*), but no penalty is given, *Statuta alma urbis Romae*, 1580, bk. 2, c. 5, p. 86.

21 On legal debates over whether statute law ought to interpreted literally or figuratively, see Mario Sbriccoli, *L’interpretazione dello statuto:contributo allo studio della funzione dei giurista nell’eta comunale* (Milan, 1969).

22 Marzia Lucchesi, *Si quis occidit occidetur. L’omicidio doloso nelle fonti consiliari (secoli XIV-XVI)* (Padua, 1999); Dean, *Crime and Justice in Late Medieval Italy*, p. 86.
insight the courtroom. In his commentary on the statutes of Rome, Leandro Galganetti (d. 17th c.) did not discuss abortion in his annotations to the laws on homicide.

While cities such as Bologna and Rome did not include abortion in their criminal statutes, civic authorities did issue prohibitions on its practice in municipal ordinances or ‘bylaws’ called bandi. Whereas statutes were lengthy volumes generally written in Latin for jurists, bandi could be one page declarations or short pamphlets (Bandi generali) written in the vernacular and specifically intended to teach or remind inhabitants of prohibitions. Most bandi enumerated the most important, most pressing, most frequently committed infractions and most ignored prohibitions. Common criminal themes included violence, banditry, theft and carrying weapons. Bandi also addressed administrative matters such as restrictions on movement and practices during times of plague. In the late sixteenth and seventeenth centuries, the civic authorities of Bologna and of Rome increasingly included prohibitions on abortion in their bandi generali. While the abortion laws found in this form of legislation were intended for and reached a much broader audience, they were no more standardized or less ambiguous that those contained in some statutes.

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23 Annibale Monterenzi, *Ad statuta tam Civilia, quam etiam Criminalia inalitae Civitatis Bononiae* ... (Bologna, 1582), bk. 5, rub. 18, “De poena homicidae ...,” p. 107, marginal note E. See also rub. 20, “De pena venenatis aliquem,” p. 117.

24 In his annotation to the law on homicide, Galganetti noted that the reader should consult the law *Cornelia de Sicarii* in the Digest, which includes hitting a pregnant woman or forcing her to take medicines in order to terminate the pregnancy, which was punishable by exile, *Statuta Almæ Urbis Roma* ... *cum glosis Leadri Galganetti*, bk. 2, cap. 17 gloss., p. 564.

25 In Bologna Bandi Generali were issued by the city’s Legates and Vicelegates (Papal representatives in Ecclesiastical States) in collaboration with the senate; in Rome they were issued by the Governor.

26 The bandi examined here were consulted at the ASR, Statuti b. 303; ASV, Mis. Arm, IV-V, b. 47 and b. 68 and the Biblioteca Casanatense. For Roman bandi, see Alfredo Cirinei, “Bandi e giustizia criminale a Roma nel cinque e seicento,” *Roma moderna e contemporanea* 5 (1997): pp. 81-95. On the visability of the printed bando on Roman streets, see Rose Marie San Juan, *Rome: A City Out of Print* (Minneapolis, 2001) ch.1.
For instance, in his bandi of 1588, the Vicelegate of Bologna Anselmo Dandino included abortion under the law on poisoning and deemed it as a capital offense: anyone who sells or gives poisons that cause the abortion of an animated foetus, even if they were meant for other purposes, merits capital punishment. This law was not, strictly speaking, seeking to punish the procurer of abortion, but rather seems to have been intended for the provider of abortifacient drugs. Furthermore, the clause “even if it was meant for another purpose” suggests that this law might have more to do with fears of poisoning and perhaps miscarriage caused by medical malpractice than with policing the practice of procured abortion. In his bandi of 1596, Vicelegate Antonio Gianotti repeated Dandino’s proclamation verbatim.

New prohibitions on abortion were issued in Bologna in 1608 and 1610 by Cardinal Legate Benedetto Giustiniano. Now, abortion was included in sections on homicide and parricide. In 1608, Giustiniano declared that “mothers” who wilfully kill their animate unborn by means of abortion are as guilty of homicide as “mothers who suffocate their babies.” In 1610 Giustiniano refined the law by adding a few distinctions: if abortion was committed without intent or if the foetus was inanimate, the offender was to suffer an arbitrary penalty (possibly

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27 Before Dandino’s 1588 prohibition, abortion had not appeared in Bolognese bandi since 1536. The 1536 *Bando Generale* of Cardinal Legate Henrico Caetano stated “Et perche no solo la sete della morte o robbia altrui e causa delli disordini che nascono dal veneno, ma anco qualche altra sfrenata voglia; di qui e che alle volte si viene a causare la morte altrui con beuande, o altro destinato ad altro fine, vuole sua Sig. Illu Striss. & dechiara che in quals si uoglia modo succedi morte, e aborto animato per venefitio, il delitto, & il delinquente sia tenuto per doloso assolutamente, & come tale deba essere punito nella pena della morte naturale.” Such a statement was not included in the bandi issued in 1557, 1559, 1560, 1566, 1567, 1573, 1580 and 1586.

28 *Bandi generali del molt’illvstre & Reuerendiss. Monsig. Anselmo Dandino Prothonotario Apostolico di Bologna Vicelegato* (Bologna, 1588), p. 19. Dandino issued the exact same law in 1586 while he was governor for Perugia and Umbria, and this law remained intact and was repeated in successive bandi until the end of the century, *Bandi Generali del molto Illvstre et Reverendissimo Mons.re Anselmo Dandino, Prothonotario Apostolico, di Perugia, & Vmbria General Gouernatore* (Perugia, 1586), p. 27, and *Bandi generali dell’Illu Striss. e Reverendiss. Sig. Cardinale Silvio Savelli* (Perugia, 1598), p. 39.

29 “etiam che fusse destinato ad altro fine che in questo,” ibid., p. 19.


31 “Le Madri, che soffocaranno i pari loro, o che dolosamente abortiranno, occidendo il conceputo in loro animato con qual si voglia maniera.” *Bando generale Dell’Illu Strissimo, & Reverendissimo Sig. Benedetto Card. Giustiniano, Legato di Bologna* (Bologna, 1608), cap. 10, p. 18.
corporal) at the discretion of the judge. In his bandi, Giustiniano also associated abortion with medical practitioners and, in a section on offences committed by healers, declared that no one is to give a woman comestibles or potables to cause abortion. If a healer provides such materials and the woman aborts or dies, the healer will be tried for a capital offence. This law forbade healers from participating in the illicit termination of pregnancy but was also a warning against medical negligence: helping a woman to abort or causing her to miscarry by accident was not to be taken lightly and therefore healers were to take special care when medicating pregnant women.

The prohibitions on abortion made by Roman Governors were fewer and less precise than those made by the civic authorities in Bologna. The earliest mention of abortion in a Roman bando appears to have been that made in November 1591, just five months after Gregory XIV’s moderation of Sixtus V’s bull. The Governor of Rome Gugliemo Bastoni listed “aborto” amongst a slew of prohibitions ranging from poisoning, blasphemy, violence towards women, prostitutes dressing as men, singing bawdy songs and other activities and behaviours deemed immoral and subversive. Including abortion with this range of behaviours suggest that it was not a particularly serious offense. There are no details about what abortion was, why it was a crime, or even what its penalty was; Romans were simply not to do it. A bando of 1595 issued by

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32 “Le Madri, le quali dolosamente soffocaranno, o abportiranno i parti loro, vccidendo la creatura animata, o verranno all’atto prossimo incorreranno in pena della forca; Et se sara tentato tale delitto senza l’affetto, o la creatura non fusse animata la pena sara arbitraria etiam corporale.” Bando generale Dell’Illustrissimo, & Reuerendissimo Sig. Benedetto Card. Givstiniano, Legato di Bologna (Bologna, 1610), cap. VI, p. 16.

33 “Non sia alcuno, che ardisca fare compositioni commestibili, o potabili per douer dare ad alcuna donna, accio faccia aborto, poiche, se seguira o l’aborto, o la morte di detta dona non fuggira la pena, che e stata imposta contra quelli, che procurano l’aborto. Et se verra all’atto prossimo di darla ad alcuna donna cada anche nelle medesime pene,” Bando Generale, 1608, cap. XVIII, 42; “Et in particolare non sia alcuno, che ardisca fare, dare, o pigliar compositioni per fare, che alcuna donna abortisca sotto pena corporale, ad arbitrio di S. S. Illustriss. Et se ne sequira l’effetto con l’aborto di creatura animata, o la morte della donna, o si fara venuto all’atto prossimo, sara punito con la pena posta al Cap. del Patricidio.” Bando Generale, 1610, 64-65.

34 “In prima per ordine, & comissione espressa di S. satita conferma, & approve, & bisognando rinova tutti li Bandi Ordini, Decreti, & Provisioni, tanto generali, quanto particolari in qual si voglia modo fatti, & publicati fino al presente giorno […] intorno alla bestemmia, imbrattamento di figure; violentia di donne; Merettrici per l’arme di
Domenico Toschi, Cardinal and Roman Governor offers slightly more: anyone who gives poison and causes a woman to abort an animated foetus “without the counsel of a physician” will incur the death penalty.\(^{35}\) The caveat “without the counsel of a physician” is important and contrasts with the Bolognese laws of Cardinal Giustiniano issued a decade later. Like Giustiniano, Toschi’s prohibition was primarily aimed at healers and providers of drugs. However, it was not exactly a wholesale prohibition on abortion; rather this law indicates that abortion was prohibited unless induced by a physician. As we shall below and in the next chapter, in some cases, inducing abortion was understood to be a form of healing. It was not, however, only the university educated physician who knew how to purge the womb, thus the need for the stipulation that a physician decide. Thus, abortion was considered to be a crime in both Bologna and Rome, but not exactly the same crime. Abortion was also understood to be a form of healing, though from a legal perspective, a highly controversial one.

A final bando issued by Pope Clement VIII (d. 1605) in 1599 should be mentioned here because it attempted to fix the prohibition on abortion for all the Papal States. In an attempt to assert authority and establish some consistency over criminal matters in the Papal States, Clement VIII sought to publish one authoritative set of *Bandi Generali* for the entire Papal States.\(^{36}\) Regarding abortion, Clement declared that causing a woman to abort an animated female foetus was a crime.

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\(^{35}\) che chi con bevanda, o altra cosa etiam data ad altro fine senza consiglio di Medico causata morte, o aborto animato in alcuna persona, incorra nella pena della vita” *BandoGenerale concernente il Governo di Roma* [...], (Rome, 16 Sept. 1595), ‘Dar veneno’.

\(^{36}\) In a preface to the Bandi, Cardinal Aldobrandini explained: “Havendo la S. N. S. molte volte considerate, quanto poco convenga che nel stato sua li Bandi generali che i Governatori de luoghi fanno non sono tutti conformi almeno in quelli parti, che I luoghi, & le persone lo permettano, essendo molto raggionevoli, che I popoli suditi dell’instesso Principe si governino non leggi quanto più conformi, che si puo, & essendosi anco trovato, che molti dal tempo si sono redotti superflui, & molti altri non sufficienti: per provedere alle cose sec he occorrano, oltre che alcuni sono gia passati in dissuetudine.” Clement therefore issued a new compilation of “*lege universale*” for the
foetus, even if unintended, should be punished with death and the confiscation of goods; if the
unborn was not animated, the procurer should be sent to the galleys along with the loss of
goods. This was repeated in Roman bandi until at least 1632.

The many abortion laws examined here are confusing and their meanings unclear. Local
social and political contexts probably account for much of the variety. Nevertheless, the legal
systems taught and practiced in cities across the Italian peninsula were similar enough to invite
some comparison. This small sample of state and municipal legislation indicates that abortion
was, in some places, criminalised. At the same time, the meanings of abortions and the penalties
to be meted out to offenders differed. There was little statutory consistency on abortion across
the peninsula or even in the same area from authority to authority. Furthermore, the omission of
abortion from most statutes likely has as much to do with its controversial and contested nature
as with the peculiarities of this type of literature. Rather than implying that abortion was not
considered a crime in most places, the paucity of abortion laws suggest that legislators had a
difficult time relating it to more established crimes and assigning clear and appropriate penalties.

Though reflecting a shared cultural belief that abortion was criminal, the prohibitions on
abortion found in sixteenth and early seventeenth century codes of law and civic ordinances were

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37 “Et perche non solu la sete della morte, o robba altrui, e causa de disordini, che nascono dal veleno, man anco qualche altra sfrenata voglia, & di qui e che alle volte si viene a causar la morte altrui con beuande, o altro destinato ad altro fine, vuole Sua Signoria, & dichiara, che in qual si voglia modo succeduo la morte, o aborto animato, per veneficio, anchor che fosse destinato ad altro effetto che a questo; o in qual si voglia altro modo, il delitto sia tenuto per doloso assolutamente, & come tale debba esser punito in pena della morte naturale, & confiscatione de beni, & non essendo l’aborto animato, incorra la pena della galera, & confiscatione de beni.” Bandi Generali publicati di commissione di Nostro Sig, n. 66, p. 21.

38 The law practiced in cities across the peninsula was fundamentally influenced by Roman law, the Ius commune, and lawyers and judges were trained in a relatively similar way in universities and often travelled around the peninsula and worked in tribunals in different cities. See Manlio Bellomo, The Common Legal Past of Europe, 1000–1800, trans. Lydia G. Cochrane (Washington, D.C., 1995); Aldo Mazzacane, “Law and Jurists in the Formation of the Modern State in Italy,” in The Origins of the State in Italy, 1300-1600, ed. Julius Kirshner (Chicago, 1996), pp. 62-67, and Dean, Crime and Justice in Late Medieval Italy.
often imprecise and inconsistent. We might assume that individuals implicitly knew what “the law” was, what abortion meant and what consequences a procurer could expect to meet, and that the language of abortion laws is merely culturally opaque to historians studying the period, but this is not accurate. Jurists who were charged with the task of investigating and passing sentence on cases of alleged abortion were highly critical of the formulations of abortion laws questioned their applicability to criminal cases. It is to these discussions that we will now turn. The tidy categories of statute law and civic legislation did not reflect well the complications of abortion in real life situations.

3. Abortion in Criminal Jurisprudence

In late sixteenth and early seventeenth-century works of criminal jurisprudence and penology, jurists carefully analysed the criminal nature of abortion and the penalties to be meted out to offenders. For late-Renaissance jurists, abortion was a legal conundrum. By and large, jurists resisted and challenged the application of the abortion laws found in some statutes by drawing on Roman law, in particular the three laws found in the *Digest of Justinian* as commented on by and medieval and Renaissance jurists. Roman law, referred to as the *Ius commune*, was the system of law and legal reasoning that jurists learned in university and which they used in making, analysing and judging cases. Unlike canon law, Roman law did not equate the intentional termination of pregnancy with homicide because it did not consider the unborn foetus to be a human being in criminal contexts. In the Roman legal system, abortion was a

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39 Ibid.
crime, but not a capital one: the laws in the *Digest* stated that a procurer of abortion could be exiled, fined, and/or have property confiscated, but not punished for committing homicide.\footnote{The three Roman laws most cited in discussions of abortion were the *Lex cornelia* on murderers and assassins, the *Lex Divus Severus et Antoninus* and *Qui abortionis*, in the *Digest of Justinian*, vol. 4, 47. 11. 4, p. 784; 48.8.1 nu. 1, 3 and 8, p. 820; and 48.19.38. n. 5, p. 853. Significantly, abortion was not mentioned in the *Lex Pompeia* on parricide, 48. 9, pp. 821-22. On abortion in the Greco-Roman world, see Enzo Nardi, *Procurato aborto nel mondo Greco romano* (Milan, 1971) and Konstantinos Kapparis, *Abortion in the Ancient World* (London, 2003).}

Medieval commentators were uneasy with Roman laws because they did not include any consideration of animation and ensoulement. For instance, in the *Glossa ordinaria* to Roman law, the starting point for all jurists, the medieval jurist Accursius (d. 1263) explained that the penalty of banishment for abortion found in Roman law should be applied in cases where the foetus was less than forty days from conception, that is, for a foetus without a soul. The abortion of an ensouled foetus, Accursius taught, should be considered homicide and the penalty should be capital.\footnote{“Exilium ante quadraginta dies, quia ante non erat homo: postea de homicidio tenetur, secundum legem Moysi, vel legem pompeiam de parricidis: vt j. ad leg. Pompe. de parric. l. j. & facit C. ad lege Corne. de sica. l pe & j ad leg. Cor. de sica l. si mul. Acc.” Digestum Nouum, sev pandectarvm ivris civilis [...] commentariis Accursii, (Louvain, 1627, rpr. Osnabrück, 1966), t. 3, bk. 47, tit. 11, n. 4, p. 1385. See also 48, 8, 8, p.1471; 48, 9, p. 1472; 48, 19, 38, p. 1558; and the index definition of *Abortvm*, t. 6.} Some medieval jurists drew a clear distinction between abortion pre- and post-animation. Others, however, wondered whether and how this distinction could actually be applied in criminal cases of abortion and miscarriage caused by assault.\footnote{For interpretations of Roman law by medieval jurists, see Muller, *The Criminilization of Abortion*, forthcoming.}

Late-Renaissance jurists were generally critical of abortion laws as found in statutory legislation. Perhaps influenced by Counter-Reformation concerns over illicit sexuality and discipline, in the late sixteenth and early seventeenth century Italian jurists devoted substantial attention to abortion in their works of criminal jurisprudence and penology. Here, I shall explore the discussions of five of the most influential jurists practicing in the Italian peninsula: Giacomo
Menochio (d. 1607), jurist and senator of Milan; Francesco Vivio (b.1538), auditor in the courts of Bari and the Kingdom of Naples; Antonio Tesauro (d. 17th c.) counsellor of the Duke of Savoy, senator, and judge in the courts of Piedmont; Prospero Farinacci (d. 1618), celebrated Roman jurist, legal theorist and statesman; and Antonio Maria Cospi (d. 17th c.), secretary to the Grand Duke of Tuscany Ferdinand II de Medici and judge at the Otto di Guardia in Florence. The thoughts and opinions of these eminent jurists and statesmen on the subject of abortion were influential and their works were continuously printed and cited well into the eighteenth century.

These authors had long and celebrated careers hearing and trying cases as lawyers and judges, and composed treatises on the practice of criminal law (practica criminalia) to share their learning and experience with colleagues and students. Rather than being firsthand accounts of what they may have experienced in court, these texts were learned disquisitions citing and analysing numerous legal opinions on crimes and legal procedure. In these works, authors offered insight into how a lawyer or judge might proceed to investigate and rule in cases, how to acquire and assess evidence, what problems or controversies he might meet, and what penalties

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45 Francesco Vivio, Decisiones regni Neapolitani Venice, 1592), dec. 82, pp. 139-140.
47 Begun in 1581 and completed in 1614, Prospero Farinacci’s five part Praxis, et theoricae criminalis was the most influential work on criminal jurisprudence before Cesare Beccaria’s Dei delitti e delle pene of 1764. The Louvain 1631 edition of the text is cited here. Farinacci’s discussion of abortion appears in the fourth book, under homicide, quest. 122, tit. XIV, part 5 and 6, pp. 211-220. On Farinacci life and career, see Niccolo del Re, Prospero Farinacci: giureconsulato romano (1544-1618) (Rome, 1999).
49 Generally, see Dean, Crime and Justice in Late Medieval Italy and Julius Kirshner, “Some Problems in the Interpretation of of Legal Texts in the Italian City-States,” Archiv für Begriffsgeschichte 19 (1975): pp. 16-27.
were appropriate for the offense. Most of the time, authors preferred to cite as many legal opinions as possible on a given subject rather than to state what they themselves actually think – this rhetorical genre can be quite confusing for the non-specialist because, as Trevor Dean has noted in regards to legal consilia, it is often difficult to determine where the authors text ends and quotation begins. Nevertheless, within a maze of opinions and citations there are moments where jurists do state their own opinions on a topic, or appear to side with one authority over another on a particular issue; here, these will be privileged.

Whereas statutes and municipal ordinances represent a diversity of concerns in their abortion laws, jurists discussing the topic in their legal writings reflect a movement towards consensus, even though they might differ on certain points. In their discussions, jurists were primarily interested in whether and under what circumstances abortion could be homicide, whether the unborn foetus was to be regarded as a human being in criminal contexts, and whether a procurer or administrator of abortion or someone who caused a pregnant woman to miscarry by means of assault should be considered a murderer to receive capital punishment. Most of the jurists discussed here seemed to agree that cases of abortion and of miscarriage caused by assault were too complicated and contentious to be tried as capital offenses. Most believed that the foetus in utero should not be regarded as a human being and therefore, that capital punishment was incommensurate to the offenses allegedly committed. They did not challenge the theological doctrines and orthodox beliefs regarding animation and the spiritual value of the ensouled unborn foetus, and indeed did not outright deny that abortion could be homicide. Rather they doubted whether these beliefs and concerns could be applied to criminal cases where the life of an offender stood in the balance. While drawing on theology and ecclesiastical discourses and practices, secular legal discourse was more real world pragmatic.
The following exploration of jurisprudential discussion on abortion will focus on three main issues: first, discussions regarding the legal status of the unborn in criminal matters and how this influenced the criminality of abortion; second, discussions regarding the motivations and social circumstances behind the practice of abortion; and third, discussions of the difficulties involved in investigating cases of abortion and miscarriage caused by violence (the problems of generating and processing evidence, of determining cause of pregnancy termination and of discovering intentions behind actions.

a) **What is the unborn and what kind of crime is abortion?**

Most jurists who published on abortion began with a discussion of the legal status of unborn foetuses. Penalty depended on the nature and gravity of the offence, which in turn derived the value assigned to the unborn. Jurists agreed that the criminal severity of abortion increased with the gestational age of the foetus. Abortion after the foetus had been animated with an immortal soul was much more grave than before. Jurists reiterated the established doctrine that animation took place after 40 days from conception in male foetuses and 80 days for females. The official position of canon law was that the intentional termination of an unbaptised soul was considered homicide. The abortion of an inanimate foetus was not because, lacking a soul, it was not yet considered to be a human being. Applying these precepts to cases of

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50 For instance, Francesco Vivio gave the following title to his discussion of abortion: “When is the soul infused in male and female foetuses, and how should procurers of abortion be punished,” Vivio, *Decisiones regni Neapolitani*, dec. 82, p. 139.

51 This was the official position found in canon law, but like civilians, canonists debated this issue and wondered whether these distinctions could be applied in practice. For the established canons, see Paolo Lancelotti, *Institutiones ivris canonici qvibis ivs pontificium singylari metodo...,* (Rome, 1587), pp. 476-77 and Francesco Graziano de Garzadoro. *Compendium ivris canonici in qvo reiciuntur omnia, quae repetebantur, & quae iam bрогата fuere a Constitutionibus Rom. Pont. A concilio Tridentino, & a Catechismo* (Venice, 1582), part 6, dist. 1,
suspected abortion was, however, difficult. Jurists knew that theologians and philosophers differed regarding the timing of animation. The Roman jurist Prospero Farinacci found authorities claiming that male foetuses could be animated in 30, 35, 40, 60 and even 80 days, and 40, 60, 80 and 90 days for females.\(^{52}\) Most jurists acknowledged the importance of the soul and baptism to eternal life, but thought animation a controversial matter on which to judge cases that could result in capital punishment. Giacomo Menochio explained that, even though the statutes of his own city of Milan distinguished between the abortion of animate and inanimate foetuses, most states did not because the matter was too ambiguous.\(^{53}\) Menochio agreed with Farinacci that in cases of suspected abortion where it could not be definitively proven whether the foetus was animated, it was more prudent to rule that the crime was less grave rather than more.\(^{54}\)

Formation was generally regarded a better measure that ensoulment for determining the gravity of abortion and its punishment. Formation meant that the foetus was complete, that it had all its organs and limbs articulated, which also meant that it could (potentially) live outside the womb, at least for a time. Some medical and theological authorities thought that the soul could only be infused in a fully formed foetus. Nevertheless, equating the abortion of a formed foetus with homicide was also problematic. Citing Hippocrates, jurists held that a foetus was fully

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\(^{52}\) “Quando autem foetus in vtero dicatur animatus vel inanimatus, diuersae fuerunt Doctorum sententiae. Aliquibus enim dixerunt, animatum dici foetum post 40. dies, alij post 30. aut 35. alij etiam post 60. alij post 80. […]”; and “Sic & in foemineo foetus, quando anima dicatur infusa, Doctores no fixerunt pedes. Aliquibus enim dixerunt post 40. dies, alij post 60. alij post 80. alij post 90. Et alij aliis aliter existimarunt […]. Farinacci, Praxis, et theoricae criminalis, ns. 139-43, pp. 217-218. Farinacci thought the question of animation better left “to the philosophers.”

\(^{53}\) (mea quidem opinione) magna est diuinitio, quando quidem non distinguut iura illa fietum animatum ab inanimato.” Menochio, De arbitrariis iudicum, n. 7, p. 518.

\(^{54}\) Farinacci presented pro and contra arguments on this point but seems to have agreed with the Spanish jurist Antonio Gomez whom he cites favourably: “In dubio autem, an foetus praesumatur fuisse animatus, vel inanimatus, dic. quod presumitur inanimatus, secundum Anton. Gomez. de delict. cap. 3. rub. de homic. num. 32. in fine, vers. quod primo extende. ea ratione motus, quia in dubio semper facienda est interpretatio ad exclusione delicti, respondetque Ananiae, & alii Doctoribus contrarium tenentibus in c. sicut, de homic. quod loquantur, non quod poenam criminalem, sed quod irregularitatatem.” Farinacci, Praxis, et theoricae criminalis, n. 138, p. 217; Menochio, De arbitrariis iudicum, n. 7-12, pp. 518-519;
formed and mature after the eighth month. Farinacci remarked that within this conception, only cases of abortion very late in pregnancy could be considered homicide. The strongest deterrent to the practice of abortion was representing it as a form of homicide deserving of capital punishment; if this was only true after the eighth month from conception, women (and men) might think there were scant consequences to aborting in the fifth, sixth and even seventh month. Another problem with this formulation was the fact that formation, like animation, was regarded to be very difficult to determine with certainty and therefore a controversial means of measuring the gravity of abortion and miscarriage caused by assault. As we shall see in more depth in Chapter 4, it was very difficult and often impossible to determine when a woman had conceived and how far along she was when her pregnancy ended. The Florentine judge Antonio Maria Cospi thought that a forensic examination of the expelled foetus by a physician or midwife might yield some information regarding level of development (its gender, length, whether its limbs were perfectly articulated, whether it had hair and nails, etc.) and that this could be used to determine the penalty to be meted out. Forensic examinations of foetuses were important forms of evidence in cases of miscarriage allegedly caused by violence, but these were far from conclusive. As we will see in Chapter 5 of this thesis, foetuses were often in such bad shape that deciphering gestational age or level of development was very difficult. Furthermore, in most cases of suspected abortion, foetuses could not be found. In print, jurists urged judges to investigate the state of aborted or miscarried foetuses, but it was generally agreed that

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55 Tesauro, *Novae decisiones*, nu. 5, fol.14r; Vivio, *Decisiones regni Neapolitani*, n. 1-9, pp. 139-140
determining a penalty based on considerations of the foetus’ animation or formation was a matter of great controversy (materia molto controversa).\textsuperscript{58}

As we saw in Chapter 2, Sixtus V’s 1588 bull \textit{Against those who Procure Abortion} eliminated any considerations of animation or formation by declaring that the abortion of any foetus was as grave as the murder of a born child: both were capital crimes. This Papal law was an incursion into secular law. It was a conscious attempt at dissolving the boundaries between sin and crime, between “disobedience to moral and religious law” and “disobedience to civil and political law.”\textsuperscript{59} While Sixtus’s position on procured abortion was controversial (and indeed after its revocation deemed theologically and legally unorthodox and too severe by jurists) it was law, especially in the Papal States, that jurists had to contend with for the two and half years before its moderation by Gregory XIV in 1591. Writing on the subject in the awkward years the bull and its revocation, the Barese auditor Francesco Vivio had to accept Sixtus’ declaration, stating that it clarified for him a very complicated subject: “I swear to God that until now I have never been able to make up my mind about this \textit{[i.e., what penalties are appropriate for abortion]}. I leave it for God to know what is in the uterus,” Vivio stated, but wisely concluded “I do not know anything beyond what the Church clearly teaches.”\textsuperscript{60} With Gregory XIV’s revocation, jurists and

\textsuperscript{58} After summarizing authoritative opinions on the matter, Cospi concluded “Trattandosi dunq di cosa di tanto pregiudizio, e fuora della professione legale, materia molto controversa.” Cospi, \textit{Il giudice criminalista}, ch. 32, p. 496.


\textsuperscript{60} “Ego vero cum haec singula legerim, testor Deum, dico quia vsque ad praesens, certi vel definiti aliqaud de hac quaestione non teneo, sed ipsi Deo relinquo scire, quid sit in vtero, & cui ipse releuare dignabitur: me tamen haec singula & legisse non nego, & adhuc ignorare confiteor, praeter hoc, quod manifeste tradit ecclesia: Deum esse, & animatum, & corporum conditorem.” Vivio, \textit{Decisiones regni Neapolitani}, n. 5, p. 139, and no. 10-11, pp. 139-140.
legislators could go back to debating the legal status of the unborn in criminal matters and the commensurate penalties for abortion.\footnote{Farinacci, Praxis, et theoricae criminalis, n. 137, p. 217}

The criminal nature of abortion was contested and controversial because early moderns placed a great value on the loss of a soul, but most did not consider the unborn in the womb to be a human being in the legal sense. While animation made the foetus a Christian and while formation brought it closer to personhood, it was live birth that legally made the foetus a human being. Jurists discussed the haziness of these boundaries. Menochio debated whether one should speak of a “child” (infans) and “person,” (homo) from conception, animation, or only from birth; he concluded that before it is born, the foetus is not a person or a child.\footnote{Menochio thought that “hominem a foetu differre, uterus enim homo non est, sed fiery speratur.” De arbitrariis iudicum, n. 10-11, pp. 518-519. In section discussing the different “Ages of Man,” Menochio wrote: “Infans, qui in utero est adhuc, vel in cunabulis, appellatur […] infans aliquando dicitur, qui adhuc est in matris utero […] quamquam improprue hoc dici creadami siquidem infans iam appellatur inspecto futuro nativitatis tempore. & hac de re aliquam dicemus infra in casu 353[sic 357] ubi agemus de poena ilius, qui abortui causam dedit.” Menochio, De arbitrariis iudicum, bk. 2, cas. 57, n. 8, p. 158.}

Antonio Tesauro was especially firm in his assertion that a foetus in utero does not have the same legal status as a born infant. “It is one thing to be a thing,” he argued, “and another to be held as a thing.” A human being is never called “a true human [being] except after [he] has been born”; “a foetus that has not yet come out is not rightly said to be a person (homo).” If the foetus was not held to be a person, then abortion was not legally homicide or a capital offense. On this matter, Tesauro concluded that judges did better to accept that “there is a difference between killing [a child] already born, and [killing] an immature [foetus] still in the womb.”\footnote{“Haec vero sententia facilius meo iudicio confirmabitur, si fetum dum in vtero residet, hominem non esse demonstrabimus, quod illa ratione mihi satis probari posse videtur, quia homo nunquam dicitur verus homo, nisi postquam natus est dum enim in vtero est formatur, licetque iam animam habeat, nondum tamen formatus est, nisi post octauum mensem regulariter, indeque vere homo dici no potest, quia homo ex anima, & corpore efficitur, & constituitur, quorum altero deficiente non est homo. […] praeritio vero hoc in casu differentia constitutenda est, quando q. occidit iam natum, & quando immaturum, prout inter vterum, & natum puerum plures constituantur a Tiraquel. in 1. si quaque nulla constitueretur, si vtosque eandem penam mereri iudicarent.” Tesauro, Novae decisiones, decis. 12, n. 6-8, fol. 14v-15r. On these grounds, Tesauro and Farinacci both thought that infanticide was}
civil arena, a foetus was not a human being and could not affect the course of inheritance until after its emergence, alive, from its mother’s womb.\textsuperscript{64} For these and other reasons, most jurists agreed that abortion and miscarriage caused by violence was not legally speaking homicide and therefore should not be tried as a capital offence.

b) \textit{A woman’s crime of honour}

Although in their printed works, jurists primarily discussed abortion from a theoretical perspective, they also raised practical issues regarding investigation and the generation and assessment of evidence. These discussions deliver some insight into the social circumstances that influenced legal opinions. Though it was not a priority in jurisprudential analysis of the crime, authors also alluded to some of the common motivations for having abortions and the circumstances surrounding miscarriages allegedly caused by means of assault. Contexts and circumstances appear to have influenced the way judges approached these cases and the penalties they could impose on offenders.

In works of criminal jurisprudence, procured abortion was primarily represented as an honour crime and associated it with women: the act of a desperate woman trying to hide an illicit sexual relationship by getting rid of its product. Jurists associated the practice with young unmarried women, but also with widows and with married women pregnant from extra marital

\textsuperscript{64} See Katharine Park, “The Death of Isabella della Volpe: Four Eyewitness Accounts of a Postmortem Caesarean Section in 1545,” \textit{Bulletin for the History of Medicine} 82 (2008): pp. 169-87, for a case where the question of whether the infant had survived the mother, even if only by a few moments, had large financial consequences for the heirs. For a discussion of whether an unborn foetus could affect the course of inheritance and how to assess these issues in cases of miscarriage, see three consilia by the Roman medical forensics expert Paolo Zacchia, \textit{Quaestionum medico-legalium} (Louvain 1661), tomus posterior, cons. 37, 209-212, and cons. 66 and 67 pp. 287-294.
unions. For women caught in these situations abortion was, according to Farinacci, a means of “concealing disgrace”\(^\text{65}\) and preserving honour.

Jurists did not use sympathetic language when discussing these predicaments, but the penalties they thought appropriate for women who had abortions for some of these reasons suggest an appreciation of the social factors and sexual and gender politics motivating the practice. For instance, Menochio and Tesauro thought that a “young girl” (\textit{filia minor}) who has an abortion to conceal illicit sexual relations and to preserve her honour should not receive the death penalty but milder penalties to be determined by the judge according to the specifics of the case. Discussing this matter, Tessauro and Farinacci thought that the responsibility for the abortion was not the girl’s but her mother’s. The assumption was that young pregnant women would likely be persuaded to have abortions by their mothers or guardians, older women who knew the damage of an illegitimate pregnancy to the family’s reputations. Nubile girls were deemed to be dangerous, both to themselves and to their families. These jurists thought that mothers likely convinced their pregnant daughters that abortion was the only remedy and likely provided the means to do so. In these cases, according to Tesauro, the “impious mother” should be held responsible “if she allowed her daughter to be so unchaste that she could so easily be committed to the embrace of a man.” Instead of imposing an abortion, mothers should try to conceal their daughters’ pregnancies and later abandon the illegitimate children after birth.\(^\text{66}\)

In print, jurists discussed another social context in which abortion could be practiced: the termination of legitimate pregnancy in order to influence the course of inheritance. Reflecting


\(^{66}\)\textit{Declaratur tertio ut non procedat, quando filia minor est, & suasionibus impiae matris abortum fecit, ut suam turpitudinem occultaret, tunc filia excusatur, ita respondit Dec. consil. 535, nam & matris ipsius ac mandatum, necon & aetas illi excusationem praestat, ego tamen illam indicarem dignam poena arbitaria.” Menochio, \textit{De arbitrariis iudicum,} n. 22, p. 519; Tesauro, \textit{Novae decisiones,} n. 12, fol. 15v-16r; Farinacci repeated that a minor forced into abortion by her mother is a common case but did not say what penalty he believed should be imposed, Farinacci, \textit{Praxis, et theoricae criminalis,} n. 156 and 158, p. 219.
cultural anxieties towards the uncertainties of lineage and the transmission of inheritance, jurists suspected that women could intentionally terminate pregnancies in order to secure their husband’s inheritance for themselves or for another heir (with whom an arrangement was made), rather than have assets transmitted to a potential heir in utero. Cospi was particularly mindful of women who suddenly miscarry after their husbands die.\textsuperscript{67} In these cases, some jurists thought capital punishment appropriate if it could be proven that the miscarriage was intentional and planned.\textsuperscript{68} In this context, it was not the state of the unborn that determined the penalty. Rather capital punishment could be imposed because of the covetous conspiracy, for property instead of the legitimate preservation of honour and the avoidance of scandal. The victim in these cases was the father of the unborn. According to Tesauro, a woman who commits such an abortion (and any accomplice) should be put to death because she has deprived her husband of an heir and his assets would therefore be given to someone who was not supposed to receive them. Farinacci thought a woman who has an abortion for these reasons should be deemed an assassin and punished accordingly.\textsuperscript{69} In this context, concerns over property and inheritance, and not over the nature of the unborn, determined the gravity of the offense and the penalty to be meted out. Of course, it is unclear how often, if ever, such cases came across judges’ desks; rather, these discussions likely indicate deep-seated patriarchal anxieties over the uncertainties of pregnancy and women’s ability to affect the course of inheritance.

\textsuperscript{67} Cospi, \textit{Il giudice criminalista}, pp. 502-503


In these discussions, jurists were curiously silent regarding the culpability of men who were responsible for illegitimate pregnancies and sometimes abortions. Only Antonio Cospi mentioned one circumstance where men would procure abortion and that was if he discovered that his wife was pregnant with another man’s child;\textsuperscript{70} in this case the abortion was a consequence of the wife’s infidelity and was intended to preserve her husband’s reputation and likely his assets from going to an illegitimate heir. Of course, men were involved in abortions for many other reasons. As we saw in Chapter 2 and as will see in more detail in two cases analysed in Chapter 5, men often forced the women they had impregnated to have abortions in order to conceal their own transgressions. While jurists ignored these considerations in print, we can assume that these realities influenced judicial practices. Secular authorities were likely not interested in prosecuting young women caught in cases of abortion to the full extent of the law. Even the strictest Counter-Reformation ecclesiastical authorities could agree that certain cases of abortion should be suppressed in order to avoid public awareness of an illicit sexual relationship and to minimize scandal and social disruption. Jurists did not explicitly express these concerns in works of criminal jurisprudence but the same social and political concerns certainly influenced their judicial practices.

c) \textit{Ambiguous bodies, uncertain crimes}

Investigations of cases of suspected abortion or of miscarriage allegedly caused by assault were also hindered by the difficulties of distinguishing between causes of pregnancy termination and of discovering the intentions that lay behind them. In many cases, it was impossible for jurists, even with the assistance of medical practitioners operating in a forensic

\textsuperscript{70} Cospi, \textit{Il giudice criminalista}, ch. 34, p. 502.
capacity, to determine with a sufficient level of certainty the causes that brought pregnancy to an end. It was never easy to discover whether a woman had procured an abortion or whether she had suffered a miscarriage, or do determine that miscarriage was in fact caused by assault. Furthermore, intentions behind actions that may have lead to the termination of pregnancy were very difficult to discover and to make sense of, and the processes that brought pregnancy to an end were ambiguous, never certain and always open to interpretation.

In print, jurists raised several ‘common cases’ of abortion to demonstrate how difficult it was to discover the cause of an ended pregnancy and intentionality. For instance, a common defence in cases of suspected abortion was the woman’s claim that she did not know she was pregnant until she felt “pain in the belly” and delivered a foetus into a latrine while performing “natural functions”. Most jurists did not have a good answer for how to proceed against a woman who claimed that “she did not know that she was pregnant” until she was well into labour and saw the foetus come out. How could the judge determine whether she was lying or whether she was truly ignorant? Cases where it was suspected that a woman had concealed pregnancy, had an abortion in secrecy or delivered and then killed the newborn and then hid the body, were even more difficult to investigate. In these discussions, jurists did not state how or why such cases came to official attention.

Ignorance of pregnancy appears to have been a common defence in cases of suspected abortion, especially by unmarried women. As a defence, it was viewed with suspicion as it was mostly used by single women. Its apparently ubiquitous use led jurists to assume that women

71 Common either because they frequently occurred or because jurists frequently discussed them hypothetically.
72 Secundo limitat in casu, […] vbi de muliere, quae ventris doloribus impulsa, puerum in latrinam proiecit sine dolo, ignornas se esse praegnantem, & sic in tortura perstitit.” Farinacci, Praxis, et theoricae criminalis, at n. 156, see also 153 and 157, p. 219; Menochio, De arbitraris iudicum, n. 22-24, p. 519.
were lying and trying to pass off procured abortions as natural or accidental miscarriages. However, this defence was common because it was plausible. Women did not necessarily know when they were pregnant. The signs of pregnancy, as we will see in more detail in Chapter 4, were known to be notoriously ambiguous, both for medical practitioners and for women themselves. In his monumental work on legal medicine, Paolo Zacchia (1659), the foremost Italian authority on forensic medicine of the early modern period, informed jurists that ignorance or misdiagnosis of pregnancy (especially in its first few months) was very common because no sign of pregnancy was certain and because most signs could signal other conditions. Even the clearest signs of pregnancy – the cessation of menstrual periods and a growing belly accompanied by a sensation of a stirring motion – could be open to interpretation. The cessation of menstruation was “the most deceptive [sign] of pregnancy,” Zacchia thought, because menstrual retention was considered a disease in itself that commonly afflicted women. Furthermore, a growing and distended belly could be a symptom of dropsy of the womb. Alternatively, a blockage stemming menstrual retention or malign uterine growths and tumours could cause swelling.

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74 On Zacchia life and career, see Silvia de Renzi, “Per una biografia di Paolo Zacchia: nuovi documenti e ipotesi di ricerca,” in Paolo Zacchia, 1584-1659. Alle origini della medicina legale, eds. Alessandro Pastore and Giovanni Rossi (Milan, 2008), pp. 50-73.

75 "Defectum porro menstruorum pro terto signo a Cagnolo adductum, omnium esse fallacissimum, iam novimus Medici. Sed non solum ex menstruorum defectu non potest certo affirmari, mulierem in utero habere, sed neque ex eorum apparentia pro certo judicari possumus, illam utero non gerere, cum & quaedam sint, quae & praenantes menstruantur, & vice versa aliae sint, quae nunquam, aut raro menstruantur, & concipiunt." Zacchia, Quaestionum medico-legalium, tomus prior, bk. 1, tit. 3, quest, 1, n. 28-29, p. 51; see questions 1 and 2 on the signs of pregnancy and whether these can be known with certainty.


77 Cospi devoted several pages of his analysis on abortion to discuss one such growth called a mola, a “piece of flesh” believed to be generated through intercourse that could resemble a foetus but which was in fact a
Some jurists were quite medically literate and discussed illnesses of women that could complicate investigations into procured abortion. Based on the medical literature of the period, menstrual retention and dropsy appear to have been very common. A woman who was not expecting to be pregnant might have perceived the signs and sensations of foetal growth as symptoms of illness. She might have even been diagnosed as such by a physician and so consume purgative medicines in order to stimulate menstruation and, in effect, to abort. Such a woman, and onlookers, might experience genuine surprise when a foetus emerged, dead or alive, from her womb. Of course, judges also knew that women could use their body’s opacity to feign illness in order to procure abortifacient medicines, and that they could later deploy discourses of ignorance and of corporal ambiguity in order to escape punishment. According to Cospi, this is what made investigating cases so difficult: not only were the signs of the body ambiguous and could be interpreted in numerous ways, but women were cunning and deceptive (l’astuzia delle donne). According to Cospi, this is what made investigating cases so difficult: not only were the signs of the body ambiguous and could be interpreted in numerous ways, but women were cunning and deceptive (l’astuzia delle donne).78 Accordingly, Cospi instructed the judge to investigate whether a woman had suspiciously consumed purgative medicines or had herself bled “without need” in the days before the alleged miscarriage. The judge was to try his best to track down prescriptions or receipts from apothecaries and question any healers such a woman might have consulted.79 Nevertheless, determining whether or not a woman had intentionally concealed pregnancy and had procured an abortion was extremely difficult.80

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78 Ibid., pp. 503-504.
79 Ibid., pp. 503-505.
80 In a consilium composed for a case where a woman was accused of concealing pregnancy (from an adulterous relationship) and of procuring abortion, Paolo Zacchia scrutinised all the available physical evidence and concluded that all the signs that led some midwives and lay onlookers to assume that the woman was guilty actually pointed to severe menstrual retention followed by a violent healing purge: Quaestionum medico-legalium, tom. post. cons. 69, pp. 298-300. See discussion of this case in Silvia de Renzi, “Medico-Legal Cases in Seventeenth-Century Rome,” Studies in the History and Philosophy of Science 33 (2002): pp. 229-232 and in Chapter 4.
Miscarriage caused by illness was also very common and very difficult to investigate. Jurists knew that illnesses, apparently even minor ones such as a bad cough, a bout of gas or a sneezing, could terminate pregnancy, especially in its first few months. According Francesco Vivio, many pregnancies end in their first few months because the foetus is not yet securely affixed to its mother, “it hangs like a fruit on a tree,” and any jostle or rumbling could shake it loose.⁸¹ Furthermore, pregnancy could cause or worsen illnesses, which could potentially turn fatal. Pregnant women who became ill – for instance, suffering from a bout of fever – were deemed to be at great risk of miscarrying and of suffering dangerous complications.⁸² Healing pregnant women was very difficult because most forms of therapy for women’s illnesses consisted of uterine purges intended to expel disease-causing morbid matter from the body. In some cases, the only way to treat certain illnesses was by means that induced abortion.

As we saw in Chapter 2, theologians and ecclesiastical authorities found abortion induced for healing reasons controversial, yet, by and large, they accepted it as a necessary course of action. Jurists agreed that abortion could be induced with impunity as long as it was intended for the mother’s health (abortum pro mulieris salutem).⁸³ Francesco Vivio thought that a physician who induces an abortion in a pregnant woman at risk should not be punished because he acted with a clean conscience (pura conscientia), and, as Augustine taught, “take away the intention and you take away the sin.”⁸⁴ This was how Vivio ruled in a 1589 case in Bari where a physician

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⁸³ Menochio, De arbitrarii iudicum, n. 20, p. 519; Vivio, Decisiones regni Neapolitani, n. 11-13, p. 140; Tesauro, Novae decisiones, n. 11, fol. 15v; Farinacci, Praxis, et theoricae criminalis, n. 123-125, pp. 214-215; Cospi, Il giudice criminalista, ch. 35, pp. 503-505.

⁸⁴ Vivio, Decisiones regni Neapolitani, n. 11-13, p. 140.
was accused of performing an abortion. According to Antonio Tesauro, saving the mother was also the more pragmatic choice because she “can go on to procreate more children.” At most, Tesauro believed salutary penance could to be applied to relieve the consciences of those involved.

In real situations, however, decisions to induce abortion for health reasons were far less clear-cut than jurists represented them to be. In many cases, abortion appears to have been an unexpected or undesired side-effect of medical intervention. As we saw in the bandi of Bologna and Rome, and as we shall see in bandi specifically for medical practitioners discussed in Chapter 4, legislators declared that the decision to give a woman medicines that could potentially terminate pregnancy was to be made by a physician, a licensed professional who could assess the risk at hand and make an educated decision. In many cities, apothecaries and herbalists were specifically prohibited from selling strong purgatives that could induce abortions without a physician’s prescription. Part of the reason for such legislation was to avoid unnecessary miscarriages caused by strong drugs sold by lower order healers. Clearly, this legislation was also an attempt to safeguard against women who, knowing they were pregnant, claimed that they suffered from menstrual retention or dropsy in order to procure medicines to cause abortion. Nevertheless, while they preferred having licensed physicians deciding whether or not a woman’s womb needed purging, jurists acknowledged the fact that women often sought advice regarding their health from lower order healers such as midwives, barbers or apothecaries, and from other women. More often than not, women diagnosed and medicated themselves. In practice, jurists agreed that as long as a purgative was sold and consumed with the intention to heal, a woman not should be tried for procuring abortion; neither should the person who gave a

85 Vivio does not give any details about this case. Vivio, Decisiones regni Neapolitani, n. 11, p. 140.
86 Tesauro, Novae decisiones, n. 11, fol. 15v.
healing purge “for the sake of pity.” Menochio thought that no penalty should be meted out in this situation because an abortion committed for the sake of healing was similar to committing “murder in self-defence (defensionem occidit)”\(^8^7\) Farinacci thought that as long as physicians would have agreed that her health was at risk and needed a purge, such a woman and any associate should not be convicted of crime. If the circumstances were unclear, the judge could assign some penalty but not a capital one.\(^8^8\) Determining intentionality and culpability in such cases was extremely difficult and often impossible. For all these reasons, Antonio Tesauro and Giacomo Menochio thought that abortions resulting from medicines taken for healing purposes were better resolved in the forum of conscience (the confessional) than in a courtroom.\(^8^9\)

With the causes of ended pregnancies and the intentions behind actions always open for interpretation, external factors could come to the fore in criminal investigations. The sexual reputation of a woman suspected of procuring abortion mattered a great deal. A married woman of good reputation who claimed that she suffered a miscarriage from domestic work,\(^9^0\) such as lifting something heavy, in the privacy of her own home would likely not be investigated too closely, whereas a single woman or a woman suspected of having extramarital relations might. However, this defence was plausible because it happened all the time. Strenuous work and even mild exertion could cause a woman to miscarry, and, as most working women could not afford to lounge around for several months, unintended miscarriages were likely very common. However, married woman making these claims could also be concealing procured abortion. How could a judge investigate the miscarriage of a married woman without harming the reputation of the

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87 Menochio, *De arbitrariis iudicium*, n. 20, p. 519; Tesauro, *Novae decisiones*, n. 11, fol. 15v.
89 Menochio, *De arbitrariis iudicium*, n. 21, p. 519. This was a notable conclusion since Menochio, in many other matters, argued for limiting ecclesiastical jurisdiction. See C. Valsecchi, “Menochio, Giacomo (Jacopo);” see also Tesauro, *Novae Decisiones* n. 9-11, fol. 15r-v
90 “Qvintvs est casus in muliere, quae abortum fecit sine eius dolo, vt puta faciendo aliquam vim pro familiari seruito suae domus, veluti in tenendo, vel in alio pondere, quod sufferre non poterat, susciendo,” Farinacci, *Praxis, et theoricae criminalis*, ns. 156, 157, p. 219; Menochio, *De arbitrariis iudicium*, ns. 23, 24, p. 519;
household? Why would he? Without any witnesses or evidence to prove the contrary, such cases would never have made it to judicial tribunals and, even if they did, judges might have had to accept the defendants’ explanations because they were entirely plausible.

Miscarriage allegedly caused by labour or accident could also be concealing domestic violence. Courts generally did not investigate domestic violence unless the abused woman sought to separate from her husband on the grounds of cruelty. Violence within marriage that exceeded what was deemed acceptable and that caused a woman to miscarry was grounds for separation. According to Farinacci, the miscarriage could be sufficient evidence of cruelty. However, Farinacci also noted that violence could be inflicted on a pregnant woman with the intention of causing a miscarriage, perhaps by a husband who did not want another mouth to feed or after discovering that his wife was pregnant by another man. In most cases, however, courts would not have bothered investigating cases of married women miscarrying unless there were significant denunciations to the effect that miscarriage was concealing something much more troubling.

Jurists and courts were more interested in cases where the woman who miscarried allegedly at the hands of a man or woman who was not a relative. In these cases, the crime committed was not necessarily conceived of as a form of murder, but rather was assault, injury and possibly danger of death and the loss of future offspring. Procured abortion was

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92 Prospero Farinacci, *Consilia sive response atque decisions causarum criminalium* (the Louvain, 1628 edition is cited here), vol. 2, cons. 152, n. 6, p. 177. In a 1591 case tried in Piedmont, a man was exiled for some time for beating his wife and causing her miscarry, Antonio Tesauro, *Ad novas decisiones sacri senates Pedemontani, [...] Additiones* (Frankfurt, 1605), p. 8.
94 For instance, see the suit brought by a candymaker against inspectors whom he believed caused his wife to miscarry and die by frightening her and making her climb up and down the stairs of their shop to demonstrate their wares. Elizabeth Cohen, “Miscarriages of Apothecary Justice: Un-separate Spaces for Work and Family in Early Modern Rome,” *Renaissance Studies* 21 (2007): pp. 496-497.
theoretically a more grave offence than miscarriage caused by violence. The former was, by definition, intentional, while the latter could and was almost always claimed to be accidental in the sense that violence did not intend to terminate pregnancy. Nevertheless, miscarriage caused by violence was a grave offence that courts took seriously. In these cases, women, their husbands or other male kin brought lawsuits against the person responsible for the miscarriage in order to receive compensation for their loss and injuries.

Cases of miscarriage caused by violence were difficult to prosecute for many of the same reasons procured abortions were: the causes of pregnancy termination and the intentions behind the actions of the defendants could not be known with certainty. Aside from asserting that they never hit the accuser, defendants could also draw on discourses of corporal ambiguity and claim that they did not know that the woman they assaulted was pregnant. This, too, was a common defence because it was plausible. If the woman was not showing and if it was not known publicly that she was pregnant, the penalty could be much lower. Menocchio and Farinacci thought it was very difficult to prove a case against a person who claimed that he or she did not know that the woman they hit was pregnant;\(^95\) Farinacci thought that the judge should be lenient on the person who hurt a woman without knowing she is pregnant.\(^96\) In such cases, the assaulter could be charged for violence and injury, but not necessarily for causing the miscarriage or for terminating the life of an unborn. The burden of proof fell on accusers: they had to make the case that the woman was visibly pregnant and that the assaulter should have known not to assault her or treat her improperly. In cases of miscarriage early in pregnancy, discovering whether or not

\(^{95}\) “Declaratur primo, ut non procedat in eo, qui ignorans praegnantem percussi, ex quo abortus secutus est, nam tunc mitius punitur, ita Alberius d. qu. 95 uersic.” Menochio, *De arbitraris iudicum*, n. 18, p. 519.

\(^{96}\) “Et rursus eadem conclusio procedit in percutiete mulierem, quam praegnantem sciebat; secus si ignorabat, tunc enim etiam abortu sequuto, non tenetur de eo, vt videtur de mete Iacob. Butrig. [...] vbi iustam, & probabilem dixit ignoratiam, quando ex aspectu mulier non apparebat grauida, & sic non habebat corpus tumidum,” Farinacci, *Praxis, et theoricae criminalis*, n. 153, p. 219.
the defendant actually knew or could have known that the woman was pregnant was very
difficult and therefore so was determining culpability.97

Of course the defence of ignorance could not work if the miscarrying woman was
showing or was publicly known to be pregnant, and if the assault took place in public where
numerous witnesses could testify to both pregnancy and assault. However, these cases came with
their own set of doubts and uncertainties. People accused of violence exploited these in several
defensive strategies. They could claim that the woman had instigated the fight and made it
impossible for them to walk away. Or they could challenge allegations that assault caused the
miscarriage by claiming that the blows were not severe enough, and therefore, there must be
another cause. Confronted with the latter defence, judges had to rely on the expertise of medical
practitioners. Jurists summarized medical opinions in print and instructed how to assess the
causal relation between assault and miscarriage. For instance, a blow to the viscera, especially
near the kidneys,98 would likely cause a miscarriage, whereas a blow to the head or upper part of
the body was thought not particularly to endanger the life of the unborn. The judge also had to
consider the length of pregnancy. If the woman, one or two months pregnant, was hit in the
viscera or kidneys, it could be presumed that the assault caused the miscarriage. If she was
further along, more than four or five months, it would take a severe beating (grandissima
violenza) to cause the miscarriage because, at this point, the unborn was more robust and tightly
fixed to its mother. Facilitating investigation, such a beating would also leave many marks on the
woman’s body and likely also cause a scene that drew witnesses. If she was close to delivery,
however, the foetus would be large and heavy and increasingly ready to come out; then even a
mild beating could cause her to bring it forth before its proper time. In these cases, witnesses

97 On these points, see Cohen, “Miscarriages of Apothecary Justice,” pp. 480-504 and Chapter 5 of this
thesis.
98 Zacchia, Questionum-medico legales, tom. post. cons. 47, pp. 234-236.
could supply, among other things, information regarding how far along the woman was when assaulted. The time between beating and miscarriage also needed close inquiry. According to Cospi, if a miscarriage occurred two or three days after a beating, the assault was likely causal and the assaulter responsible. If more than three days passed, the likelihood diminished and the judge must assume that the miscarriage had other causes, perhaps illness or even intentionally procured abortion.\(^9^9\)

As with cases of procured abortion, attitudes towards miscarriage caused by assault were influenced by the reputation of the accuser and the accused. Suspicion ran deep that women could try to use the opacity of their bodies for financial gain. Jurists believed that some women might try to pass off menstrual blood as a miscarriage, or claim that a spontaneous miscarriage or even a procured abortion was caused by assault in order to extort money from an adversary. Antonio Cospi warned judges that some women with a “vile soul” (animo vile) instigate fights with their enemies when they are pregnant in order to later accuse them of causing their miscarriage.\(^1^0^0\) Judges should be especially wary of prostitutes who brought these accusations to court. Because of their vocation and frequent sexual intercourse, prostitutes were prone to miscarry. Their sinful trade was generally to blame for terminated pregnancies rather than the fault of another.\(^1^0^1\) According to Cospi, sometimes the reputation of the woman investigated for alleged abortion or who feigned miscarriage was the only evidence that a judge had to go on. So, if she was known to have a bad reputation (mala fama), “a soul so disposed to commit such

\(^9^9\) Cospi, *Il giudice criminalista*, ch. 36, ns. 1-3, p. 505-506; see also ch. 33, n. 8, pp. 495-496 and ch. 35 n. 4, pp. 504-505.
\(^1^0^0\) Ibid., p. 506.
\(^1^0^1\) Frequent sexual intercourse not only jars the body but also keeps the womb open and all the semen emitted within creates a very humid environment which could suffocate the unborn. Ibid., p. 507.
wickedness [sceleraggine],” or a specific incentive, she likely had had an abortion or, in cases of alleged miscarriage caused by violence, was trying to extort money from someone.  

5. Conclusion

Unlike the post-Tridentine ecclesiastical authorities discussed in Chapter 2, secular authorities, in their civic legislation and in works of jurisprudence, did not portray abortion as a pressing social problem that required immediate attention and harsh penal strategies. Certainly, especially in the Papal States where ecclesiastical and secular jurisdictions blurred, authorities such as the Governors of Rome and the Legates of Bologna shared many of the same concerns as reforming bishops and theologians. Yet these views are not easily discerned in normative legal documents. In late-Renaissance Italy, abortion laws were few and often imprecise, and they varied from state to state. Most civic authorities likely held abortion to a crime and punishable offense, but this was always contentious. From a legal perspective, abortion was complex, difficult to categorize as a crime and not easy to fit within penal systems. Jurists noted that because the very nature of the offense was controversial and open to interpretation, statutes were often misleading and not really applicable to real situations. Abortion laws were too simple to effectively resolve cases full of uncertainty and ambiguity.

This chapter has argued that medical discourses regarding the uncertainties of the female body, of generation, pregnancy and its termination, fundamentally influenced the ways jurists thought about and approached cases of abortion and miscarriage caused by violence. Drawing on medical theory and practice, jurists doubted that, in many cases, there could be found knowledge

102 Ibid., pp. 502-503.
103 Most governors and legates were also cardinals and bishops.
certain enough to prosecute cases where the termination of pregnancy was suspected to be nefarious. The opacity of the female body did not allow for easy decisions to be made. Women and men suspected of abortion and of assaulting a pregnant woman could deploy discourses of ambiguity to obfuscate charges of intentionally. Jurists knew that defences of ignorance of pregnancy, of illness, of unintended abortion and of spontaneous miscarriage were standard because they did happen. These claims were plausible and could not be easily discredited. Cases of abortion and of miscarriage caused by assault were too full of uncertainty to be tried as homicide and capital punishment too severe to be meted out to suspected offenders. Jurists preferred milder penalties to be decided on by the judge in accordance to the specifics of each case. Most of the time, the reputation of the suspects and the potential for causing scandal and social disruption were critical.

While the legislation and works of criminal jurisprudence examined here do not indicate how cases of abortion were actually processed in secular courts of law or with what frequency, they do reveal legal thinking on the nature of the crimes and guidance for judges who tried these cases. Menochio, Vivio, Tesauro, Farinacci and Cospi’s practiced in the courts of Milan, Naples, Piedmont, Rome, and Florence; jurists who were confronted with cases of suspected abortion and miscarriage allegedly caused by violence would have read their analyses of these offenses and would have applied some of their insights. As we will see in Chapter 5, in practice, judges scrutinized the evidence presented in cases and tried to discover the intentions and motivations of the alleged offenders in order to discover whether they had committed a crime and to determine their degree of culpability. However, the ambiguities of the female body greatly problematized these investigations.
At some point in the early 1600’s (date unknown), the Roman forensics expert Paolo Zacchia was approached to give his learned opinion on a case of concealed pregnancy and murder of a newborn child. A Roman woman named Matthia de Bello was accused by her neighbours of adulterous pregnancy – her husband had been long absent – of having previously attempted abortion, of giving birth in secret and of then killing her newborn by throwing it in a latrine. The neighbours who brought the charges knew that Matthia was pregnant because they had seen her belly grow over the course of a few months; they knew she delivered because they allegedly heard the baby cry from a latrine and because Matthia’s belly deflated immediately afterward. Denying the charges, Matthia explained that her belly had been swollen for some time on account of severely suppressed menstruation; her belly suddenly deflated because she finally had a strong purge where copious amounts of obstructed blood and other fluids were expelled. Matthia was still bleeding when the investigation began.

Searching her house one day after the alleged expulsion and murder, investigators did not find a dead baby but rather blood on the floors and on several rags; some of the blood appeared thicker and was described by Zacchia as clumps (cruoris grumos). Three midwives and a surgeon were brought in by the court as expert witnesses to assess the physical evidence on Matthia’s body. Two midwives concluded that Matthia had given birth and therefore that she was guilty of at least some of the charges; the other midwife and the surgeon, however, thought
Matthia was telling the truth and that she suffered from a severe case of retained menstruation. The learned Zacchia was brought in to resolve the controversy. He concluded that the available evidence did not indicate that Matthia was pregnant or had an abortion, but rather was consistent with severely retained menses. In making his judgement, Zacchia looked to the underlying causes of the appearance of Matthia’s body, the reasons her belly swelled and then deflated so quickly, and also scrutinized the quality of the expelled blood. To the untrained eye, Zacchia opined, these signs might suggest pregnancy and delivery but what they really indicated was illness and cure.¹

For Zacchia, the case demonstrated the danger of putting faith in the testimonies of unlearned medical practitioners. For our purposes, Matthia’s case demonstrates that the female body was hard to “read” and could elicit numerous competing and contradictory interpretations, even amongst medical practitioners. The difficulties of distinguishing between the signs of pregnancy and the symptoms of illness could lead to false accusations and possibly wrongful penalties. Of course, the fact that Matthia was a married women living apart from her husband and was believed to be having an affair shaped her neighbours’ perceptions of her body and their expectations of what was taking place within it. Nevertheless, even women with sullied sexual reputations could be wrongly accused of concealing pregnancy and having abortions.

The preceding two chapters, exploring ecclesiastical and legal attitudes towards abortion, have argued that uncertainties regarding causes of terminated pregnancies, including intentionality, greatly frustrated attempts at discipline. This chapter focuses on the medical discourses and practices that underpinned these uncertainties. In the sixteenth and seventeenth

¹ Zacchia, Quaestitionum medico-legalium (Louvain, 1661), tomos posterior, bk. 10, cons. 69, pp. 298-300; also discussed in a section on “simulation”, tomos prior, bk. 3, tit. 2, quaest, 9, pp. 234-235. The case is discussed by Silvia De Renzi, “Medico-Legal Cases in Seventeenth-Century Rome,” Studies in the History and Philosophy of Science 33 (2002): pp. 229-232. Unfortunately we do not know how the case ended. Attempts to find the case in the records of the Governor of Rome’s Criminal Tribunal have not yielded.
centuries, Italian physicians and anatomists embarked on intense study of women’s anatomy, physiology and pathology in order to better understand and control fertility and pregnancy, which were regarded to be public concerns. Understanding and being able to intervene in generation, fertility and female health, and being able to minimize the risks in pregnancy and childbirth were of paramount importance. Monica Green has convincingly argued that Renaissance physicians succeeded in re-inventing women’s medicine as a learned masculine discipline, in concept if not necessarily in practice. By the sixteenth century, gynaecology was a specialized sub-discipline of medicine rooted in the Hippocratic tradition. Academic and popular interest in women’s bodies led to an explosion of male-authored works on generation, pregnancy and women’s diseases in both Latin and the vernacular. Katharine Park has observed that medical authors sought to unveil and disseminate their discoveries and learning through publication in the service of “public interest and public good.”

And yet, even under constant investigation, the female body resisted comprehension, especially in its generative capacities. As a number of historians have recently observed, in the early modern period, the womb remained stubbornly opaque, generation occult and unpredictable, and pregnancy notoriously difficult to detect, especially in its early months. The so called normative signs of pregnancy (the cessation of menstruation, a growing belly and the

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2 The newly discovered and translated ‘Hippocratic gynaecological corpus’ provided impetus to the medicalization of women’s bodies and women’s healing. See Monica Green, *Making Women’s Medicine Masculine: the Rise of Male Authority in Pre Modern Gynaecology* (Oxford, 2008), ch. 6, esp. pp. 275-287. See Green’s appendix for a list of sixteenth century works of women’s medicine.

3 Latin works in the *De morbis muliebris* tradition, such as those of Albertino Bottoni (1585), Girolamo Mercuriale (1587) and Alessandro Massaria (1600) targeted a learned, medical and male audience. Much discussion of women’s illnesses and their therapies could also be found in the numerous editions of Hippocratic texts published with commentaries by learned physician, in general works of pathology and therapy (*Practica*), and in collections of medical consilia (some of which are cited below). Vernacular works such as Giovanni Marinello’s *Le medicine partenenti alle infermità delle donne* (1563) and Scipione (Girolamo) Mercurio’s *La commare o raccoglitrice* (1596) popularized and interpreted learned medicine for a broader practicing and lay public, including midwives. Alongside these works, more general works discussing generation and pregnancy, as well as numerous works of remedies were composed for lay audiences.

sensation of motion within it) could be signs that a woman was with child but also symptoms of illness such as menstrual retention, which, if left untreated, could worsen, turn life threatening and also significantly diminish fertility. Problematically, the treatments used to heal women from such disorders – mostly purgatives designed to force the womb open and flush its contents – could cause pregnant women to abort. The same medicines that women used for cure could also bring pregnancy to an end. Surprises were thus very real but they were also expected; abortion could be genuinely accidental or the unintentional consequence of an attempt at healing by means of a purge; abortion could also be intentionally procured and covered up by consciously deploying discourses of ignorance, of illness and of corporal ambiguity.  

This chapter explores these tensions from several perspectives. Drawing on a variety sources (learned and vernacular medical treatises, works of pharmacology, medical consilia, legislation, as well as familial letters and fragments from criminal trials), it argues that abortion was a very complicated event and that it could be processed in a variety of ways by medical practitioners who studied the female body as well as by women who experienced it and by onlookers who perceived it. Medical practitioners knew that they were prohibited from administering or aiding in abortions, just as women and men knew that they were not permitted to procure medicines to terminate pregnancy. However, the physical ambiguities of the female body often meant that mistakes could be made. Abortion could be procured unintentionally, but also induced for health related reasons.

On the one hand, women and their healers could miss the signs of pregnancy or misdiagnose them as symptoms of womb related illnesses. Therapies for treating these illnesses were common, easily accessible and, it seems, powerful and efficient at emptying the womb. Pregnancy could be experienced as illness and therapy could lead to abortion. The mind can do one thing and the body another. The assumption of female duplicity in cases of concealed pregnancy and induced abortion, therefore, needs to be revised, because ignorance of pregnancy and unintentional abortion, even by means of medical intervention, could be genuine. On the other hand, the ambiguities of the female body and the uncertainties surrounding pregnancy also meant that abortion could be procured by means of duplicity, and this troubled ecclesiastical, secular and medical authorities. Discourses of ignorance and of ambiguity surrounding pregnancy could be consciously crafted and deployed as defences in cases of procured abortion and miscarriage caused by violence. A woman could choose to perform her pregnant body as ill, obstructed and in need of a purge. Illness narratives could be intentionally crafted to trick healers into misdiagnosis in order to procure medicines that could terminate pregnancy. Healers, therefore, had to be cautious and skeptical when listening to women’s illness narratives. Furthermore, scrupulous healers could sell medicines without regard for what the patient would do with them. Facing charges of providing or facilitating an abortion, the healer could also exonerate himself by falling back on discourses of ignorance and claims that he was fooled by the illness narrative and the ambiguous signs of the body. Determining the intentions for which medicines were acquired was often impossible. The ambiguities of the female body exacerbated attempts at regulating the practice of abortion.
2. Representations of Abortion in Medical Texts

Early modern healers (physicians, surgeons, apothecaries, midwives, barbers and others) knew that administering an abortion to a woman who did not want to be pregnant, who was trying to conceal an illicit sexual relationship, who wanted to preserve her sexual honour or who was simply trying to avoid another mouth to feed, was strictly prohibited. As we saw in Chapter 2, theologians thought that if a physician helped a woman abort, the sin was on his head. Confessors were told to remind physicians that giving remedies to make a pregnant woman abort, or even to impede pregnancy, was a grave sin. If the unborn was animate, the healer himself was guilty of homicide. In medical texts, physicians concurred and condemned the practice. Some, looking to the theologians, identified abortion as a mortal sin and veritable homicide. Two influential physicians emphatically made this point in works discussing the moral, ethical and spiritual consequences of medical practices. The Bologna-trained physician and author Giovanni Battista Codronchi (d. 1628) discussed abortion in his Latin work De Christiana ac tuta medendi (1591). So did the Dominican physician Girolamo (Scipione) Mercurio in his very influential work on midwifery La commare (1595) and in his De gli errori popolari d’Italia (1603), written for a broader audience. In these works, Codronchi and Mercurio vehemently stated that induced abortion was forbidden to the Christian physician. Codronchi was firm that “a physician, at no time or occasion ever, whether the foetus is animated or not animated, is to attempt abortion.” According to Mercurio, intentionally induced abortion, was the “killing of an innocent creature,” not only “killing the body but also the soul” for stained

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6 See Winifred Schleiner, Medical Ethics in the Renaissance (Washington, D.C., 1997) for discussion of this genre of writing.
7 “Quamobrem Medicus nullo unquam tempore, vel occasione, siue foetus sit animatus, vel non animatus, abortum tentare, sed semper in foetus conseruationem incumbere, sperans Deum omnipotentem, qui foetum formauit, posse absque aliquo nostro auxilio, vel praeter spem nostram ipsum seruare,” Giovanni Battista Codronchi, De christiana ac tuta medendi ratione (Ferrara, 1591), bk.1, ch. 22, pp. 70-71.
with original sin and not having received the holy waters of baptism, an aborted foetus was “deprived forever of the vision of God.” Women who procure abortion were evil, according to Mercurio, but how much more so was the physician who helped? “What is the state of the soul of those physicians who counsel and help” women commit such great wickedness? God, in his rightful disdain, should hurl lightning bolts at them from heaven, they are “horrendous monsters” and “enemies to the human race.”

Besides religious prohibitions, physicians knew that abortion was also condemned by Hippocrates, the ‘father of medicine’ in his Oath outlining the ideals of the medical profession. “I will never give a woman a pessary [pessu] to have an abortion, I shall keep my life and art pure.” Physicians would have found this phrase in every edition of Hippocrates’ collected works, usually at the very beginning where the Oath was placed. Italian healers who did not read Latin would find the Oath and its prohibition on abortion, in a slightly different formulation, in Lucillo Filalteo’s (d. 1578) Italian translation of 1554 and summarized in numerous other texts. By the middle of the seventeenth century, surgeons too would look to the Oath as setting the ideals of their art. The surgeon Tiberio Salvi translated the Oath in his surgical manual; in his version, Hippocrates’ prohibition of abortion read: I will not “give a pregnant woman a beverage...”

8 “uccidere una creatura innocentissima, che mai l’offesse, ne mai danneggio alcuno, e non solo la uccide nel corpo, ma nell’alma [sic, anima], poiche nascendo morta senza Battesimo, resta per sempre priva del veder Dio” Girolamo (Scipione) Mercurio, De gli errori popolari d’Italia (Venice, 1603), bk. 2, ch. 26, fol. 107v-108r; bk. 5, ch. 14, fol. 254r; Mercurio, La commare o raccoglitrice (Venice, 1618), bk. 2, ch. 20, p. 222.

9 “Ma qual sia lo stato dell’anime di quei Medici, che a cio far lo consigliano, & aiutano, sallo Iddio benedetto, la cui pieta e tale, che contempradoli il giusto sdegno, fa sì, che dal Cielo non li fulmini, o permetta, che la Terra apprendasi non inghiotti mostri cosi horendi, & inimici publici del genera humano ad esempio di scelerita cosi fiery, e d’opra cosi infol.me.” Mercurio, De gli errori popolari, bk. 2, ch. 26, fol. 108v; bk. 5, ch. 14, fol. 251v-253v; ibid., La commare, bk. 2, ch. 20, p. 222.


11 “Similiter aut neq; mulieri pessu pro faciedo abortu dabo. Purro caste & sancte vita & arte mea coseruabo,” Ivsivrandum in Girolamo Mercuriale, Hippocratis Coi Opera qvae extant (Venice, 1588), class. 4, p. 1.

12 “Similmente ne pessolo di sotto porgero alle femine, che le faccia sgraudare.” Lucillo Filalteo, Il Giuramento, e le sette parti de gli aforismi d’Hippocrate Coo (Pavia, 1552), p. 2, n. 34.
to kill the foetus.”

Healers, then, had two ideological frameworks bidding them to steer clear from induced abortion: theological and professional. God and the ‘father of medicine’ both condemned this practice.

Nevertheless, abortion was associated with a wide variety of healers including physicians. Both learned and vernacular texts represented abortion as primarily prescribed and administered by physicians, but apparently not by midwives or other lower order healers. Listing all the vices of medici physici, Tommaso Garzoni (d. 1589), author of the popular and widely published encyclopaedic work on professions, stated that doctors desired plague, disease and war because these were opportunities to gain wealth, and that they even prolonged and augmented illness in order to keep the sick paying. In their quest for riches, physicians had no qualms aborting pregnant women, while indifferent to whether or not the foetus is animated. In his condemnation of pimps and procuresses, Garzoni accused them of “playing the physician” (deviene medico) when, to trick a prospective bridegroom, they tried to make deflowered girls appear as virgins and when they give purgative remedies and let blood from widows and unmarried women to avoid conception and to abort. According to Garzoni, physicians’ greed and knowledge of the body led them to do very unchristian things.

Garzoni’s representation of physicians as greedy and immoral was a trope of popular and learned criticisms of medicine. However, the numerous discourses that associated the practice

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13 “ne tampoco alla Donna grauida daro mai beuanda, per ammazzar la creatura; cosi me conseruaro nella mia arte, & nella mia vita intera & pura.” Tarduccio Salvi, Il chirurgo, trattato breve (Rome, 1642), p. 3.

14 “non e vero, che desideran le pesti, i morbi, la guerra, per far guadagno; prolongano, & aumentano l’infermita per interesse della borsa loro[...]. Gli aborsi delle donne gravide, le dispersioni delle vedoe e citelle, quando la creatura e animata” Tommaso Garzoni, La piazza universale di tutte le professioni del mondo, eds., Paolo Cherchi and Beatrice Collina (Turin, 1996), vol. 1, disc. 17, p. 285; Ruffiani and ruffiane: “deviene medico promettendo alle fanciulle di farle diventar vergini al tempo del maritaggio, di restringer le poppe che non crescano, di ritirar la pancia al suo segno, di procurar la dispersione del parto, d’insegnare un remedio da non ingravidare, di gettare il seme concetto crollando il filo della schiena,” ibid., vol. 2, disc. 75, p. 974.

15 For instance, see Nancy Siraisi, “Renaissance Critiques of Medicine, Physiology and Anatomy,” in Medicine and the Italian Universities, 1250-1600 (Leiden, 2001), pp. 184-202.
of abortion with physicians are suggestive. That authors such as Codronchi and Mercurio, as well as theologians and authors of devotional works on sin and confession, felt the need to warn physicians against the practice suggests that they were administering abortions. Writing shortly after Sixtus V’s 1588 bull, Codronchi and Mercurio adopted the Pope’s rhetoric and chastised physicians who “do not fear to most cruelly harm immature foetuses still lying within their mothers”; “how impiously and viciously do [physicians] act” having no regard for “both Divine and Ecclesiastical laws.”

Codronchi and Mercurio’s prohibitions against abortion and criticism of physicians for performing them were in line with dominant Counter-Reformation rhetoric on sexuality and discipline. Like the theologians and ecclesiastical authorities examined in chapter 2, however, these authors greatly simplified a very muddy and complex issue. In print, physicians who discussed the topic agreed that abortion intended to terminate pregnancy was a sin and a crime. However, intentional abortion was only one form. In other contexts, abortion had other meanings. It could also be the result of an accident or the unforeseen and unintended consequence of therapeutic intervention. Pregnancy could be completely missed by a woman, her attendants and onlookers, and by her healers. Pregnancy could be misdiagnosed as illness, and medicines consumed as a means of cure could end up terminating foetal life. Abortion could also be an unintended though expected consequence of attempting to heal a pregnant woman who was ill, who was in the process of miscarrying, who was harbouring a dead unborn in her womb, and who was at risk of dying herself. Abortion had numerous medical meanings and these were processed in variety of ways depending on the contexts and social circumstances surrounding the event.

16 Codronchi, De christiana ac tuta medendi, bk. 1, ch. 22, pp. 66-72; Mercurio, De gli errori popolari d’Italia, bk. 2, ch. 26, fol. 107v-110r; bk. 5, ch. 14, fol. 251v-253v and in La commare, bk. 2, ch. 20, pp. 222-223.
3. Reading Women’s Bodies: Signs of Pregnancy, Symptoms of Illness

As we have seen, cases of suspected abortion were difficult to investigate and prosecute because it was difficult to determine with certainty the factors that brought pregnancy to an end and to discover the intentions behind the actions of suspected offenders. Jurists who discussed abortion listed ignorance of pregnancy as a defence commonly heard in court. Claiming ignorance of pregnancy was suspicious, especially if the defence came from an unwed woman with a blemished sexual reputation. However, the defence was common because it was plausible. In the early modern period pregnancy was notoriously difficult to detect because women’s bodies were opaque and ambiguous. Most physicians agreed that the signs of pregnancy were never certain and usually conjectural.

Even though it was widely accepted that all the signs of pregnancy could be misleading, then as now, there was an intense desire to know as early as possible whether or not a woman had conceived. In medical works, authors listed numerous signs that could indicate conception. The first sign came during intercourse itself: when the male and female seeds met and mixed in the womb, a woman’s body would slightly shake. She should feel a “tightening and contraction” in her womb followed by a small pain in the lower part of her belly and around her navel as the womb drew itself together and compressed in order to retain the seeds. Yet in the heat of the sexual act, some women might miss this sensation.

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17 By the mid sixteenth century, most medical authors believed in Galen’s two seed model of human generation: men and women both contribute seed which combine and produce the child. The Aristotelian theory of male seed fashioning the seedless, passive female matter was often stated only to be refuted. See Joan Cadden, The Meanings of Sex Difference in the Middle Ages: Medicine, Science, and Culture (Cambridge, 1995); Danielle Jacquart and Claude Thomasset, Sexuality and Medicine in the Middle Ages (Princeton, 1988); Ian Maclean, The Renaissance Notion of Woman. A Study in the Fortunes of Scholasticism and Medical Science in European Intellectual Life (Cambridge, 1980), pp. 35-37.

18 Albertino Bottoni, De morbis muliebris (Venice, 1588), bk. 2, ch. 11, fol. 10r.
Luckily there were many internal and external signs through which a woman’s body communicated – both to herself and to onlookers – what happened within it. A necessary condition for conception was, of course, the retention of the male seed following sex and the retention of the mixed seeds in the following days. Therefore, discharge might indicate a failed or unviable conception. Firmer evidence could come from a digital examination of the womb by a midwife: because the womb craves seed and yearns for generation, following coitus it closes very tightly in order to prevent the seeds from leaking out. If a midwife tries to probe a womb that harbours a conceptus, she will find the mouth (cervix) to be very dry and shut. Some authors deemed this test a “certain and effective sign” of conception. Other signs were easier to observe. A woman who had conceived might be unusually sleepy; her face might be pale and spots and freckles might appear; her eyes might be depressed and sunken; the whites of the eye might be pale and yellowish. Others signs included changes in a woman’s mood and health. In the early months of pregnancy, she may suffer headaches, vertigo, loss of appetite and vomiting, especially in the morning. She may feel unusually giddy, anxious, sad, and hateful. She may be sluggish, feel heavy and often faint and may lack a desire for sex. She may lose her appetite but at times crave bizarre and unnatural food such as coal, dirt, ash, acrid things and vinegars. Perhaps from consuming such foods, or because of the change in her menstrual purgation, her urine may be sharper, odorous, somewhere between yellow and white/clear, and somewhat bloody. She may also urinate more often. She might feel weight around her pubic bone (pettenecchio) and pain around her groin (inguinaglie), her navel, and/or her lower back.


20 Marinello, Le medicine partenenti, bk. 3 ch. 2, fol. 241r-242v, ch. 6, fol. 253r-255v and ch. 7, fol. 256r-258r; Bottoni, De morbis muliebribus, bk. 2, ch. 11, fol. 9v-12r; Girolamo Mercuriale, De hominis generatione; Zacchia, Quaestionum medico-legalium, tom. 1, bk. 1, tit. 3, quest. 1 and 2, pp. 54-62; Pietro Bairo, Secreti
Healers and ordinary people believed that all these signs indicated that which was taking place within a pregnant woman’s body: the mixture of the seeds and the growth and articulation of the unborn were made manifest through changes in a woman’s appearance, disposition, pathology and mood.

These signs were nevertheless open to interpretation, and no two bodies were exactly alike. Some signs could be more pronounced in some women and less in others. More troublesome was the fact that all the signs of conception were not specific to pregnancy. It was not only pregnant women who suffered headaches, lack of appetite, cravings for unusual things, indigestion, stomach pains, nausea, vomiting, paleness, weakness, moodiness, backaches, fatigue, heaviness throughout the body, and inconsistent urine. Simply altering one’s diet or activities could affect the humoral economy and bring on pathological changes.

Surer signs of pregnancy came as the months passed. Three signs that were generally held to indicate that a woman was carrying were 1. the cessation of periods, 2. the feeling of motion, and 3. increasingly swelling belly. The absence of menstruation was one of the first significant signs that women looked for in order to discover whether they were pregnant. Women’s menstrual cycles, especially those of newlywed elite women, were closely monitored by family members and others.21 In a 1617 letter to her daughter the Duchess of Mantua Caterina de Medici-Gonzaga (d. 1629), Christine de Lorraine de Medici (d. 1637) stated that she thought her daughter was pregnant because she had not menstruated in a while; as Christine regarded

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21 For examples from the seventeenth century, see Marina d’Amelia, “Becoming a Mother in the Seventeenth Century: The Experience of a Roman Noblewoman,” in Time, Space, and Women’s Lives in Early Modern Europe, eds. A. J. Schutte, T. Kuehn and S. S. Menchi (Kirkville, 2001), pp. 223-244 and Susan Broomhall, Women’s Medical Work in Early Modern France (Manchester, 2004), ch. 8.
Caterina’s periods to be stable, she read a missed period as sign of pregnancy. According to medical theory, periods ceased in pregnant women because the nutritive elements of menstrual blood were needed to feed the foetus *in utero*; later blood was transformed into milk to feed to newborn. This transformation yielded another sign of pregnancy: a pregnant woman’s breasts would swell and fill with milk. Further along in pregnancy, milk might come out when breasts are squeezed.

The sensation of motion in an increasingly growing belly was generally regarded amongst medical professionals and ordinary people to be the most “certain and infallible sign of pregnancy.” The famous essayist Sperone Speroni (d. 1588) reflected the common belief: “I say, if the *embrione* moves, she is certainly pregnant.” In a correspondence between diplomats from Mantua and Florence in September 1618, the secretary to the Duke of Mantua Ferdinando Gonzaga (d. 1626) reported that there were doubts regarding whether his wife Caterina de Medici-Gonzaga was now pregnant; even though there were other signs that suggested she was with child, the motion of the foetus could not be felt.

Unlike some of the other signs, motion came only later in pregnancy. The unborn could only stir in its mother’s belly after it had undergone considerable development; it would only move after it was formed and animated. Theologians and canonists related motion to ensoulment and theorized this date to forty days for a male foetus and eighty days for a female. Medical

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22 “Caterina voi siate di natura sana et hora dicendomi che state molto bene dico che sin a questo giorno se le purghe non vi sono venutte si può credere che siate gravida poiché secondo mi vien detto voi siate [siete] stata sempre benissimo regolata,” Christine de Lorraine de Medici to Caterina de Medici-Gonzaga, 28 April 1617, Medici Archive Project. Evidently Christine was right and Caterina was pregnant but she suffered a miscarriage in July 1617.

23 “... hor diro io, se l’ebrione le si moueua nel corpo, ella era grauida certamete; ch’al mouimeto, piu ch’a mestriu douemo credere,” Sperone Speroni, *Dialogi di m. S. Speroni* (Venice, 1543), fol. 50v.

24 “Habbiamo segni favorevolissimi della gravidanza della S.ra Duchessa [Caterina de’ Medici] ma per qualche debole osservazione in contrario, nessuno ardisse di darla per sicura [...] Io ci scometterei quanto ho per il sì, et in questa opinione sono i medici et il S.r Duca [Ferdinando Gonzaga], ma quel non sentire punto di moto nel suo corpo da che pensare [...]” Alessandro Senesi to Andrea di Giovanni Battista Cioli, 8 September 1618, Medici Archive Project.
authorities, unable either to corroborate or to dispell these numbers, mostly decided to repeat the orthodox position.\textsuperscript{25} They did, however, speculate on the timing of fetal motion and related this to its level of formation.\textsuperscript{26} A foetus could not start to move until its body was firm and strong (\textit{forza}), and this required time to build up.\textsuperscript{27} Furthermore, physicians could not give an exact time for motion because every foetus developed differently.\textsuperscript{28} The celebrated physician and humanist Girolamo Mercuriale (d. 1606) thought that a male foetus could be formed anywhere from 35 to 50 days. Following a formula found in the works of Hippocrates, physicians thought the amount of time required for the unborn to be strong enough to move was approximately double the amount of time taken for its formation. Using Mercuriale’s numbers, this meant that if a male foetus was formed in 45 days, it would not move before the 90\textsuperscript{th} day from conception. A female foetus, always delayed, formed on the 50\textsuperscript{th} day would begin to move on the 100\textsuperscript{th} day. While insightful, learned physicians admitted that there was no certainty in any of these numbers.\textsuperscript{29} The Modenese Giovanni Marinello (d. late 16\textsuperscript{th} c.) chose to simply teach the readers of his vernacular

\textsuperscript{25} See Zacchia’s analysis of the nature and timing of animation \textit{Quaestionum medico-legalium}, tomus posterior, bk. 9, tit. 1, quest. 1, pp. 1-26. Most medical authors decided to ignore the question of animation all together.

\textsuperscript{26} Physicians distinguished between formation and perfect or full formation; the former was when the conceived matter had acquired human shape (\textit{figura d’huomo}); the latter was when it had all its limbs and organs developed enough to survive, if only for a few moments, outside the womb.

\textsuperscript{27} “[...] certissimum est aliud esse formationem, aliud motum, et aliud requirere formatione, aliud motum,” Mercuriale, \textit{De hominis generatione}, ch. 25, p. 319; Marinello, \textit{Le medicine partenenti}, bk. 3, ch. 1, fol. 237v; Levinio Lennio, \textit{De gli occvlti miracoli, & uarii ammaestramenti delle cose della natura...} (Venice, 1560), bk. 1, ch. 11, fol. 35r.

\textsuperscript{28} “[...] non si possa assegnare determinatament il giorno presisso,” Lennio, \textit{De gli occvlti miracoli}, bk. 1, ch. 11, fol. 33v; “Quod enim spectat ad totius confirmationis absolutionem putauit Hippocrates, atque experientia confirmat non vno eodemque tempore, & marem, & foeminam perfecte formar[...],” Mercuriale, \textit{De hominis generatione}, ch. 18, pp. 313, 315-316; Bottoni, \textit{De morbis muliebribus}, bk. 2, ch. 23 and 24, fol. 21r-25v.

\textsuperscript{29} “Modo ad motum accedamus, quem conceptum accipere varii temporibus non est dubitandum,” Mercuriale, \textit{De hominis generatione}, ch. 25, p. 319. Girolamo Mercuriale included the following table for his readers convenience:

\begin{tabular}{|c|c|c|c|}
\hline
Formatio & 35 & Motus & 70 & Perfectio & 210 \\
F. & 40 & M. & 80 & P. & 240 \\
F. & 45 & M. & 90 & P. & 270 \\
F. & 50 & M. & 100 & P. & 300 \\
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\end{tabular}

\textit{De hominis generatione}, cap. 18, p. 313. By \textit{perfectio}, Mercuriale means ready for life outside the womb; he later defines it as “dicitur perfectus, quando exire, & superuiuere aptus est”, cap. 27, p. 321.
work of women’s medicine to expect motion sometime after the third month for males and in the fourth for females, an opinion echoed by the Spanish professor of anatomy at the University of Rome Juan Amusco Valverde (b. 1525).\textsuperscript{30} This meant that there could be approximately 90 to 120 days (and possibly more) after a sexual union during which time a woman could have a developing foetus in her womb and not feel it. Furthermore, the foetus’ first motions could be so small and weak that they might go undetected by the pregnant woman. Perhaps the reason the Duchess of Mantua Caterina de Medici-Gonzaga had not felt stirring motion by the time the letter was written in 1618 was because it was too soon for the foetus to move. The bigger, firmer and stronger the foetus was, the stronger its motions would be and the greater the chances of detection. Women hoping to be pregnant would have to wait for at least three months and more likely four for this most indicative sign of pregnancy.

According to Paolo Zacchia, before the fourth month, pregnancy was very difficult to detect for the pregnant woman and even more so for onlookers.\textsuperscript{31} For newlywed women hoping to get pregnant, every bodily sensation would be scrutinized for indications of the presence of a growing foetus. Yet even women whose bodies were closely monitored could still miss or misinterpret the signs. Young wives generally learned to identify the signs and sensations of pregnancy from the instruction of experienced matrons. For instance, in the mid seventeenth century, the young Roman noblewoman Eugenia Spada-Maidalchini reported to her mother Maria Spada that she only began to look for the signs of pregnancy after onlookers instructed her to: “I think I felt the baby because of what they said,” Eugenia reported “but I am not sure because I do not know if I can recognize it.”\textsuperscript{32} For women who were not expecting to be

\textsuperscript{31} Zacchia, \textit{Questionum-Medico legales}, bk. 1, tit. 3, quest. 1 n. 6-7.
\textsuperscript{32} D’Amelia, “Becoming a Mother in the Seventeenth Century,” p. 231.
pregnant and who were not scrutinizing their bodies or having them scrutinized by others, however, these signs of pregnancy could be completely missed, at least for a few months. But when signs built up, a woman might start suspecting that she might be pregnant: when enough periods were missed, if her belly was consistently growing and she and others began to feel more and more pronounced rumblings from within. By stages she might come to believe and accept that she was with child.

Failing to detect pregnancy was a common defence given in cases of miscarriage caused by assault. If a woman was not visibly pregnant, men and women who interacted with her were not necessarily responsible for treating as if she was. In a 1608 case from Rome studied by Elizabeth Cohen, inspectors burst into a confectioner’s workplace and home, terrified his pregnant wife with accusations of fraud and of promises of punishment, and also made her climb up and down stairs and lift and open boxes to inspect their wares. The woman later miscarried and died. As a defence, two of the inspectors claimed that they did not know that she was pregnant. The implication was that she was not showing and that, if her pregnant state was obvious, the inspectors would not have treated her so roughly. Similarly, in a case from 1581 studied in the next chapter, a man who was accused of beating a pregnant woman and causing her to miscarry tried to exonerate himself by arguing that her body displayed none of the signs associated with pregnancy. The beating was a crime, but, he argued, he should not be tried for causing her to miscarry.

Ignorance of pregnancy was also a frequently heard defence in cases of alleged abortion. Women might miss the signs of pregnancy only to miscarry from strenuous labours or other violent motions, which they might have avoided had they known they were pregnant. In other

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cases the signs of pregnancy could be interpreted as symptoms of illness. Missed periods and a growing belly accompanied by the sensation of internal motion invited several different medical readings. Aside from signalling pregnancy, menstrual retention and a swelling belly were symptoms of dangerous illnesses. A stoppage of menstruation could mean that the womb was blocked and morbid matter trapped inside the body; a growing and disorderly belly could indicate dropsy of the womb (a severe type of blockage) or even malign growths and tumours. All the so-called normative signs of pregnancy could signal illness.

In the humoural system of medicine, health was based on the balance and fluxes of fluids. In a healthy and well functioning body fluids moved naturally and were expelled in a regular and balanced way. If humours become trapped inside the body due to a blockage (oppilatione), the body would be unable to purify itself and would become ill. This was especially true for the female body. Women’s diseases mostly stemmed from a clogged womb which could not purge itself by means of menstruation, a natural and vital form of purgation by which the female body regularly expelled corrupt or abundant humours. Menstrual retention meant that corrupt matter which normally escaped the body was trapped inside. A clogged body could develop ulcers, cancers, tumours and fevers which could prove fatal. Moreover, regular purgation was essential not only for health but also for conception: a woman had to be regularly purged of corrupt


humours in order to have a clean and good environment for generation. “No woman may conceive,” Giovanni Marinello stated, “who is not regularly purged by way of menstruation.” The longer a women went without a menstrual purge, the more harm could come to her health and fertility. For all these reasons, retained menstruation was not regarded to be a certain sign of pregnancy. In fact, Zacchia thought that the cessation of menstruation was “the most deceptive [sign] (fallacissimum).” In a pre-modern world of bad or insufficient nourishment, many women must have suffered frequent menstrual retention (amenorrhea). In many cases, early modern individuals, especially women who were not hoping to be pregnant and thus not monitoring their bodies very carefully, would likely have interpreted missed periods as signalling illness that required curing rather than a sign of pregnancy.

If menstrual retention persisted for too long it could develop into dropsy (hidropisia), a dangerous type of oppillation where a blockage of fluids in a limb or part of the body resulted in swelling. Dropsy was a very common illness in pre-modern Europe – the sight of swollen

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37 Marinello, Le medicine pertenenti, ch. 16 and ch. 18, p. 101v. In sixteenth-century France, menstruation was commonly referred to as women’s “besongnes,” a term which can be translated as her “needs;” Broomhall, Women’s Medical Work in Early Modern France, p. 216.

38 Similarly, the onset of a period was not evidence that a woman was not with child. Some women menstruate throughout pregnancy and there are others who menstruate rarely or never at all and “yet they conceive,” wrote Zacchia, “Defectum porro menstruum pro terto signo a Cagnolo adductum, omnium esse fallacissimum, iam novimus Medic. Sed non solum ex menstruorum defectu non potest certo affirmari, mulierem in utero habere, sed neque ex eorum apparentia pro certo judicari possimus, illam utero non gerere, cum & quaedam sint, quae & prænantes menstruantur, & vice versa aliae sint, quae nuncquam, aut raro menstruantur, & concipiunt.” Zacchia, Quaestionum medico-legalium, tomos prior, bk. 1, tit. 3, quest. 1, n. 28-29, p. 51.

cheeks, throats, forearms, hands, calves, or feet was not unusual. Women often suffered dropsy of the womb (hidropisia della matrice). A clogged womb retained menstruation, humours, waters, other fluids, as well as wind (ventosita) that a well functioning body released. The buildup of these fluids or winds in the womb caused it and the belly to swell: according to physician Giovanni Marinello, “the belly enlarges, and it seems to the woman as if she is pregnant.” Furthermore, the bubbling and sloshing of the trapped fluids could be mistaken for foetal movement. As well as looking pregnant, hidroppic women were weak and lethargic, had trouble breathing and suffered pains in the belly and kidneys, all symptoms which could mimic pregnancy.40 According to Zacchia, no faith could be put in a swollen belly.41

That pregnancy shared signs and symptoms with womb-related illnesses created many opportunities for shock and disappointment: women who hoped to be pregnant could find that they were actually suffering from a dangerous illness. Medical authorities portrayed dropsy of the womb as a deception a woman’s body played on her and her family’s expectations. Girolamo Mercurio reported several instances of missed pregnancies in his work on midwifery. In one case, a woman of Tivoli believed herself to be pregnant as her belly enlarged. After the fifteenth month of “pregnancy” she passed a great amount of wind from her womb, upon which her belly deflated, as did her hopes of birthing a child.42 In early modern Latin and vernacular treatises of women’s medicine, authors warned healers to take care when declaring a woman pregnant. “There is nothing more ridiculous,” the French surgeon and author of a very influential work on pregnancy and childbirth Jacques Guillemeau (d. 1613) wrote, “than to assure a woman that she


41 Zacchia, Questionum-Medico legales, bk. 1, tit. 3, quest. 1, ns. 17-19, pp. 50-51.

42 Mercurio, La commare, bk. 2, ch. 41, p. 341. See also Marinello, Le medicine partenenti, bk. 2, ch. 24, fol. 191v-193r; Massaria, Praelectiones de morbis mulierum, pp. 315-316.
is with child, only to see her menstrual blood flow or a great quantity of water come out of her instead of a child, and then to see her belly flatten.” Such a false diagnosis would mean ridicule for the healer but could also mean disaster and outrage for the pregnant women and her family who might be anxiously awaiting an heir to cement dynastic unions. It was well known to early modern Italians that Mary Tudor of England (d. 1558) had suffered such disappointment; dropsy of the womb tricked her into believing that she was pregnant, potentially with a male heir who would bring an end to the political instability afflicting her kingdom.

The opposite situation also occurred: women who thought they were suffering from womb-related illnesses could discover that they were actually pregnant. In another case recounted by Mercurio, an unnamed Venetian gentildonna consulted several physicians about a mysterious illness; after considerable investigation, they diagnosed her as “very sick (molto male).” She travelled to Padua to be treated by the celebrated physician Ercole Sassonia (d. 1607) professor at the University of Padua, who pronounced her not sick, but pregnant. She gave birth a few months later to a “beautiful boy.” For Mercurio, this historia served in part as evidence of pregnancy’s slipperiness, and in part as professional boasting: only the best physicians could “read” women's bodies accurately. The woman herself, her kin, and her Venetian physicians could not interpret her body’s signs effectively.

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43 “il n’y a rien plus ridicule apres auoir asseuré que la femme est grosse, que de luy voir coule ses mois, ou quantité d’eaux, ou d’entendre sortir quelques vents en lieu de son enfant, puis soudain apperceuoir son ventre aflat & applaty.” Jacques Guillemeau, De la grossesse et accouchement des femmes (Paris, 1620), bk. 1 ch. 1, p. 2

44 The famous humanist historian Natale Conti wrote “Cociosiache la Reina d’Inghilterra Maria essendo caduta hidropica, e gonfiosese il ventre, fu riputata grauida: e secondo il costume de mortali naturalmente inchianati a credere le cose desiate, non solo cio acquisto facile credenza; ma causa ancora, che la Reina tenne una contraria regola di viure a quella, che linfermita sua richiedea, ne fu curata secondo il suo bisogno.” Natale Conti, Delle historie de suoi tempi (Venice, 1589), fol. 314r. See Elizabeth Lane Furdell, The Royal Doctors, 1485-1714: Medical Personnel at the Tudor and Stuart Courts (Rochester, 2001), pp. 56-58, for a discussion of Mary’s healers and her alleged pregnancy.

45 Mercurio, La commare, bk. 1, ch. 17, pp. 107-108.
Aside from menstrual suppression and dropsy of the womb, a woman’s belly could also grow if she had generated some kind of tumour or other untoward growth in her womb. A particularly dangerous and confusing object that could be generated in the womb was a mole (mola). Early modern physicians were very interested and troubled by this generation. A mole was described as a “piece of flesh” (pezzo di carne) growing in size and weight in the womb; deformed, roundish, crude, imperfect, undistinguished in members, and hard to the touch. Moles were much discussed in early modern medical literature and this gives the impression that they were fairly common. And yet not all physicians who discussed them claimed to have had direct knowledge of this growth. In other words, the mole was, like monsters, real but actually observed by few.

This anomalous product of the womb greatly complicated conceptions of generation and pregnancy because moles were believed to be generated through sexual intercourse. The mole was a type of conception created by the same ingredients, male and female seed and blood, that created a human foetus. Authors explained that this could occur if the man’s seed was too weak and scarce or if the woman’s was too strong or abundant, or if either or both were corrupt or infirm. Some authors believed that moles were common in lascivious women: too much intercourse renders a husband’s seed weak and in short supply; a great desire in a woman could cause her produce copious amounts of seed and menses and make her womb very hot and unfit for conception. Moles were also believed common in marriages where the wife was young and the husband much older. Some physicians also thought that a mole could be generated entirely

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46 This word is derived from the Latin and Greek word for mill stone (mola, molon). The uterine growth mola supposedly resembled the shape of the said stone and hence its name. Today, a molar pregnancy refers to a tumor in the uterus generated when a sperm penetrates an egg without chromosomes and genes.

47 Marinello, Le medicine partenenti, bk. 2, ch. 26, fol. 196r-v Mercurio, La commare, bk. 2, ch. 41, pp. 335-343; Bottoni, De morbis mulieribribus, bk. 2, ch. 55-60; Mercuriale, De morbis mulieribribus, bk. 1, ch. 3, p. 25-26; Venusti, Discorso generale ... intorno alla generazione, fol. 81v-82v

by a woman without any contribution from a man. In this case, the generation of a mole was the outcome of severe menstrual suppression: instead of flowing out, menstrual blood and female seed coagulate in the womb and swell in size. Marinello, though not fully convinced that a mole could be generated by a woman alone, stated that the most telling sign of a mole was if a truly chaste and holy woman who has never known a man shows all the accidents of pregnancy. Most physicians, however, thought that the only way that the womb could get hot enough to generate a mole would be if it was excited by sex.  

Medical authors usually represented the mole to be an “error”; a “generation gone wrong”; a dangerous “corrupt conception” (conceptus vitiosus). Moles were significant and received considerable attention in medical literature because they were misleading and dangerous. They tricked women and their families, midwives and physicians alike. Early modern dictionaries such as the one issued by the Accademia della Crusca in Florence defined the mole by its misleading nature: it was a piece of flesh generated in the womb which “makes [women] appear pregnant.” The mole was a false or fake pregnancy (falsa grauidanza); it fools women into “believing that [they] are pregnant” (“crededole graude”, “credeua essere grauida”, “creduto fermamente se esser grauida”) because they demonstrate all the same signs as true pregnancy.  

The most misleading of all was the mole’s tendency to grow and move in the womb. Marinello recounted a story of a wife who was fooled, along with her physicians, by a moving

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49 “[... ] quando alcuna donna casta, & di santa, & buona uita no haura conosciuto huomo carnalmente, & le auengano cosi fatti accidenti; la grauidanza sua e falsa,” Marinello, Le medicine partenenti, bk. 2, ch. 26, fol. 199r; Zacchia, Quaestitionum medicoe-legalium, tom. prior, bk. 1, tit. 3, quest. 6, pp. 63-65.  
50 Mercuriale, De morbis maliebribus, bk. 1, ch. 3, p. 25; Marinello, Le medicine partenenti, bk. 2, ch. 26, fol. 196v, 197r; Mercurio, La commare, bk. 2, ch. 41, pp. 341-342.  
51 Dizionario Toscano. Cependio del Vocabolario della Crvsca (Rome, 1614), ‘Mola’, p. 515; “e vn pezzo di carne, che si genera nell’vtero delle donne che la fa parer pregne.”  
52 Mercuriale, De morbis muliebribus, bk. 1, ch. 3, p. 31; Massaria, Praelectiones de morbis mulierum, ch. 8, pp. 298-9; Zacchia, Questionum-Medico legales, bk. 1, tit. 3, quest. 1, ns. 36-40.
mole into thinking that she was truly pregnant. This unnamed married woman was no stranger to
pregnancy: although she had previously given birth to three healthy children, for whatever reason, all died before the age of 10. After losing her last child, this woman became depressed and inconsolable. However, after some time her hopes were renewed as she felt herself once again pregnant. Her body showed all the right signs: she ceased to menstruate and her belly grew little by little. At the beginning of the fourth month, as with her other pregnancy, she felt the foetus move. Day after day, she felt more and more motion. Her physicians, as well as the women who attended to her, were sure that this was the motion of a healthy and vigorous foetus and eagerly awaited its birth. The ninth month passed, then the tenth, the eleventh, the twelfth and even the fourteenth. It was only after one year that her main physician suspected that her ‘pregnancy’ would not end happily. By now, he had determined that she was not pregnant but rather was harbouring a mole. Her former experiences of pregnancy were not enough to reveal this deception. Her other physicians and the other women who cared for her were no better qualified. The growth and motion of the mole fooled everyone. From this experience, Marinello concluded that “none of the signs of [pregnancy] are certain.”

Physicians speculated on the ways in which they, midwives, and women themselves might distinguish a mole from a true pregnancy. Several authors pointed to the timing and the quality of its motion: some stated that a mole might only begin to move much later than the real foetus; the motion of a mole might feel harder, cruder, heavier and less fluid than that of a human foetus; some stated that a real foetus moves side to side in the womb but a mole rolls around like a ball depending on the motion of the carrying woman. But these signs were all inconclusive. Most authors believed that the only way to determine with certainty whether a woman was truly

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53 Marinello, Le medicine partenenti, bk. 2, ch. 26, fol. 199v-200v; Mercuriale, De morbis muliebribus, bk. 1, ch. 3, p. 25-26; Zacchia, Quaestionum medico-legalium, bk. 1, tit. 3, quest. 5, p. 62.
pregnant or carrying a mole was to wait. According to Mercurio and Massaria, if a woman has not given birth by the eleventh month, she is likely not carrying a human foetus. In a 1662 case studied by Maria Conforti, the Roman physician Mattia Naldi described a married woman who appeared, in all respects, to be pregnant but when she went into labour delivered only “a little fluid.” Her menses subsequently returned, but her abdomen remained swollen until she died about twenty years later. An autopsy revealed that she had generated and harboured a mole-like growth for over two decades.

Confusion over moles could lead to allegations of pregnancy and illicit sex. Paolo Zacchia composed a consilium for a civil case where a woman, Violante Albenti, was accused of living “dishonestly” and of becoming pregnant after her husband had died. This was significant because, in his will, Violante’s husband left her his entire estate on the condition that she remain faithful to him and not remarry; if she remarried or lived dishonestly, she would lose his estate and it would be given instead to a certain pious house. Two years after her husband’s death, the monastery sued Violante to claim the estate on the grounds that she was pregnant. Violante swore that she had no lover and was not pregnant, even though her belly was “swollen in a remarkable fashion.” After several months of waiting, Violante passed a large amount of water with what appeared to be a mole and her belly deflated.

Other cases of missed or misdiagnosed pregnancies could come with higher stakes. The story of Matthia de Bello summarized at the beginning of this chapter is a case in point; had

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55 Whether the object was a true mole or some other growth was debated, as it was in Zacchia’s consilium cited above. Conforti, “‘Affirmare quid intus sit divinare est,’” pp. 125–52.
56 Zacchia, *Quaestiones medico-legales*, tomus posterior, cons. 39, pp. 214-217. Nevertheless, the case did not go away as the plaintiffs argued that moles could only be generated through intercourse, which proved her infidelity. Zacchia, however, questioned whether or not the expulsion was a true mole or some other kind of untoward growth. It was also possible that the growth had been generated by her husband’s seed before he died and grew very slowly over a two year period. Zacchia concluded that he could not determine with certainty whether the expulsion meant that Violante had had sexual relations after her husband’s death.
Zacchia not determined that she had suffered from severely retained menses, Matthia could have been found guilty of concealing pregnancy and of infanticide and possibly sentenced to death.\footnote{We do not know how the case ended; Matthia may have been found guilty despite Zacchia’s opinions.} Moreover, for physicians, diagnosing a woman as ill and medicating her when she was actually pregnant could cause miscarriage and incur charges of medical malpractice and of intentionally procured abortion.\footnote{In a case from Constance, studied by Ulinka Rublack, 27 year old unmarried Elisabetha Eggenmann claimed that she was suffering from a blockage and was diagnosed by medical professionals, after they examined her urine, as being dropsy. After drinking a “purgative drink,” prescribed by the town physician, she experienced intense pain in her belly and delivered a child in the privy, \textit{The Crimes of Women in Early Modern Germany} (Oxford, 1999), pp. 170, 174-75; see also the story of Maria Späth, pp. 22-23} In a 1569 case from Milan, thirteen-year old Costanza Colonna was diagnosed as suffering from dropsy as her belly swelled following months of menstrual retention. Costanza was believed to be a virgin even though she admitted to attempting though failing to have sexual intercourse with her seventeen-year old husband Francesco. Following a regime of medicines and therapies designed to open the blockage and expel the obstructed matter from her womb, Costanza delivered a dead male foetus. When asked by an investigator why she did not say that she was pregnant at along, Costanza replied “I did not know I was pregnant”; when asked “didn’t you ever feel the foetus in your body in all those months?” Costanza replied “I didn’t think of it”; “I didn’t believe it until I saw the foetus.” She and her maids also shifted responsibility to her physicians who failed to detect her pregnancy but rather interpreted her bodily signs as symptoms of illness. Costanza, her maids, and her physician were all allegedly mislead by the opacity of her body and deployed discourses of ambiguity to deflect charges of concealing and intentionally terminating her pregnancy.\footnote{The case is discussed in Renee Baernstein and John Christopoulos, “Interpreting the Body in Early Modern Italy: Pregnancy, Abortion and Adulthood,” in preparation.}

On this very important subject, Paolo Zacchia, the foremost authority on forensic medicine, concluded that one could never know with certainty whether or not a woman was truly...
pregnant. With the signs of pregnancy never certain, women were just as likely to perceive and experience pregnancy as illness and seek therapy; pregnancy could be a very real surprise to many women and abortion an unintentional consequence of healing. As Susan Broomhall has observed, “[early modern women’s] sensory perceptions were as socially coded by contemporary discourses as were those of the learned physicians of the medical faculty, even if the discourses themselves were different. It would be simplistic to suggest that physicians drew their notions on the female body, about its function and reactions, from medical texts, while women of all social levels drew theirs from ‘authentic’ observation of their own bodies.”

Like Costanza Colonna, a woman who had missed several periods, who was feeling ill and whose belly started to grow could genuinely believe that she was suffering from a menstrual retention or other malady of the womb. Especially if she was of good sexual reputation, a healer too might also diagnose her as oppilated and in need of treatment. If she was truly pregnant and the foetus was spontaneously miscarried or unintentionally aborted through medical intervention, a defence of ignorance and of misdiagnosis could work in criminal cases because it was in line with cultural expectations of the female body.

We should not assume, however, that the anxiety shared by a variety of authorities that women and men could and did deploy discourses of corporal ambiguity and craft illness narratives in order to procure abortifacient medicines was unfounded. Women and men knew what to say in order to pass off intentionally terminated pregnancies as accidents. A woman could choose to perform her pregnant body as ill, obstructed and in need of a purge. Illness narratives could be intentionally crafted to trick healers into misdiagnosis in order to procure medicines that could terminate pregnancy. Healing women was, therefore, tricky business. On

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60 Zacchia, *Quaestionum medico-legalium*, tomus prior, bk. 1, ch. 3, quest. 1 and 2, pp. 49-57; and tomus posterior, bk. 10, cons. 26, pp. 185-188, esp. n. 11 “Praegnantia infallibiliter cognosci non potest in omnibus”
the other hand, unscrupulous healers could sell medicines without regard for what the patient would do with them; if charges of providing or facilitating an abortion were made, the healer could also fall back on discourses of ignorance and claim that he was fooled by the illness narrative and by the ambiguous signs of the body in order to exonerate himself from blame.

4. Purging the Womb

Ordinary men and women knew what medicines could be used to terminate pregnancy because they also knew what medicines could were used to heal womb-related illnesses. There were several methods of procuring abortion that relied on products that were widely available in early modern Italy. Knowledge of these products and their effects circulated on various social levels. Medical practitioners and laypeople were well aware that treatments for womb related illnesses could provoke a miscarriage in a pregnant woman and therefore that they could be intentionally consumed to have an abortion. This was neither specialized knowledge restricted to physicians, nor was it a secret that women whispered to each other, but was general knowledge that ordinary women and men possessed or could learn with relative ease. The fact that the same medicines that were used to heal women from retained menstruation, dropsy and other womb related illnesses could be used to intentionally terminate pregnancy greatly complicated efforts to discipline the practice of intentionally procured abortion.

In early modern Italy, ordinary men as well as women knew how to terminate a pregnancy or knew where to turn for information and products. Drawing on some of the misogynistic literature of the period, some historians have identified knowledge of abortifacient medicines as ‘women’s secrets.’ A sixteenth-century commentator in the often published Secreti
*delli donne*, a work translated into several vernacular languages intended to teach men about the alleged secret knowledge women possessed regarding sex, generation and pregnancy, reported that “evil women” teach young girls how to abort “by boiling down certain herbs which they know well.” While it was the case that women, especially midwives, did know what to take in order to purge the womb and that this knowledge was transmitted through networks of family, friends and acquaintances, such tropes give the impression that men were not privy to this information. This does not ring true for sixteenth and seventeenth-century Italy. Male healers, especially physicians who studied women’s illnesses, apothecaries, and barbers, knew which herbs and drugs stimulate the expulsive faculties of the womb. These could cause unintended miscarriage if administered to pregnant women, or be used to intentionally induce abortion. As we will see in the next chapter, ordinary men responsible for unwanted and scandalous pregnancies also knew which herbs could be used to terminate pregnancy and had their own networks through which they could obtain them. This information was not so very secret.

Much information regarding drugs and surgeries that stimulate menstruation and purge the womb could be gleaned from learned and popular medical works discussing women’s illnesses and how to treat them. Authors did not explicitly teach ‘what to take in order to have an abortion’ but this information was indirectly available in discussions of medicines and activities to avoid when pregnant because they might cause miscarriage, and in discussions of therapies for womb related illnesses. The same laborious activities, traumas and medicines that a physician might warn a pregnant *gentildonna* against, and the same therapies he might prescribe if she

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63 This has led John Riddle to claim that Renaissance men were ill informed in matters of herbal abortion and contraception, *Contraception and Abortion from the Ancient World to the Renaissance* (Cambridge, Mass., 1992) p. 157.

suffered from menstrual retention, dropsy of the womb, or an untoward growth, could be actively sought and consumed by her housemaid with the intention of expelling the product of an illicit sexual encounter. The same warnings that a husband might be given when his wife was expecting could be manipulated by a man seeking to rid himself of the consequences of illicit sex. According to Marinello, everything that was good for pulling out an obstruction could cause an abortion.65

Bloodletting and purgative medicines, the most common methods for stimulating menstruation, cleansing the womb and removing obstructions, were also used for abortions. Bloodletting, especially from the saphena vein in the foot, was an especially common therapy for women suffering from womb related illnesses. In his work instructing barber-surgeons on the art of phlebotomy, the surgeon from Piacenza Pietro Paolo Magni taught that the saphena vein in the inner side of the foot was very important for women because of its connection to the womb.

Sixteenth-century anatomists confirmed this fact. Letting blood from this vein stimulated the womb and encouraged blood flow, which would result in a menstrual purge. The saphena vein was therefore commonly referred to as the “domestic vein,” “vein of the mother,” “menstrual vein” or “virgins’ vein” (because virgins often suffered illnesses due to insufficient purgation).66

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65 “[…] ma egli parra cosa sconueneuole, & fuor di proposito parlare di materia, che tragga la creatura di corpo alla donna la doue la nostra intentione era di distruggere la mola, ma chi nol sapesse, tengasi a memoria, che tutte le medicine, che giuanno all’un bisogno, sono ottime all’altro. Si che ciascuno argomento narrato e di tanta efficacia a rimouerne la mola, quanto a trarne il parto.” Marinello, _Le medicine partenenti_, bk. 2, ch. 26, fol. 204v-205r. “Sara dungue sicurissima strada fuggire nelle done grauide ogni medicine veramente purgante; […] Il medesimo dico del cavare sangue.” Mercurio, _La commare_, bk. 1, ch. 17, p. 111-12 and again “Ogni sorte di evacuatione notabile puo essere anco causa efficace dell’aborto, come di medicine purgati, e in genere, & in specie. In genere dico, perche i purganti per la esagitatione & evacuatione causata ne gli humori, o per lo stuzzicare la virtu espultrice, possono produtte tale effetto.[…] L’istesso diciamo dal cavare sangue, togliendo immediatamente il cibo alla creatura; e così anco del flusso di corpo abbondante che venise alla dona.” Mercurio, _La commare_, bk. 2, ch. 17, pp. 217-218. Bottoni, _De morbis muliebribus_, bk. 2, ch. 61; Mercuriale, _De morbis muliebribus_, bk. 1, ch. 3, p. 33.

66 Pietro Paolo Magni, _Discorsi ... intorno al sangvinare i corpi hvmani_ (Rome, 1584), ch. 17, p. 63; Tarduccio Salvi, _Il ministro del medico, trattato breve_ (Rome, 1643), part 1, ch. 10, pp. 6-7 and ch. 12, p. 8; Giovanni Andrea Della Croce, _Cirugia universale e perfetta di tutte le parti pertinenti all’ottimo chirurgo_ (Venice, 1661), bk. 5, ch. 27, pp. 366-367; Cintio d’Amato, _Prattica nova et vitalissima di tutto quello, ch’al diligente Barbiero s’appartiene_ (Venice, 1669), pp. 20-24. Vesalius called it the “matricis uena & uirginalis”, _De humani
Marinello prescribed that as much as six ounces of blood be let from the saphena vein of a woman suffering from menstrual retention and related illnesses. Early modern barbers were well accustomed to this procedure, as were midwives, who practiced bloodletting themselves and prescribed it for their patients, though they were officially prohibited from doing so. The sight of a woman being bled from the saphena vein appears to have been common.

Because it encouraged menstruation and purged the womb, bloodletting from the saphena vein was also a method for terminating pregnancy. In medical works, physicians warned barbers against bleeding pregnant women. In Bologna, barbers were forbidden from letting blood from a pregnant woman’s foot without the “expressed permission, either from the mouth or in writing from an approved physician” under pain of 25 lire. For pregnancy further along, the return of menstruation and the loss of blood from the venesection would deprive the foetus of its source of nourishment which could lead to its death. This was not specialized knowledge known only to physicians, surgeons, barbers and midwives. Rather it was widely diffused amongst ordinary women and men: a priest in one of Martin Azpilcueta’s consilia on abortion (discussed in

corporis fabrica (Venice, 1568), bk. 3, ch. 10, p. 302; Realdo Colombo, De re anatomica, libri XV (Venice, 1559, reprint, Brussels, 1969), bk. 6, p. 174; Valverde, Anatomia del Corpo, fol. 125v. On the ‘diseases of virgin’s,’ see King, Diseases of Virgins,
67 Marinello, Le medicine partenenti, bk. 2, ch. 18, fol. 102r-103r. In a 1626 letter to Christine of Lorraine, a Medici envoy to Mantua informed her that her daughter Caterina de Medici-Gonzaga was recovering well from a recent illness and informed her that Caterina’s physicians wanted to bleed her from the foot to encourage a purge. Caterina wanted to delay a day or two perhaps because she did not feel strong enough yet. Alessandro Bartolini Baldelli to Christine de Lorraine, 16 Oct. 1626. A previous letter (2 Oct.) indicates that Caterina was suffering from fevers, chills, bodily aches and irregular heartbeat. Medici Archive Project.
69 Marinello, Le medicine partenenti, bk. 3, ch. 5, fo. 251v, 259v; Venusti, Discorso generale...intorno alla generatione, fol. 69v; Massaria, Praelectiones de morbis mulierum, pp. 328-330; Mercurio, La commare, bk. 2, ch. 18, p. 218.
70 ASB, Studio, Divers. riguardante il buon governo della citta, 1571-1769, b. 233, “Et particolarmente, non sialecito ad alcuno causare sangue alle donne dal piede, o d’altro, per causa delle grauidanze, se non haueranno espressa commissione a bocca, o in scritto da alcun Medico Dottore approbato, sotto pena di uicitinque lire per ciascuna uolta, d applicarsi come di sopra.” Provisione sopra il grave abvso di qvelli che senza licenza presvmono medicare moderatione rinovata sopra li spetiali, e barbieri (Bologna, 1581), p. 4; also in the Liber pro recta administratione protomedicatvs (Bologna, 1666), p. 17, n. 30.
71 Salvi, Il ministro del medico, part 1, ch. 10, p. 6-7
Chapter 2) used phlebotomy as a method to hide his transgression as did a man accused of violent defloration in Rome in 1596 and a nobleman of Sezze in 1613 (discussed in Chapter 5). If letting blood did not get the menses to flow or unclog an obstructed womb, purgative medicines would be used. Purgative herbs and drugs were fixtures in physicians,’ apothecaries’ and midwives’ practices because, in the humoural system of medicine, most illnesses derived from fluids trapped in the body and therefore were healed by means of evacuation. Purgatives were commonly consumed by women and men to encourage bowel movements, urination, vomiting and sweating. Women frequently consumed purgatives to cleanse an infirm or blocked womb, to stimulate menstruation and to encourage fertility. Purgatives were also used to help women through childbirth by encouraging delivery, to expel stubborn afterbirth, and to deliver a dead foetus that was trapped in the womb. This also meant that they could kill a foetus in development and deliver one before term. Because of these effects, physicians advised pregnant women to avoid purgative medicines. Girolamo Mercuriale warned his Latinate readers that purgative herbs such as savin (a species of juniper) should be kept far away from pregnant women because they are “inimical to life” and they corrupt the foetus. When used intentionally to terminate unwanted pregnancies, medical authorities, such as the influential physician Albertino Bottoni, referred to these purgative herbs and drugs as “maleficia medicamenta.”

72 Renato Barahona reports a 1611 case from Vizcaya Spain where a surgeon bled a woman he had impregnated to induce abortion. *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735* (Toronto, 2003), pp. 91-92, 106. Laura Gowing has also found that bloodletting was used to induce abortion in early modern England, *Common Bodies*, pp. 47, 120.


74 See discussions of menstrual retention, dropsy of the womb and similar blockages, remedies against sterility, methods of encouraging childbirth, expelling afterbirth, dead foetuses, moles and other growths in Bottoni, *De morbis muliebribus*, bk. 1, ch. 30-31, bk. 2, ch. 49, 53, 61, 74, 80-81; Mercurio, *La commare*, bk. 2, ch. 23-27, 30-31, 41; bk. 3, ch. 16; Marinello, *Le medicine partenenti*, bk. 2, ch., 18; bk. 3, ch. 5, 8, 11, 13; Massaria, *Praelectiones de morbis mulierum*, ch. 2, 7, 9-13; Mercuriale, *De morbis muliebribvs*, bk. 1, ch. 2, 3; bk. 2, ch.1, 3, 4; bk. 4, ch. 1.

medicines used for evil purposes. It was not the nature of the drug but rather the intention behind its use that made a “purgative medicine” (*purgantibus medicamentis*) an “evil medicine” (*maleficia medicamenta*). This fact of early modern pharmacy, missed or underplayed by some historians, greatly complicates pre-modern understandings of abortion.

Aside from learned treatises of pathology and women’s medicine, information regarding herbs and drugs that could be used to purge the womb and to terminate pregnancies was widely available in a variety of medical works produced for a various audiences. Three genres of medical writing will be surveyed here: first, works of *materia medica* and pharmacology written in Latin as well as in the vernacular for medical practitioners such as apothecaries and herbalists; second, works of obstetrics and women’s medicine written for midwives; and third, works of medical ‘secrets’, self-help books of remedies that ordinary men and women might use for domestic healing.

Literate medical practitioners would find information on medicinal herbs in works of *materia medica*, a genre of medical writing that proliferated in the sixteenth and seventeenth centuries. The recently available *De materia medica* of Dioscorides provided physicians and apothecaries with a wealth of knowledge of plants and their medicinal uses. Translated from Greek into Italian in 1544, into Latin in 1554, and glossed by Pier Andrea Mattioli (d. 1578), this work (which historians have claimed was “the most well read scientific book of the sixteenth

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77 Pietro Andrea Mattioli, *I discorsi ... ne i sei libri di Pedacio DIOSCORIDE AnazarbeoDellaMateria Medicinale* (Venice, 1563). Mattioli’s commentaries generally begin with a description of the plant as it is found “in Italia.”
century" was consulted by an array of healers (and readers interested in natural history) and informed daily practice. Its teachings were summarized and repeated in numerous vernacular works on healing herbs and in specialised works devoted to particular types of drugs. The healing properties of specific herbs also figured in manuals instructing apothecaries how to set up and run their pharmacies, such as the Paduan apothecary Girolamo Calestani’s *L’arte della speciaria* (1562) and the Venetian Prospero Borgarucci’s *La fabrica degli spetiali* (1566).

Works of *materia medica* described many herbs that can stimulate menstruation, unclog a blockage, encourage childbirth, or dislodge the unborn and terminate pregnancy. Under *Aristolochia* (birthwort), readers would find that this plant is so called because of its ability to help women in labour deliver (*i.e.*, it brings on the *lochia*). *Aristolochia* stimulates menstruation, purges retained fluids, induces birth and expels afterbirth; it could also drive the foetus out of the womb before it is due, which “most of the time ends up killing it.” *Artemisia* (asteraceae, and its subspecies *Matricaria*) had similar properties and was commonly used for women’s maladies. Boiled and consumed or steeped in a bath, it provokes menstruation, helps in childbirth, the expulsion of the afterbirth, and purges a clogged womb; made into a plaster and rubbed into the pubic bone, it will provoke menstruation; its juice combined with myrrh and inserted into the

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79 For instance, Francesco Sansovino, *Della materia medicinale libr i quattro* (Venice, 1562) and Castore Durante, *Herbario nuovo* (Rome, 1585).

80 Such as the *De i semplici pvrgativi...*, (ascribed to the Arabic doctor Mesue), (Venice, 1559), see bk. 2, section “Di medicamenti che purgano gagliardamente & con molestia,quali hanno quasi natura di veneno.”

81 Girolamo Calestani, *Delle osservationi ... Parte prima* (Venice, 1580); Prospero Borgarucci, *La fabrica degli spetiali* (Venice, 1566).


83 Some treated this herb as its own species but others thought it was simply the Tuscan name for a subspecies of artemisia, also known as parthenio, see Mattioli, *I discorsi*, bk. 3, ch. 149, pp. 479-480; Borgarucci, *La fabrica degli spetiali*, p. 197.
womb as a clyster will “pull every [obstruction] out.” The herb *Sabina* (savin) was also widely used as a menstrual stimulator but also it could “kill the foetus in the belly.” Grinding the fronds of the plant *Calamintha* (lamiaceae family) into a paste or making *Scammonea* (scammony) into a juice, and inserting either of these into the womb (as pessaries or clysters), could release retained menses and also kill an unborn. So does consuming *Elleboro* (hellebore) in either its white or black varieties. *Brionia* (bryoni), also known as *Vete* (or *Vite*) bianca, purges the womb, provokes menstruation, removes the afterbirth, causes abortion and “kills the unborn in the body.” *Brionia*, Mattioli wrote, is well known by all.*Pulegio* (pennyroyal), *rue*, *myrrh*, *centaurea* (in the asteraceae family, like *artemisia*), *Coloquintida* (colocynth),

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86: “Le frondi peste, & applicate alla natura delle donne con lana, prouocano i mestri & ammazzano le creature.” Mattioli, *I discorsi*, bk. 3, ch. 38, p. 394; Sansovino, *Della materia medicinale*, fol. 69r-71r; Borgarucci, *La fabrica degli spetiali*, p. 175; Calestani, *Delle osservationi ... Parte prima*, pp. 28-29; Durante, *Herbario nuovo*, p. 83. The purgative and expulsive powers of *calaminta* were known to Vannoccio Biringuccio, metalurgist and senator of Siena, who devoted a chapter to this plant in his *De la pirotechnia* (Venice, 1559), fol. 89r.


93: “Raschiata, & messa in forma di collirio nelle parti secrete delle done prouoca i mestri, e’l parto,” “prouocare de i mestri, il far partorire le creature morte, e’l corromper delle uiue,” Mattioli, *I discorsi*, bk. 3, ch. 6,
Cassia Fistula (in the fabaceae family), Mandragora (manrake root), Apio (apium), and Sagapino/Serapino (gum sagapen or seraphic) were also well known and commonly used for purging the womb and to “kill the unborn and drive it out” (ammazza il parto, & lo tira fuora). The list could go on. Eaten or steeped in liquids and drunk; distilled and made into syrups or pills, made into therapeutic baths or fumigations; into pessaries, suppositories or clysters and inserted into the womb, or into plasters and unguents and rubbed into the walls of the womb, purgative herbs stimulated menstruation, provoked childbirth, expelled dead foetuses and also killed ones in development.

Compound drugs that were comprised of several purgatives were stronger and more dangerous than simple herbs, and therefore needed to be more carefully regulated. In the sixteenth and seventeenth centuries, protomedicati and colleges of physicians increasingly sought to regulate and standardize the practice of apothecaries in their cities and states. Health boards composed official antidotaries and pharmacopeias to standardise medicines in order protect consumers from erroneously prepared or fraudulent drugs that could cause harm and possibly death. Apothecaries and other licensed vendors of simples and compounds were required to have a copy of their city’s official antidotary and follow its instructions when making...
medicines. In these technical and specialised works, apothecaries and pharmacists would find approved and orthodox recipes for compound medicines along with brief descriptions of their use and their effects. Alongside other medicines that could be dangerous (poisons, for example) makers and vendors of medicines were expected to know that purgative drugs could terminate pregnancies and therefore were to take care when composing these and selling them to women who may be pregnant.

A survey of official antidotaries for several early modern Italian cities reveals that many powerful drugs that could cause abortion were in regular circulation. The 1641 index of the antidotary of Bologna listed more than fifty compounds for “healing the womb.” Most of these contained several of the purgative herbs listed above. For instance, comprised of black hellebore, aristolochia longa, artemisia, centaurea, cassia fistula, myrrh, rue seed, pennyroyal, apio, and savin the Antidotum Haemagogum was a very strong purgative. As its name implies, this electuary was used primarily for stimulating menstruation, but it was also used to expel uterine obstructions, to drive out a dead foetus and stubborn afterbirth. The official pharmacopeia of Rome explicitly warned apothecaries that they must not give this electuary to pregnant women because it will “kill the foetus.” The electuary Triphera magna had similar effects. When enriched with artemis, it was very effective in stimulating menstruation and terminating

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100 Electuaries are pastes made of pulverized simples brought together with honey or sugar, and consumed orally.

101 Antidotarium Bononiense (Bologna, 1647), pp. 3-4; the 1574 edition (p. 104-105) lists the drug but does not mention these properties; the Ricettario Fiorentino (Florence 1574) lists this recipe but calls it “Lattouaro Iustino di Niccolao, p. 175

102 “E stato composto questo Antidoto principalmente per le Donne: perché fa venire le purghe a quelle, che se li sono ristrette, o ritardano, o con difficolta escono. purga anco quelle, che doppo il parto non sono sufficientemente purgate, e le risana; ma non conuiena alle grauide, perché uccide il fetò, ucciso lo caccia fuori, e fa uscire la seconda ritenuta doppo il parto.” Antidotario Romano, Latino, e Volgare. Tradotto da Ipplito Ceccarelli ... con le annotationi del Sig. Pietro Castelli (Roma, 1639), p. 29-30.
pregnancy. The *Trochisci* *hysterici*, composed of myrrh, castoreum, savin, aristolochia, matricaria, and rue juice, cured its namesake, *hysteria* (suffocated and wandering womb), by driving the womb downwards to its natural place. It was also very good for releasing retained menses and expelling the unborn, as were *Syrup of Artemisia* (a combination of artemisia, matricaria, pennyroyal, calamintha, savin, rue and bettony), *Hiera archigenis* (a concoction of black hellebore, sagapino, myrr, colocynth, and aristolochia), *Trochisci of myrrh*, and many other drugs composed or derived from purgative simples. From Venice to Messina, early modern pharmacies stocked many medicinal herbs and strong compound drugs that could be used to terminate pregnancy.

Along with other powerful drugs and poisons that could be used for nefarious purposes, apothecaries were, in some places, officially prohibited from selling purgative drugs without a physician’s prescription. In 1595, the protomedicato of Rome prohibited apothecaries from selling poisons, opiates, solutives (purgatives and laxatives) and “[substances] that could make a pregnant woman miscarry (*sconciar*)” without a written prescription from a physician. If they did, they could be punished with a fine of 25 ducats with possible corporal punishments depending on the circumstances surrounding the sale and its consequences.

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104 *Trochisci/troches*: Losenges made of pulverized or powdered medicinal substances with sugars, honeys or gums, to be swallowed or inserted into the womb as suppositories.


106 ASV, Mis. Arm., IV-V, b. 68 and ASR, Universita, Collegio Medico, b. 24, “Che nussuno Speciale, ne Droghieri, ne Herbario, o Simplicista, ne altri chi si sia, possa dare per bocca, ne vendere, ne donare, o in qual si voglia modo dare ad alcuno cose venenose, opiate, scammoneate, solutue, e da far sconciar le donne grauide, senza l’ordine del Medico in scriptis con la forma di sopra, sotto pena di 25 ducati, & altre pene ad arbitrio di esso Sig. Ptoromedico etiam corporali, considerata la qualita del delitto.” *Bando concernente il buon reggimento della facolta di medicare, e dell’arti, che a lei servuano, e somministrano: da osservarsi in Roma, e fuori in tutto lo Stato Ecclesiastico, così mediate, come immediate sottoposto alla Santa Sede Apostolica* (Rome, 1595), n. 12. In 1608,
prohibitions were issued frequently in Bologna from at least 1581 to 1666. The Bolognese authorities also warned apothecaries that if they suspected the dosage on such a prescription to be incorrect, or if they suspected “any error” (tampering by the customer?), they must go “in person” to verify with the physician; otherwise they were not permitted to give the substance to the customer. The apothecary was to be held accountable for the products he sold and could be fined 25 gold scudi for his negligence if something went wrong with the patient because of the medication, even if the error lay with the physician or the prescription. Apothecaries were expected to check and evaluate prescriptions before they sent customers on their way with a potentially dangerous product. A certain level of medical competence on the part of the apothecary was required to make these assessments and to catch any errors. To make sure, however, that there was no misunderstanding of which herbs were prohibited, in 1653, in his second term as protomedico of Rome, Paolo Zacchia amended his earlier ban by naming herbs that were prohibited for sale without a prescription: amongst others, he listed hellebore, savin, and scammony.

Behind these strictures lay concerns regarding the safety of the patient and the traffic of dangerous substances that could potentially be used for illicit purposes. On the one hand the prohibition against selling purgatives without a physician’s prescription may have been the...
expression of the concern that certain drugs were harmful to pregnant women, a point we willeturn to below. As we have seen in previous chapters, abortion stemming from medical
malpractice was a serious concern and could materialize into criminal proceedings. If an
apothecary sold a purgative drug to a woman whom he did not know was pregnant and she later
miscarried, he could be liable. On the other hand, prohibitions on selling products that could
terminate pregnancy were also attempts by municipal health boards to monitor and regulate the
practice of intentionally procured abortion. Purgative substances were known for their power and
they could obviously be used in a variety of ways. For instance, in a 1629 letter to her father,
Suor Maria Celeste Galilei informed Galileo that she was feeling much better now that Doctor
Ronconi gave her a purgative “in order to try to remove an obstruction that has troubled me […]
for the past six months.” She also informed him that Suor Violente, who apparently suffered
from similar illnesses “continues purging” herself.109 On the other end of the spectrum, however,
women feigned illness to purchase abortifacient medicines. The Roman protomedicato warned
that the properties of the drug *Triphera magna* were apparently so well known that young
women (*donnicciole*) often asked apothecaries for this drug under false pretence in order “to
cover up their mistakes.”110 Without a prescription from a physician, apothecaries were to
assume that powerful drugs might be used for nefarious purposes and therefore were not to be
sold. Healers were expected to be suspicious when listening to their female patient’s narratives.

By restricting the prescription of drugs to learned and licensed physicians, the rhetoric went,

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York, 2001), pp. 100-105. Maria Celeste suffered from a similar obstruction one year later and gain consumed
purgative medicines to clear her womb. 25 May 1630, p. 115.

110 “donnaicilo, che per coprire i suoi errori, quando desiderano l’aborto, senza licenza del Medico lo
dimandano alli Speziali,” *Antidotario Romano*, pp. 72-74, at 74; *Antidotarium Bononiense*, pp. 119-120; *Ricetario
Fiorentino*, p. 195; Cortesi, *Pharmacopoeia seu antidotarium Messanense*, p. 169; Borgarucci, *La fabrica degli
spetiali*, pp. 450-451; Calestani, *Delle osservazioni ... Parte seconda*, pp. 134-35.
fewer unintended consequences for the patient would arise and fewer intentionally procured abortions would be committed.

The caveat “without a physician’s prescription” indicates that physicians could prescribe medicine with the explicit intention of inducing abortion. As will be discussed further below, physicians were permitted, in certain situations, to intentionally terminate pregnancies for health reasons. What is important here is that physicians and not lower order healers were officially supposed to make these decisions. The need for the publication of legislation year after year, however, suggests that apothecaries and other vendors of medicines were in fact selling prohibited substances without the prescribed authorization. In another 1595 bando, the protomede of Rome Marsilio Cagnati expressed frustration that vendors of medicines (droghieri) illicitly sell purgatives “every day.” In the bando, Cagnati explicitly told them to hang the proclamation in their shops in a place where everyone who walked in could see it and know that they could not purchase such products from this type of healer without a prescription. The publication of legislation was meant to inform people of new laws but also to restate ones that were being disregarded probably by apothecaries and patients. The sick often preferred to have apothecaries, barbers and midwives heal them rather than physicians. The Neapolitan apothecary Fra Donato d’Eremita stated that “common people hold an apothecary in higher regard than a physician,” likely due to their knowledge of drugs and their effects on the body and because they were more affordable and practical healers. If an apothecary knew which drug would heal a specific illness, why would the sick person turn to a physician? Succumbing to the financial pressures of the competitive early-modern medical marketplace, apothecaries likely often disregarded the prohibition and sold purgatives to those who sought them. As David

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Gentilcore has observed, “as far as the sick were concerned, this form of illicit practice was unlikely to present a problem.”

Prohibitions against selling purgatives without a physician’s prescription were likely unenforceable and conflicted with social values. An amended Bolognese bando of 1600 appears to confirm this: apothecaries were now told that they could not sell “dangerous, poisonous, abortive or analgesic” substances without having seen a prescription unless it was to the “head of the family/household,” keeping good memory of the person to whom it is given, the quantity of the product and the reasons why it is being purchased. Probably accommodations were made elsewhere though I have not found anything similar for Roman legislation. This bylaw does not suggest that a ‘head of a household’ could walk into a pharmacy – a space which Filippo de Vivo has described as a proto public sphere where medicines were sold but also where news was discussed, gossip circulated and which was often crawling with state informants – and request a ‘medicamento abortivo,’ a drug to terminate an unwanted pregnancy. Rather it likely meant that a head of household of good reputation could buy a menstrual regulator or uterine purgative for a woman in his household. The buyer of the Antidotum haemagogum, the Triphera magna, or a Syrup of Artemisia would have purchased these for his virgin daughter suffering from

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112 Fra Donato D’Eremita, Antidotario [...] nel quale si discorre intorno all’osservanza, che deve tenere lo spetiale [...] (Naples, 1639), p. 4, quoted in Gentilcore, Healers and Healing, p. 79.
113 ASB, Studio, Divers. riguardante il buon governo della citta. 1571-1769, b. 233, “Che non possano li Speciali per qualunque cagione, & qualunque pretesto porre in opra, vedere, o dar via alcun medicamento semplice, o composto, che sia deleteris, o velenosa, abortiuo, & oppiato senza espressa licenza, & ricetta del Medico sottoscritta da quello, sotto pena di scudi venticinque d’applicarsi per vn terzo all’accusatore, & il resto come disopra a luoghi pii. Eccetto alli capi di fameglia, coltener particolar memoria della persona a chi si e dato, & della quantita, & dell’occasione perche la domanda.” Auvertimenti, & Prouisione intorno li Speciali, & quelli, che essercitano la Medicina (Bologna, 1600), n. 7.
114 For instance, in a 1613 case analysed in Chapter 5, an apothecary from the town of Sezze sold strong purgatives to a man whom he suspected would use for an abortion with the warning: “be careful of what you do – it is not your job to give things by the mouth, you can make some error.” ASR, Trib. crim. del Gov. “Processi,” 1613, b. 116, fol. 72v-73r.
greensickness, for his wife who required a menstrual stimulator, or who was having difficulty delivering, for the mother of his newborn because she had yet to have a post-partum purge, or even his mother who had just entered menopause and might be suffering from hysteria. The fact that a head of household could also purchase these same products for his unmarried daughter who might be pregnant from an illicit sexual affair, for his wife in order to avoid another mouth to feed, or for another woman, a housemaid perhaps, whom he, his son, or another man had impregnated, was problematic but in many cases unavoidable. The reputation of the customer, it seems, was the only means by which an apothecary might be able to evaluate what the purgative would actually be used for. Furthermore, even if an apothecary did suspect that a drug would be used for abortion, it does not necessarily mean that he would refrain from selling it. Apothecaries and herbalists were likely not centrally concerned with such issues.

Aside from physicians and apothecaries, midwives and other lower-order healers knew which drugs and herbs could be used to treat womb-related difficulties and to terminate pregnancy. These healers were also channels for this knowledge and also for products. Medical and pharmacological knowledge was acquired and transmitted through textual learning and experience. Midwives and barbers likely sold and administered purgatives herbs if not compounds, although they were officially prohibited from doing so. While physicians increasingly tried to circumscribe and regulate these practices, in the early modern period most women and men turned to midwives and barbers as their primary “agents of health.”

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116 Giovanni Zecchi, one time archiater of Sixtus V and protomedico of Rome, prescribed decoctions of savin, artemisia and other purgative simples, as well as a trochisci of myrrh to help a Marchesia Reani expel stubborn afterbirth, *Consultationes medicinales*, cons. 68. In 1608, the Roman physician Pietro Bresciani prescribed the same trochisci in order to help a married woman expel her dead foetus, Cohen, “Miscarriages of Apothecary Justice,” p. 501. See also Bottoni, *De morbis muliebribus*, bk. 2, ch. 81, fol. 75r-77v; Massaria, *Praelectiones de morbis mulierum*, pp. 406-413; Mercuriale, *De morbis muliebribus*, bk. 2, ch. 3, p. 63-69; ch. 4, pp. 69-70; Marinello, *Le medicine partenenti*, bk. 3, ch. 8, fol. 265rv, ch. 11, fol. 285r; ch. 13, fol. 290r-291r.

Barbers were explicitly forbidden from selling medicines for oral consumption, but they could and did sell unguents, lotions, oils and other medicinal products for external use.\textsuperscript{118} In a 1598 case from Rome that will examined in Chapter 5, a barber who participated in an abortion, allegedly under the guise of healing a woman from dropsy, readily produced and sold medicines for internal consumption along with the standard service of bloodletting. Midwives also had much experience and knowledge regarding herbs and drugs that were efficacious for womb-related illnesses.\textsuperscript{119} However, in his influential work on midwifery Girolamo Mercurio pretended that they did not. He stated that his intended purpose in writing was to teach midwives how to assist women in childbirth but also how to tend to them before and afterwards.\textsuperscript{120} A few times in this work Mercurio alluded to the fact that women, because of their modesty, prefer to put their health in the hands of midwives rather than going to a male physician. For these reasons, Mercurio thought it wise and responsible to teach midwives about illnesses that commonly afflict women and how to heal them. In discussions of womb-related illnesses, Mercurio included information regarding purgative medicines. While he stated that giving women purgative medicines was officially a physician’s job and not midwife’s, Mercurio did not think it dangerous or imprudent to describe what herbs should be given to women suffering from dropsy, from difficult or delayed labours, who could not pass the afterbirth or deliver a dead foetus or even women who harboured untoward growths and moles in their wombs and needed to expel them. He assured his readers that he was not trying to “turn midwives into physicians” but rather sought to equip them with necessary knowledge and skills needed do their job properly and

\textsuperscript{118} Gentilcore, \textit{Healers and Healing}, pp. 74-78; Pomata, \textit{Contracting a Cure}, pp. 64-67.


\textsuperscript{120} Mercurio, \textit{La commare}, bk. 1, ch. 18, pp. 112-117; ibid., \textit{De gli errori}, bk. 6, ch. 2, p. 262
safely. “I have taught her to give medicines out of care,” he wrote. Furthermore, some illnesses could prove fatal if untreated and therefore it was essential for the midwife to know what medicines were appropriate in order to act quickly.

Mercurio’s representation of midwives’ ignorance in these domains and his self-assigned responsibility to educate them was of course a rhetorical trope of medical writings and not an accurate reflection of midwives’ capabilities. Though we do not have much information regarding midwives’ healing practices, there is good reason to believe that many offered a range of medical services to women, men and children, and were sources of medical and therapeutic information in their communities. Midwives procured, fabricated and sold purgatives for woman’s illnesses, although there were officially prohibited from doing so. They were likely the primary conduits of these products for most women and also transmitted elements of their learning and experience to university-educated physicians: unlike Mercurio, Giovanni Marinello had no problem admitting that he learned from a midwife that a very simple decoction of

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121 “[...] niuno si pensi, chi io inteda di dottare, e face medico la mia Comare; perché io la lascio ne i suoi termini di raccorre le creature, e non le concedo se non quanto le cocesse Platone nel Teotetto, e Timeo, doue uoole ch’ella si a diligentissima in aiutare il parto difficile, non solo co i medicamenti, ma anco con gli incanti, iquali essendo uani, e meritamente prohibiti dalla religion Christiana, gli lascieremo da bada, e ragioneremo solo di quei rimedij naturali, che puo, e dee usare la Comare nell’ageuolare i parti.”Mercurio, La commare, bk. 2, ch. 24, p. 235. See also remedies for encouraging a post partum purge, for afterbirth, and for dropsy: ch. 27, p. 252; ch. 30, pp. 271-275; ch. 31, p. 276; bk. 3, ch. 16 pp. 411-412.

122 “Qui voglio auisare il Lettore, che non si marauigli, se nella cura della Mola ho quasi dottorata la mia Commare, insegnandole a dare medicine, i perche la carita mi ha sforzato a farlo, accadendo bene spesso che le donne non dico per vergogna di non lasciarsi vedere da i medici: ma perche essi non sappiano i mali loro; e specialmente di questa sorte, si contentano piu tosto di morire, che di chiederli aiuto; e per questo ho giudicato expediente, che le Commari siano istrutti di quelle cose, che sono maggiormente necessarie in tale infermita.” La commare, bk. 2, ch. 41, pp. 346-347.


124 In 1642, Angela Rhighetti, a midwife in Bologna, was sentenced to pay a fine of twenty five lire and to forfeit the drug she “made and sold for women’s purgation,” Pomata, *Contracting a Cure*, p. 77. Midwives were also known to let blood, Pomata, “Barbieri e comari,” p. 175.
pennyroyal steeped in wine was very successful in expelling stubborn afterbirth. Midwives knew the signs that might indicate pregnancy and the causes of its termination. Even though physicians such as Zacchia undermined their authority in these roles, they were frequently called on as expert witnesses in criminal court cases of abortion and miscarriage caused by violence. A woman who was in need of a purgative to stimulate menstruation and a woman who was trying to have an abortion would turn to a trusted and experienced midwife for information and for products.

Aside from midwives and other medical practitioners, ordinary women and men would learn what herbs to take for womb-related illnesses from popular works of so-called medical ‘secrets.’ These cheap and popular ‘self-help’ manuals communicated elements of learned medical knowledge to lay audiences in a simplified and prescriptive way and also transmitted empirical, artisanal and ‘folk’ remedies to university-trained physicians. Medical self-help books flourished in the early modern print market. Historians have suggested that these works would have been used by lower order healers and by non-professional people to take their health into their own hands. In these works, men and women learned how to self-medicate in relatively simple and accessible ways. As most healing took place within the household, such books would have proven quite useful.

In these texts, a reader would find remedies for various illnesses of the womb, to stimulate retained menses, to increase fertility, to ease difficult labour and the passing of the afterbirth and to expel a dead foetus. Authors such as Pietro Bairo, Timotheo Rossello, Leonardo Fioravanti, Tomaso Tomai, Floriano Canale, Benedetto Vittori da Faenza and Alessio

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125 “Cuono alcune leuantri pulegio nel uino, il quale dano bere alle donne, & ne ottenon il desiderio loro.” Marinello, Le medicine parteneniti, bk. 3, ch. 13, fol. 290r. See Green, Making Women’s Medicine Masculine for physicians learning from midwives.

Piedmontese recommended letting blood from the “vein of the mother” (uene della matrice) and decoctions and electuaries containing calamint, myrrh, pennyroyal, aristolochia, savin, matricaria, and many other purgative herbs.\(^{127}\) For stimulating menstruation, Bairo promised that savin was “the strongest” of all purgative herbs.\(^{128}\) In these works, readers were also explicitly warned that consumed during pregnancy these remedies may “corrupt the foetus” and cause abortion (sconciare ouer disperdere).\(^{129}\) After recommending a concoction of matricaria, savin, and other simples for provoking menstruation, the compiler of a collection of remedies (apparently gleaned from the work of the famous anatomist and professor of simples at the University of Padua Gabrielle Falopia),\(^{130}\) urged his readers not to give this to a pregnant woman because it will cause her to abort. Consuming this medicine will not only harm her body but will cause the death of a foetus without a soul, a “very horrendous sin.” The author assured his readers that he has collected and published remedies for good and not for evil. Used with good intentions, this recipe heals womb-related illnesses very well; used for evil, it will cause a great scandal if caught;\(^{131}\) if not, it might prevent a scandal. The connection between purgative and abortifacient was explicit.

\(^{127}\) La seconda parte de’secreti del reverendo donno Alessio Piemotese (Pesaro, 1559), bk. 1, part 2, p. 26; Pietro Bairo, Secreti medicinali (Venice, 1562), fol. 204rv. Bairo includes 5 pages of recipes for cures of sterility, fol. 193r-195v; Benedetto Vitorri da Faenza, Pratica d’esperienza (Venice, 1570), ch. 33, fol. 100r-103r; Leonardo Fioravanti, La cirugia (Venice, 1595), p. 173; Tommaso Tomai da Ravenna, Idea del giardino del mondo (Venice, 1611), fol. 36r-37r; Floriano Canale, De secreti univeralsi raccolti et esperimentati, … ne quali si hanno rimedii per tutte l’infermita de corpi Humani, come anco de Caualli, Boui, & cani (Venice, 1613), pp. 124-125; Timoteo Rossello, Della summa de’Secreti universalis… Si per huomini, & donne, di alto ingegno, come ancora per Medici, & ogni sorte di Artefici industriosi, & a ogni persona virtuosa accommodate (Venice, 1619), fol. 17v-18r, 84r-85r.

\(^{128}\) Bairo, Secreti medicinali, fol. 204rv, he includes five pages of remedies for retained menstruation.

\(^{129}\) Bairo, Secreti medicinali, fol. 200r-201r, at 200v; Vitorri da Faenza, Pratica d’esperienza, ch. 33, fol. 100r-103r, at 101v, see also ch. 45, fol. 126r.

\(^{130}\) Most likely from Fallopia’s De simplicibus medicamentis purgantibus (Venice, 1565).

\(^{131}\) “Ma guarda nol dare a donna gravida, che potresti farla disperdere, e faria danno dell’anima tua, e pericolo del corpo, perche far perire una creatura senza anima, e troppo orrendo peccato, si che avertisciti bene a quel che fai, che io scrivo le mie cose per bene, e non per adoprarle in male, massime onde possa venire così gran scandalò, si che avertisciti: questa ottima usandola in bene,”Secreti di medicina, chirurgia ed alchimia raccolti da Gabriello Falopia (Venice, 1578), pp. 62-63.
Undoubtedly some of these recipes could have been used by ordinary people intending to terminate unwanted pregnancy. Neither a physician nor even an apothecary was needed to procure these medicines. They could be purchased from charlatans, herb peddlers and even grocers in public squares. Grocers sold many of the same medicinal herbs as apothecaries but were less systematically monitored by medical authorities. Perhaps one could even pick some botanicals wild for free: according to the *Antidotario Romano*, aristolochia grew in the countryside just beyond the Quirinal Hill. There would have been no way to control the consumption of such herbs in rural areas. Gardeners (*ortolani*) knew not only how to grow herbs like aristolochia but also that its roots, steeped in wine and oil, could expel a dead foetus. Those who bred and cared for horses and other livestock also knew which herbs purge the womb, help with difficult labour, or to induce abortion. According to Carlo Ruini, Bolognese senator and author of a work on equine anatomy and care, “occasionally one needs to abort (*disgrauidare e disperedere*) pregnant horses for the utility and accommodation of men,” especially if they are noble, expensive, destined for racing or other exercises, or simply because they have been “impregnated against the will of the owner.” According to Mattioli, whose

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132 Charlatans could acquire licenses to sell purgatives: for example, in 1620, the charlatan Dionigio Alberti was licensed to sell a purgative consisting of prepared *seme di ricino* (castor-bean) in the Piazza Navona in Rome. Among other things, this remedy could heal dropsy, Gentilcore, *Medical Charlatanism*, p. 234. Paolo Zacchia prohibited the sale of *seme di ricino* without a physician’s prescription, see note 108).

133 Garzoni lists a number of purgative herbs as sold by *semplicisti ed erbolari*, *La piazza universale*, vol. 1, disc. 23, pp. 332-335 and vol. 2, disc. 89, pp. 1059-1065. In a 1613 case examined in Chapter 5, purgative herbs were purchased from an herb pedler in the Piazza Navona in Rome.

134 In Naples grocers fell under the inspection of the protomedicato in 1581 after several deaths resulted from the selling of poisons by grocers, however, this oversight was revoked in 1604. The Roman protomedico could fine grocers for “misdemeanours.” See David Gentilcore, “‘All that Pertains to Medicine’: *Protomedici* and *Protomedicati* in Early Modern Italy,” *Medical History* 38 (1994): p. 137; idem., *Healers and Healing*, p. 44.

135 “Aristologia tenu, ditta Sarmentosa, radica sottile, la Romana colta del mese di Maggio nelle campagne fuor di porta Quirinale, e preparata con hauerli leuata la sua medolla, secca diligentemente, & odorifera.” *Antidotario Romano*, p. 57.


137 “Essendo alcuna volta bisogno far disgrauidare, e disperdere le caualle pregne, per vtile, & commodo de gli huomini, & per saluare la caualla grauida; & per fuggir la noia, e l’anno, che ci apporta vedere le caualle nobili, generose, & care, o destinate a corsi, a palij, & ad altri nobili essercitij, esser ingrauidate contra il volere del patrone,
knowledge of materia medica was unsurpassed in the sixteenth century, farmers, peasants and
herb-women often possessed more knowledge of the healing properties of plants because of their
experience with nature, a connection, however, which also lent itself to associations, especially
for women, with magic and witchcraft.\footnote{On medicine and witchcraft, see Albano Biondi, “La signora delle erbe e la magia della vegetazione,” in Cultura popolare nell’Emilia Romagna: Medicina, erbe e magia (Milan, 1981), pp. 183-205; Claudio Bondi, Strix: Medichesse, stregh e fattucchiere nell’Italia del Rinascimento (Rome, 1989); David Gentilcore, From Bishop to Witch: The System of the Sacred in Early Modern Terra d’Otranto (Manchester, 1992), ch. 5; Oscar Di Simplicio, Inquisizione, stregoneria, medicina: Siena e il suo stato (1580-1721) (Siena, 2000); Jonathan Seitz, Witchcraft and Inquisition in Early Modern Venice (Cambridge, 2011).}

Ordinary women and men knew or could learn through experience, observation, through
their various networks or from reading medical self-help books that herbs like savin, artemisia,
and aristolochia eaten raw or processed in a variety of ways stimulated menstruation, expelled
trapped fluids and corrupt humours, loosened and purged obstructed wombs, and therefore could
be used to have an abortion. These products were widely available in early modern cities and
some in the countryside. They could be purchased with or without a prescription from a
pharmacy or from a grocer, or even picked from the ground; they could be processed into
decoctions in private kitchens and consumed quietly at home.

It is important to restate that the herbs and drugs described above were not \textit{abortifacients},
but rather ordinary drugs that could be used for a variety of purposes. Abortion was a side effect
in pregnant women. As Etienne van de Walle, Helen King and others have emphatically argued,
it would be a mistake to assume that every menstrual regulator was covertly used by women to
avoid or terminate pregnancy, and that the phrase “to bring on the menses” was code for “to have
an abortion.”\footnote{Van de Walle, “Flowers and Fruits”; Helen King’s discussion of these issues in Hippocrates’ Women, “When is a purge not an abortion,” pp. 145-146.} Purgative medicines were primarily used to promote health by means of
regulating menstruation, releasing trapped and corrupt fluids and, perhaps ironically to our contemporary medical views, encouraging fertility: apothecaries such as Borgarucci and Calestani marketed *Triphera magna* as a fertility drug: “it helps [women] conceive and get pregnant.”

Nevertheless, early modern people knew that bloodletting from the foot and purgative medicines could be used to intentionally terminate pregnancy, and this caused concern and anxiety over their administration and traffic. Civic and ecclesiastical authorities suspected that women and men used the opacity of body to acquire purgatives under false pretences. Men and women, as we shall see in the next chapter, knew what to say to healers and apothecaries in order to procure purgatives, and also to judges when accused of intentionally procuring abortion. Procuring dangerous medicines was getting more difficult in an increasingly regulated marketplace. In the sixteenth and seventeenth centuries, however, purgatives could be acquired through numerous sources with relative ease. The onus thus fell on the healer and the provider of

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140 The physician and protomedico of Rome Giovanni Zecchi prescribed similar remedies for the noblewoman Violante Corsa, who was diagnosed as suffering from dropsy of the womb. His remedies included exercise, baths and fumigations, phlebotomy, and purgative medicines such as a syrup of artemisia, as well as decoctions of savin leaves, matricaria, pennyroyal and other medicines. Zecchi, *Consultationes medicinales*, cons. 39, pp. 226-28.

141 Giovanni Zecchi prescribed many of the herbs listed above to an unnamed Roman noblewoman who was having a hard time conceiving, *Consultationum medicinalium*, cons. 67, pp. 341-34, and also for another unnamed woman from Macerata who had just suffered a miscarriage: he recommended that she be purged at least twice before conceiving again, cons. 86, pp. 418-419. See also Girolamo Mercuriale, *Responsa et consultationes medicinales*, vol. 1 (Venice, 1587), cons. 93, pp. 214-218, esp. p. 217. For discussions of sterility and its cures in Mercuriale, *De morbis muliebribus*, bk. 1, ch. 2, esp. pp. 20-22; Bottoni, *De morbis mvliebribus*, bk. 2, ch. 59, fols. 47v-49r; Massaria, *Praelectiones de morbis mulierum*, pp. 254-262; Marinello, *Le medicine partenenti*, bk. 2, ch. 8, fols. 71r-85r.

142 “La *triphera magna* e vutilissima, & di molto giouamento a gli afferti delle donne. [...] A difetti di matrice per frigidita si da stemperata con vino tepido, in cui sia decotta arthemisia. Et fattone pessario nel bambace, e con olio moscato, & arthemisia ben trita, e postolo ben dentro nella natura a donne no con cipienti, procura il menstruo, & aiuta il concipere, & l’ingrauidarsi.”Calestani, *Delle osservazioni* ... *Parte seconda*, pp. 134-35; Borgarucci, *La fabrlica degli spetiali*, p. 450. That purgatives could aid in fertility and encourage conception was not specialised knowledge: in letter to her mother, Caterina di Medici-Gonzaga indicated her desire to be purged in order to maximize her chances of conceiving. Christine de Lorraine, however, warned her daughter against it, believing that it would trouble (guasterete) her general health and this would diminish her chances of conceiving. “Ho anche visto che nella vostra lettera mi dite di volervi purgare, et io non so perché. Però se non havette febre non dovete farlo perchè guasterete la vostra compplessione et per far figliuoli Dio vi aiuterà, et il purgarsi forse vi impedirete.” Christine de Lorraine-de Medici to Caterina de Medici-Gonzaga, 3 Oct. 1617, Medici Archive Project.
medicine. They were the ones who were to regulate dangerous products and, in effect, police the practice of abortion. Given that the intention of the procurer could not be known with certainty, most vendors would not have hesitated too much to sell products that could potentially be used as abortifacients. Depriving a sick woman of a healing purge just in case she was pregnant could worsen her condition. Moreover, many vendors would not have cared to inquire into the customer’s intentions. As we have seen, theological and legal conceptions regarding the gravity of abortion were not necessarily shared by ordinary men and women. Healers and purveyors of medicines may very well have sympathized with a young woman who was deflowered, found herself pregnant and therefore needed to purge her womb in order to escape scandal.

Whether or not purgative drugs or bloodletting from the *vena della madre* actually worked in terminating pregnancy is beyond the scope of my research. What is important here, however, is that early modern Italian agents believed these therapies worked and used them accordingly. Authorities tried to regulate their consumption because they were known to work. Women who suffered from retained menstruation and from dropsy of the womb and consumed decoctions of savin and aristolochia or the compound triphera magna did so with the expectation that these treatments would expel blood or other fluids, that their period would return, and that their illness would subside. Pregnant women who consumed such drugs likely expected the same.

That the signs of pregnancy could be easily missed or misdiagnosed as symptoms of womb-related illnesses, and that therapies for treating these illnesses were common, easily accessible and, it seems, powerful and efficient at emptying the womb, suggests that many pregnancies could have ended unintentionally though by means of medical intervention.

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143 For a discussion of efficacy, see Riddle, *Contraception and Abortion* and *Eve’s Herbs*; and Stefania Siedlecky, “Pharmacological Properties of Emmenagogues: A Biomedical View,” in *Regulating Menstruation: Beliefs, Practices and Interpretations*, eds. Etienne van de Walle and Elisha Renne (Chicago, 2001), pp. 93-112.
Accidents and surprises could and did happen. Nevertheless, the ambiguities of the female body and the uncertainties surrounding pregnancy also meant that abortion could be procured by means of duplicity. Determining the intentions for which a purgative drug was acquired was in many cases impossible. The ambiguities of the female body exacerbated attempts at regulating the practice of abortion.

5. Miscarriage

Women who knew or suspected that they were pregnant and did not want to be could consume an array of medicines to purge the womb, but if medicines failed to artificially induce abortion a woman in need might turn to more natural and forceful methods. In discussions of how to avoid miscarriage, physicians warned women to steer clear of jarring activities, strenuous labours and, above all, violence. Women who wanted to have an abortion might reverse this advice. Because miscarriage was so ubiquitous in the pre-modern world and because pregnancy could be brought to an end by any disturbance, miscarriage was a common defence in cases of alleged abortion. As we saw in the previous chapter, jurists suspected that women and men often passed intentionally procured abortions off as accidental or spontaneous miscarriage. This defence worked because the causes that brought that pregnancy to an end were very difficult and often impossible to ascertain.

In chapters on miscarriage, medical authors warned that a variety of assaults with varying degrees of intensity and danger could bring pregnancy to an end. Physicians warned against
dancing, jumping (especially backwards), running, climbing stairs, riding in carriages, exerting oneself “more than is needed,” carrying weights, intense work, falling down, and being hit; anything that jolts and damages the body and makes a woman to tighten or contract her belly could cause miscarriage. Authors of popular and learned works alike thought that women who wanted to terminate their pregnancies could do so by intentionally putting their bodies in harm’s way. For instance, the popular *Secrets of Women* compendium stated that prostitutes and women learned in the art of midwifery, engage in a good deal of activity when they are pregnant. They move from place to place, from town to town: they dance and take part in many other evil deeds [mali] […] they have a great deal of sex, and they grapple [giocano] with men. They do all these things so that they might be freed from their pregnancy [disperdere della creatura] by the excessive motion. Learned physicians like Albertino Bottoni also stated that these methods were well known to prostitutes, which explained why they were often childless. Tommaso Garzoni associated the knowledge not with young prostitutes but with their pimps, male and female, those who were more experienced in sexual matters and for whom a pregnant prostitute was a liability.

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144 Mercurio wrote that because jostling motion is dangerous for pregnant women, “[…] vietarono per leggei Romani che le donne grauide no and assero in cocchio […] Questo abuso nodimen e si poco cosiderato in Italia, & così radicato quasi in tutta la nobilita, che non si propongo mai altri solazzi alle grauide, che d’andare in caroccia, se reketare festimi non s’accorgendo che moti di questa sorte non solo conquassano la creatura incredibilmente, sono bastanti a rompere i legami, che la ritengono nella matrice, e farla sdruciolare fuori in maniera,che in caso sia irrimediable.” *La commare*, bk. 2, ch. 18, p. 216 and again in *Degli errori popolari d’Italia*, bk. 5, ch. 7, fols. 239r-241r. In an April 1617 letter, Christine de Lorraine-Medici “especially warned” her daughter Caterina, who was believed to be in the early months of pregnancy, not to ride in carriages at least for another month because, at the time of the letter, the foetus would have been very small and any minor jolt or rumbling could dislodge it from its mother. Christine de Lorraine de Medici to Caterina de Medici-Gonzaga, 13 April, 1617, Medici Archive Project.

145 An unidentified sixteenth-century Italian commentator of this text added that these methods are common knowledge amongst “evil women” who teach them to “young girls who have become pregnant and wish to hide their sin.” Lemay, *Women’s Secrets*, p. 102-03.

146 Bottoni, *De morbis myliebribus*, bk. 2, ch. 53, fol. 52r.

Strenuous manual labour, whether it be working the land or household chores, was known to bring pregnancy to an end. In a 1608 case from Rome, a married pregnant woman suffered a miscarriage and died allegedly from internal injuries caused by walking up and down stairs and moving heavy boxes under duress.\(^{148}\) Women who wanted to terminate pregnancy could purposely take on strenuous labour in order to achieve this effect. In a 1593 case of father-daughter incest in the Venetian countryside studied by Joanne Ferraro, the pregnant daughter purported to miscarry from labour in the fields; the bending and lifting allegedly caused the unborn to slip out “like a slice of ham.”\(^{149}\) In this context the miscarriage was clearly suspicious and was assumed to be a means of concealing the transgression. Even so, cases where a miscarriage was held to be suspicious on account of the woman’s reputation were still open to interpretation. A village woman who made her livelihood through farming could very well miscarry, whether or not her pregnancy was illicit or transgressive.

Medical authorities could offer no decisive insights into the intentions behind the actions that terminated pregnancies. Furthermore, determining the exact cause that brought pregnancy to an end was also very difficult. In medical works, authors listed many factors internal and external to the body that could cause miscarriage. Internal causes referred to a woman’s particular humoural complexion and her anatomy, which could predispose her to sterility, an inability to conceive or to carry a foetus to term. Wombs that were naturally flatulent, tightly packed, loose, overly large or overly small, too fat or too thin, phlegmatic, humid, slippery, too cold, hot, moist or dry, were all held to be inimical to generation and the life of the foetus. Girolamo Mercuriale considered all these factors in a consilium composed for an exasperated Maria Aviz-Farnese, Duchess of Parma and Piacenza, who had suffered six miscarriages in four

\(^{149}\) Ferraro, Nefarious Crimes, p. 56.
years. Mercuriale could not isolate one factor but preferred to list several medical issues that needed to be addressed before Maria again tried to conceive. Aside from anatomical and complexional shortcomings, any number of acute or chronic illnesses that a woman might suffer during pregnancy could severely damage the unborn and possibly cause her own death. As Silvia de Renzi has observed, pregnancy was, in many cases, regarded to be pathological, a time of uncertainty where any minor illness could potentially prove fatal. External causes referred to factors outside the body that came to bear on what was happening within it: the quality of air; climate and temperature; diet and medicines; activities, labours, exercises and violence; and also a emotional health (passione delle anime) all impacted pregnancy. Any of these internal and external factors, operating on their own or interacting with others, could bring pregnancy to an end. The causes could be something as distant and as complicated as a malign celestial influence or as simple as a cough or a bout of gas. “Any little disturbance can cause miscarriage,” Mercurio warned.

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150 Mercuriale, *Responsa et consultationes medicinales*, tom. 1, cons. 101, pp. 131-134. We do not know when the Mercuriale’s consilium was composed (the first edition of his consilia were published in 1587), but in 1577 Maria diagnosed by her physicians suffered from a “tumor maligno, cio e cancro nella matrice,” letter of 7 March 1577, Tommaso Cornacchini to Francesco de Medici, Medici Archive Project. 151 De Renzi, “The Risks of Childbirth.” 152 Paolo Zacchia acknowledged that the dietary restrictions imposed during Lent might be dangerous for pregnant women, see *Il vitto quaresimale* (Rome, 1636), pp. 110-111, 225-226 for his recommendations for pregnant and nursing women during this time. In a 1576 letter to his pregnant daughter, Sperone Speroni warned her not to observe Lenten dietary restrictions: “Figliola cara, ion non credo che prete, ne medico ti abbia consigliata a far quaresima; pero l’hai fatta di tua testa, e tuo e il danno. Se sei gravida, non te ne dei crucciare per ragione: dunque a torto tut e ne doli. E fai sempre così; che ove non hai rimedio, ti metti fastidio, ed a chi ti ricorda il rimedio, contradici. Io non intendo piu questo tuo intelletto, fa a tuo modo, poiche cosi ti par di fare,” Sperone Speroni, *Opere*, vol. 5, letter 322, pp. 228-229. 153 Marinello, *Le medicine partenenti*, bk. 3, ch. 5, fol. 250r-251r, ch. 6, fol. 253r-255v and ch. 8, fol. 264v-265r; Mercurio, *La commare*, bk. 2, ch. 17 and 18, pp. 210-219; Venusti, *Discorsi generale ... intorno alla generatione*, ch. 56-58; Bottoni, *De morbis mvliebribus*, bk. 2, ch. 62, fol. 62r-64r; Massaria, Praelectiones de morbis mulieris, ch. 11; Mercuriale, *De morbis mvliebrivs*, bk. 1, ch. 4, p. 35; bk. 2, ch.1, pp. 43-46; Zacchi, *Consultationes medicinales*, cons. 86, p. 416-424; cons. 94, pp. 450-454. 154 Allessandro de Angelis, *In astrologos coniectores libri quinque* (Rome, 1615), bk. 2, ch. 8 and 9, pp. 69-72 on particular planetary conjunctions that may cause fetal death and premature delivery. For discussion of how coughs can cause miscarriage, Pietro Castelli, *Exercitationes medicinales* (Toulouse, 1616), p. 197. 155 “[...] ogni picciolo sinistro puo produr l’Aborto,” Mercurio, *Degli errori popolari d’Italia*, bk. 5, ch.7, fol. 241r.
Some external factors could be manipulated in order to intentionally terminate pregnancy and they could also be deployed in narratives to cover up abortion procured by medicines. As the Roman jurist Farinacci remarked, how could one prove that a woman lied when she claimed that she miscarried from strenuous work done in the privacy of her own home? At most, medical authorities could discern whether or not a woman expelled a foetus, but not determine the reasons why. In a 1613 case examined in the next chapter, a midwife who assessed the body of a woman suspected of having an abortion concluded from the physical signs on her body that she had recently expelled a foetus, but when asked whether she had given birth naturally, miscarried spontaneously or had an abortion, the midwife replied “I cannot know which.”

Medical authorities might have more to offer in cases of miscarriage caused by violence. As we have seen in previous chapters, violence and assault were assumed to be common causes for ended pregnancies. In medical texts, as in manuals of confession and works of jurisprudence, such violence was commonly associated with men. A beating could result in miscarriage and sometimes also in the death of the woman. Miscarriage was often an undesired consequence of a beating, but it could also be intended. In an early seventeenth century case tried in Rome, a priest was accused of causing a thirty-five year old pregnant woman to abort by beating her with a stick. Paolo Zacchia, who served as an expert witness in this case, concluded that the beating, which was directed towards the pregnant woman’s kidneys, caused the miscarriage. Though details are lacking, the cleric was assumed responsible for the pregnancy and the beating appears

157 Mercurio specifically chastised husbands for beating their wives during pregnancy: “a questi esempi si riduere l’esser battuta la Grauida; perche se la battitura sara graue al sicuro puo farla disperdere; doue si conosce quanto sia graue quell’errorre di quei Mariti quali per ogni picciola cosa sono cosi facili a battere le loro Mogli grauide quali percio commettono peccato mortale doppiamente, prima perché non portano rispetto a quella Donna, che gli e congiunta per quel Matrimonio, che vno della sette sacramenti di Santa Chiesa, quali scaturino dalle piaghe di Christo in Croce: secondo perche si espongono al pericolo di far l’aborto,”Mercurio, Degli errori popolari d’Italia, bk. 5, ch. 7, fol. 241r.
to have been a way to terminate it.\textsuperscript{158} If purgative medicines, jarring motions, and labour did not get the job done, violence might be a last resort for women or men desperately seeking to terminate a pregnancy. Though probably effective, abortion by means of violence or strenuous activity would likely have been very painful and dangerous; the woman in Zacchia’s case haemorrhaged to death following the miscarriage. Intentional abortion by violence would likely have been committed by the very desperate.

6. Abortions to Heal

Medical authors discussed another context of abortion where causes were less ambiguous and intentionality clearer: abortion as an anticipated consequence of healing or intentionally induced to heal a pregnant woman (per sanatio/pro salute). As we have seen, prohibitions on selling purgatives and bleeding women from the foot were in part aimed at preventing unintentional abortions. If a pregnant woman consumed a purgative that ended up terminating her pregnancy, charges of medical malpractice could be made against the healer who supplied the drug. A physician’s prescription took a lot of the ambiguity and unpredictability out of these situations. Physicians, the rhetoric went, could judge whether or not a drug was appropriate for a pregnant women; they were also more likely to diagnose pregnancy in ambiguous cases. Physicians could also judge how dangerous an illness was to the life of the pregnant woman and prognosticate whether it could turn fatal if untreated.

\textsuperscript{158} Unfortunately Zacchia did not include details surrounding this case, Zacchia, Questionum medico legalium, tomus posterior, bk. 10, cons. 47, pp. 234-236.
It was widely believed that pregnancy could turn a minor illness serious and potentially fatal; pregnancy weakened a women’s constitution which made her more disposed to illnesses and also augmented their danger.\textsuperscript{159} In works of women’s medicine, physicians discussed ways of treating pregnant women who suffered from illnesses without harming the unborn. Doing both at once was never easy and often not possible. As most illnesses that befell women stemmed from the womb, they were treated with purges. For instance, in his work on \textit{Death caused by Pregnancy, Abortion, and Childbirth} (1607), the Roman physician Girolamo Perlini explained that while menstrual blood goes to nourish the foetus in pregnancy, some can go unconsumed, accumulate and corrupt in the womb and thus cause illnesses such as dropsy or various potentially fatal fevers.\textsuperscript{160} Women could also simultaneously generate and nourish a mole and a real foetus. In September of 1574, Marcello Donati (d. 1602), physician and counsellor to the prince of Mantua, claimed to have seen a mole, that he described as a round fleshy thing resembling the head of a child, which was attached to the after-birth of a real foetus.\textsuperscript{161} A mole could share the womb with a true conception, threatening both the viable foetus and the carrying mother. It was also possible for a woman to harbour two foetuses (\textit{superfoetatio}), and if one died, the other foetus and the mother were at risk.\textsuperscript{162}

Purgative medicines could relieve these obstructions and dangerous growths but would do so by potentially causing abortion.\textsuperscript{163} The fear of losing the unborn led some pregnant women

\textsuperscript{160} Girolamo Perlini, \textit{De morte caussa graviditatis, abortus, et partus} (Rome, 1607), pp. 8-10; De Renzi, “The Risks of Childbirth.” Paolo Zacchia gave counsel on a case where a six-months pregnant woman developed dropsy which may have led to her death; Zacchia was brought in as an expert witness to determine the causal relationship between her pregnancy, dropsy and death, which had financial consequences for her husband. Zacchia, \textit{Quaesttionum medico-legalium}, tomus posterior, bk. 10, cons. 56, pp. 261-263.
\textsuperscript{161} Donati, \textit{De medica historia mirabilis}, ch. 25, p. 247.
\textsuperscript{163} “Ogni sorte di evacuatione notabile puo essere anco causa efficace dell’aborto, come di medicine purgati, e in genere, & in specie. In genere dico, perche i purganti per la esagitatione & evacuatione causata ne gli
to suffer through illness and eschew therapy, at least to a certain extent. For instance, writing to her pregnant daughter Eugenia who was experiencing bouts of debilitating nausea, Maria Spada warned her not to tell her physician perhaps fearing that any medicine he might offer might terminate the pregnancy. Nevertheless, if a woman was in significant risk, physicians thought that administering purgative medicines an appropriate course of action even if this meant the loss of the unborn. As we have seen, ecclesiastical and secular authorities agreed that, to save a woman’s life, abortion could be induced with impunity. But this was never an easy decision, and it remained controversial and contested through the early modern period. The tricky part, of course, was determining that a women’s life was at sufficient risk to warrant the intervention.

Believing in the possibilities for prevention, physicians urged women to put their bodies in expert hands in advance of pregnancy and to consult regularly in order to avoid illnesses and miscarriage. Evidence suggests that some, generally elite, women sought advice from physicians on how to manage pregnancy. The consultant would construct a regimen tailored to a woman’s specific constitution and alter it as needed in order to safeguard her from illness while pregnant. If a woman’s specific complexion predisposed her to acute or chronic illnesses, a physician would try to offset imbalance through diet, activities and exercises, and medicines, if needed. Physicians, nevertheless, admitted that despite every precaution, pregnancy could always end in miscarriage and even threaten the life of the carrying woman.

humori, o per lo stuzzicare la virtu espurtrice, possono produrre tale effetto. […] L’istesso diciamo dal cavare sangue, togliendo immediatamente il cibo alla creatura; e così anco del flusso di corpo abbondante che venisse alla dona.” Mercurio, La commare, bk. 2, ch. 18, pp. 217-218. Authors included numerous milder medicines that pregnant women could consume for less grave illnesses: Mercurio, La commare, bk. 1, ch. 17, pp. 111-112; ch. 22 pp. 131-133; Marinello, bk. 3, ch. 5, fol. 251v and ch. 8, fols. 258v-259r-v Bottoni, De morbis muliebribus, bk. 2, ch. 62, fols. 63v-64r; Mercuriale, De morbis muliebribus, bk. 1, ch. 4, pp. 35-39; Massaria, Praelectiones de morbis mulierum, ch. 11, pp. 348-362; Giovanni Zecchi, Consultationes medicinales, cons. 86, pp. 420-421.

164 d’Amelia, “Becoming a Mother in the Seventeenth Century,” p. 227
165 Marinello, Le medicine partenenti, bk. 3, ch. 5, fols. 250v-251r, ch. 6, fols. 253r-255v and ch. 8, fols. 258v-260, 264v-265r; Mercurio, La commare, bk. 2, ch. 17, pp. 18, 21; Bottoni, De morbis muliebribus, bk. 2, ch. 62, fols. 62r-64r; Mercuriale, De morbis muliebribus, bk. 1, ch. 4, p. 35; bk. 2, ch.1, pp. 43-46; Massaria, Praelectiones de morbis mulierum, ch. 11; Giovanni Zecchi, Consultationes medicinales, cons. 86, pp. 416-424; cons. 94, pp. 450-454.
Some women could be deemed “unfit for conception” altogether. A woman who was perpetually sickly or whose womb could not support a foetus, should, according to Mercuriale, be advised to “dedicate herself to virginity” and life in a cloister rather than the marriage bed. While ideal, restricting marriage to women who were able to generate, bring pregnancy to term and deliver a live child without problems was impossible and recognised to be unrealistic, though this did not stop some from trying. Mercurio thought midwives should be consulted before marriage was contracted to determine whether a woman (or a man) was fit for generation. In some cases, midwives were asked to probe a woman’s genitals and digitally examine her cervix and womb to ascertain whether she was capable of coitus and of getting pregnant. (Such examinations were also standard in cases of marital dissolution on the grounds of sexual and generative incapacity.) If her cervix and womb were too tight for sexual intercourse and too narrow to support foetal growth and childbirth, healers might try, through various means, to stretch them. However, these practices were likely only conducted in high profile marriages where female and male generative capacities were politically significant. And even then, a midwife’s or a physician’s examinations and interventions were no guarantee.

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167 Listing a midwife’s tasks, Mercurio wrote “di saper discernere avanti che si facesse il matrimonio quail fossero le donne feconde per poter produr figliuoli, e quail huomini non l’istessa potessero generare, ilche si conosca, e dalla qualita del temperament, e dalla disposition de’membri genital,” Mercurio, La commare, bk. 1, ch. 18, pp. 113-114; ibid., De gli errori popolari, bk. 6, ch. 2, fols. 262r.

168 Ferraro, Marriage Wars; ch. 3; Hacke, Women, Sex and Marriage, ch. 7; Edward Behrend-Martínez, Unfit for Marriage: Impotent Spouses on Trial in the Basque Region of Spain, 1650-1750 (Reno, 2007).

169 For instance, see the physical examinations and surgical procedures Margherita Farnese (d. 1643) endured before she was found to be incapable of sexual intercourse and of generation, which also meant the dissolution of her marriage (1583) to Vincenzo Gonzaga (d. 1612) recounted in Valeria Finucci, “The Virgin's Body and Early Modern Surgeons,” in Masculinities, Violence, Childhood: Attending to Early Modern Women and Men, eds. Amy Leonard and Karen Nelson (Lanham, 2010), pp. 195-221. More generally, see Ferraro, Marriage Wars, pp. 91-97 and Hacke, Women, Sex and Marriage, pp. 155-164. See also the shaming tests that Vincenzo Gonzaga was put through following the annulment of his fruitless marriage to Margherita Farnese and before his marriage to Eleonora de’ Medici, recounted in Terpstra, Lost Girls, pp. 169-71 and 183-90. Further research may indicate whether such practices were more common.
Trial and error was the only way to know whether a woman could conceive and carry a foetus and deliver it alive.

What to do then with women who could not bring pregnancy to term and for whom pregnancy and childbirth could prove fatal? Ideally, physicians thought it better to prevent generation altogether or to terminate pregnancy as early as possible in women who were likely to suffer complications, who had a history of miscarrying, or who suffered from dangerous acute or chronic illnesses during pregnancy. In chapters on sterility and miscarriage, some physicians—especially those writing in Latin—taught methods to avoid generation, such as using liniments to prevent the meeting of seeds or to expel the seeds from the womb post-coitus, for instance, jumping around and taking baths. In his vernacular work of *materia medica*, Francesco Sansovino had no trouble listing eighteen medicinal substances that prohibit conception and terminate early pregnancies. Some authors also taught methods of aborting problematic pregnancies in chapters on miscarriage and also in chapters on difficult or delayed childbirth. In these discussions, authors instructed their readers to do the exact opposite of what they were warned against to avoid miscarriage.

The further into pregnancy, the more dangerous it was to induce abortion and the more controversial. In theory, physicians preferred to abort inanimate unborns but in practice they seldom had that choice, as most cases of medical intervention would have been in emergency situations and likely further along in pregnancy. Physicians making these decisions had to determine whether or not the risk to the women’s life was high enough to merit the termination of an ensouled and developed foetus. Mercuriale thought that if the life of the woman was at risk, the physician should try to heal her even it could result in abortion and the death of the unborn, animate or not. In these cases, the physician, he argued, was not guilty of sin or crime, but rather

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was plying his trade. Mercuriale’s reasoning echoed discussions from casuist theology and jurisprudence. “I say that it is never permitted for a physician to make killing the foetus his end. It is permissible for him to treat the woman with necessary medicines which may harm the foetus, but it is never permitted to pursue a treatment with the intention of killing the foetus.” As long as the physician has acted with the intention to heal, he has not acted contrary “to our inviolatable faith.” Albertino Bottoni agreed with his learned colleague, “a physician should first tend to the mother and then try to conserve the foetus.” Letting nature take its course was, according to Bottoni, was risky. A physician was better off intervening and trying to heal a woman even if this meant abortion, “We ought to carry out the work of nature by facilitating and accelerating the abortion,” Bottoni thought. To do this, physicians recommended bloodletting and the purgative simples and compounds we have repeatedly seen. Bottoni simply referred his Latinate reader to the ones he described in detail in his chapter on menstrual retention.

Inducing abortion for health reasons was a complicated, controversial and dangerous intervention, and likely would have been a last resort option. Zacchia, who interestingly did not give this topic much attention in his work on forensic medicine, thought that it was best to wait as long as possible before evacuating the contents of a pregnant woman’s womb in the hopes that

171 “Quod si Conceptus iam sit gradiusculus & mulier lethaliter agrotet: dico, nunquam licere Medico vt prima intentione foetum interimat, licet sane curare Mulierem medicamentis necessarijs & inimicis foetui, sed non licet vnquam hoc animo mederi vt interimatur foetus: cuius ratio supra ad ducta est: sed licet interdum consulere Mulieribus vt non concipiant, sed aduertendum ne conscientia perdantur vestrae, quoniam nunquam licet hoc consilium dare, nisi vbi maximum virae di scrimen videatis. Etsi saepe mulieres inhostae, huiusmodi remedia a Medico requirant, vt satisfaciant libidini & vituperia fugiant, quae omnes refrenandae sunt: haec omnia subijcio sacrosanctae fidei.” Mercuriale, De morbis mvliebribus, bk. 1, ch. 2, p. 25. Mercuriale expressed similar sentiments in his gloss to the Hippocratic aphorism “Women with child who are seized by fevers and who are emaciated, have difficult and dangerous labours and if they miscarry they are in danger of death.” In omnes Hippocratis Aphorismorum, bk. 5, aph. 55, pp. 550-552.

172 “Medico fieri debet propter matris, aut foetus conseruationem;” Bottoni, De morbis mvliebribus, bk.2, ch. 73 [err. 83], fol. 68v.

173 “Si deinde abortus in actu iam sit, vel fiet cum facilitate & cito, tunc nihil agendum, sed totum negocium nature rcte operatori committendum erit; at si cum difficulitate, & longiori tempore fiat, tunc naturae opem ferre debemus, abortum facilitando, & acelerando, quod si adhibendo aperientia, & laxantia intus, & extra, de quibus latius infra agemus, quando de partu difficili sermo erit.” Bottoni, De morbis mvliebribus, bk. 2, ch. 74, fol. 70v.

174 Bottoni, De morbis mvliebribus, bk. 2, ch. 53, folos. 51v-52r.
the foetus could be delivered alive enough to be baptised.\textsuperscript{175} Theologically-minded physicians such as Condronchi and Mercurio thought that pregnant women should endure their ills and that, instead of medical intervention, “hope [should] be placed in Omnipotent God, who formed the foetus, [who] is able without our help, or aside from our hope, to save it;”\textsuperscript{176} Mercurio stated that instead of administering purgatives which will certainly kill the foetus, it is better to appeal to the majesty of God with orations and votives, which might end up saving both mother and child.\textsuperscript{177}

Mercurio even included a plea in his work on obstetrics for midwives to get between the physician and the sick pregnant woman and convince them not to go through with the purge. The midwife, according to Mercurio, should get involved in this important “negotiation” by telling the woman that choosing abortion was a great sin, that she would be severely judged by God if she makes her foetus “taste death before life” (“\textit{per dire cosi}”), if she introduces herself to her issue as a murderer rather than a nurse (\textit{nutrice}).\textsuperscript{178}

Aside from hoping to maximize the foetus’ chances at earthly or eternal life, physicians also worried that inducing abortion could kill the sick pregnant woman. Abortion, at any time, was always dangerous and even more so when a women was already very ill and at risk of death.\textsuperscript{179} Mercurio, who clearly rejected abortion as a legitimate form of healing, stated that inducing abortion in an already dangerously ill woman was a sure-fire way of killing both the

\textsuperscript{175} Zacchia, \textit{Quaestionum medico-legalium}, tomos prior, bk. 6, tit. 1, quest. 7, n.15, p. 413.
\textsuperscript{176} “Quamobrem Medicus nullo unquam tempore, vel occasione, siue foetus sit animatus, vel non animatus, abortum tentare, sed semper in foetus conservationem incumbere, sperans Deum omnipotentem, qui foetum formavit, posse absque aliquo nostro auxilio, vel praeter spern nostram ipsum seruare,” Codronchi, \textit{De christiana ac tuta medendi ratione}, pp. 70-71.
\textsuperscript{177} Mercurio, \textit{De gli errori popolari}, bk. 2, ch. 26, fols. 108v-109r; idem., \textit{La commare}, bk. 1, ch. 17, p. 111
\textsuperscript{178} “[…] vorrei fare accorta la mia Commare in negotio cosi importante,” …“mi scusi il troppo affetto, che io porto a quelle creature, le quali per loro sciagura, e per imprudenza, o maluagita della madri, gustano prima la morte, che (per dire cosi) la vita; muionoauanti, che nascano; prima che possano rimirare questa fabrica del Mondo, l’abbandonano; auanti che co’piedi calchino la terra, vi sono dentro sepolte; e finalmente prima, che possano conoscere la madre per nutrice, la prouano per homicida.” Mercurio, \textit{La commare}, bk. 2, ch. 20, pp. 221-223 and bk. 1, ch. 17, p. 111.
\textsuperscript{179} Zacchia, \textit{Quaestionum medico-legalium}, tomos prior, bk. 6, tit. 1, quest. 7, n.15, p. 413.
foetus and the mother. However, this point was disputed. Bottoni thought it better for a physician to induce abortion artificially rather than let a woman suffer natural miscarriage, which he judged to be more dangerous as it was, apparently, more unpredictable. That authors devoted considerable attention and strong rhetoric to the subject of abortion induced for healing purposes suggests that purging pregnant women was part of regular healing practices but that it was always controversial and risky.

Another important and controversial issue was inducing abortion in cases where a foetus was dead in the womb. In this context, the tricky part was determining with certainty that the foetus was really dead. The primary sign healers and ordinary people looked for in order to determine whether a foetus was dead or alive in the womb was the same sign they looked for months earlier to discover whether a woman was pregnant: motion. If motion could not be detected for some time, the foetus was likely dead. Authors of medical works instructed midwives and physicians to place their hands on the belly and feel whether the foetus moves or not; if they could not detect any motion, they must suspect that the foetus is no longer alive. If the woman declares that she does not feel her foetus either, it can be concluded that the unborn was dead. From the moment the foetus died, the woman harboring it was in danger herself. A dead foetus would rot within a women’s body and this corruption could quickly turn fatal. If a woman could not expel it naturally, healers would have to expel it artificially. In print,

\[\ldots\] bugiarde parole, che per saluare la madre si puo occidere la creatura […] Bugiarda sentenza: poiche no e vero, che per fare disperdere la creatura si salui la madre; anzi elle incorre in pericoli maggiori: imperoche diremo nelle cause del parto difficile, che la creatura morta lo fa difficilissimo con pericolo di morte alla parturiente, non potendosi la creatura aiutare in modo alcuno., Mercurio, La commare, bk. 1, ch. 17, p. 110; idem., De gli errori popolari, bk. 2, ch. 26, fol. 108v.

Marinello, Le medicine, bk. 3, cap. 12, fols. 285r-289r; Mercurio, La commare, ch. 19, pp. 219-220; Mercuriale, De morbis muliebribus, bk. 2, ch. 3 p. 63; Bottoni, De morbis muliebribus, ch. 71; Massaria, Praelectiones de morbis mulierum, ch. 11, pp. 347-348; Bairo, Secreti medicinali, 200r-201r; Venusti, Discorso generale… intorno alla generatione, ch. 74

physicians recommended medicines that mollify the womb and make it slippery, followed by purgative medicines designed to encourage the womb’s expulsive faculties. In a 1608 case from Rome, the physician Pietro Bresciani prescribed a trochisci of myrrh in order to help a woman expel a foetus which he thought had been dead in her womb for about one week. If medicines failed, a midwife might try to pull the dead foetus out with her hand; if this was too difficult or dangerous, a surgeon might be called in to extract it with hooked instruments or through caesarean section. The longer the dead foetus remained in the woman’s body, the greater the risk and the greater the urgency to remove it.

The opacity of the female body, however, made even these abortions problematic. What if the foetus was still alive but for whatever reason immobile? The priest and theologian Bartolomeo Gittio recounted one such case that he allegedly witnessed in 1619 in Benevento where healers and the pregnant woman herself misdiagnosed the situation. A pregnant woman in a considerable pain believed that her foetus was dead in her body. Her midwife agreed “for it made no motion” for some time. They requested that a physician come to the house to administer medicines in order to expel it. While they waited for the physician, the woman surprisingly delivered a living boy whom Gittio was able to baptise just before he died; having received the waters of baptism, the boy “flew into heaven” and disaster was averted. Likely a bit of pious fiction, Gittio’s message was that in uncertain situations, healers should not intervene in haste. “Women are very often deceived” he stated, into thinking that their foetus is dead because they do not feel motion; “while lack of motion is a sign of a dead foetus, their great pain does not allow them to perceive this motion.” Gittio thought that before administering medicine to liberate


a woman from a dead foetus some time should pass just in case the foetus does start to move or is born alive. Before making any decisions, “not one but two learned persons” should be brought in for assessment. 185

Even for physicians and in circumstances of medical need, inducing abortion was never an easy decision to make. While lack of motion was considered the most indicative sign of a dead foetus, healers still looked for other signs to contribute to the diagnosis: these included sharp abdominal pains; unfamiliar heaviness; depressed eyes; pallor; or an inability to hold urine or stool. Similarly, if her belly becomes soft and mushy or if she and others feel a hard dense lump in it; if she develops fevers or shivers; if her breath stinks; if her belly and genitals are cold to the touch; if a foetid odour emanates from her womb; if the umbilical cord begins to hang outside of her vagina and starts to turn black; if she expels much blood or the afterbirth but not the foetus. 186 Midwives and physicians looked for all these signs when trying to determine whether the foetus was dead and whether medical intervention was needed. Even when they were sure that a foetus was dead, some healers still hesitated to intervene and preferred to let nature take its course. In a 1598 case from Rome examined in the next chapter, the physician

185 “[…] quare caueat sacerdos curam animarum habens, ne permittat talia pocula ad perdenum faetum dari, immo neque passim ad perditum extrahendum, nisi prius habita fide, qualiter ipse faetus in utero sit mortuus, idque a personis peritis non una, sed duabus: vel pluribus maxime deficientibus medicis, saepius enim credunt mortuum, & re vera non est, idque eu nit mihi die 3. Iulii 1619 cum enim sexta noctis hora, vocamus fuissem ad quandam parcurientem, dicerentque velle adire medicum pro poculo ad extrahendum fetum iam mortuum, & interrogata per me obstetricie, num esset mortuus libere respondit esse a vesp. re praecedenti, sic ipsa patiens respondit nullum motum facere, quare ego mandau, ut altera, quae in terra erat abstetrix vocaretur, & diligentiam adhiberent, num re vera viuere, cognoscedi, & interim, adiret medicum, nihil tamen patienti darent, me inconsulto, qui semper presto essem quibus peractis, cum domum redirem, paulo post fui vocatus ad baptisandum puerum, qui viuus natus erat, & Deo gratias, baptizatus fuit & post duas horas voluit in caelum, solent itaque maxime mulierculae, & ipsa partu rii quoque decipi, quamvis enim mortui faetus sit signum, quia non percipitur motus tamen ob magnum dolorem partus, non cognoscunt, sunt quoque alia signa quoque alia signa, nempe ea. quae fluunt ex utero, sunt putrida, subsequitur febris, in pectore sentitur frigiditas quaedam, oculi sunt subfusc i, de quibus remitto ad peritos.” Bartolomeo Gittio, Tractatus de casibus reservatis in quo praecipue explicantur reservati in dioecesi Beneventana (Naples, 1621), pp. 142-43.

186 Marinello, Le medicine, bk. 3, ch. 12, fols. 285r-289r; Mercurio, La commare, ch. 19, pp. 219-220; Mercuriale, De morbis muliebris, bk. 2, ch. 3, p. 63; Bottoni, De morbis muliebris, ch. 71; Massaria, Praelectiones de morbis mulierum, ch. 11, pp. 347-348; Bairo, Secreti medicinali, fols. 200r-201r; Venusti, Discorso generale… intorno alla generatione, ch. 74.
Timoteo Camotio waited to intervene with a woman named Angela da Filettino whom he and a midwife both concluded was harbouring a foetus that had been dead for about one week. Even though she became increasingly ill and her life was in danger. Camotio preferred to wait and see what would happen. Angela eventually expelled a very decayed foetus.\textsuperscript{187}

In situations where healers judged a woman’s life to be in danger, abortion could be induced with less jeopardy, but it was always a difficult decision for the healer to make. As we saw in Chapter 2, in 1591, a physician from near Altamura was placed under spiritual sanctions for inducing abortion in a woman whose health was at risk, but the sanctions were lifted when Gregory XIV allowed his absolution and at the same time modified Sixtus V’s bull \textit{Against those who Procure Abortion}. Around the same time, the jurist Francesco Vivio reported in his discussion of abortion that a physician had been brought to court for the same reasons, though he too was absolved and charges dismissed. In both cases, the abortions were controversial, but also deemed to be necessary for the health of the carrying women. It is unclear how often healers were faced with decisions to induce abortion for healing purposes, but the fact that physicians, jurists and theologians frequently discussed the matter suggests that it might have been common enough to be controversial and needing justification. Officially, university trained physicians were the only medical practitioners who could make the decision, but in practice it was likely that a variety of healers would provide purgative medicines for pregnant women at risk of miscarriage or who carried a dead foetus. While they preferred physicians making these decisions, jurists agreed that as long as a purgative was given and consumed with the intention to heal, the provider should not be tried for a crime, neither should the person who consumed it.

The Milanese jurist Giacomo Menochio thought that no penalty should be meted out in these

\textsuperscript{187} As we will see in the chapter, Camotio’s decision not to intervene was made in a very specific legal context: Venere had denounced another woman for assaulting her and causing the death of her unborn. Had Camotio intervened and hastened the expulsion of the foetus, the case might have been contaminated.
situations because an abortion committed for the sake of healing was similar to committing “murder in self-defence (defensionem occidit).”\textsuperscript{188}

In their discussions of abortion induced for healing purposes, medical authors were specifically concerned with purging women known to be pregnant. Yet we can assume that similar considerations applied to women who were diagnosed and diagnosed themselves as suffering from womb-related illness and did not know they were pregnant until after consuming purgative medicines that caused abortion. It was also suspected that women known to be pregnant might feign illness in order to receive dangerous medicines. In his discussion of abortion for health reasons, Girolamo Mercuriale noted that a physician could be deceived into performing an abortion and wondered whether he should be at fault. Doctors must take care because “dishonest woman seek such remedies […] to avoid reproach in satisfying their desires.”\textsuperscript{189} Nevertheless, he insisted that as long as the physician intervened in order to heal, he was not culpable. Mercuriale here described a situation where a woman tried to terminate her pregnancy by deceit and guile, but he was clearly aware of the fact that there could be only genuine ignorance of pregnancy and misdiagnosis on the woman’s part and her healer’s. The ambiguities of the female body and the uncertainties surrounding generation and pregnancy meant that abortion was never simple and its meanings always open for negotiation.

7. Conclusion

\textsuperscript{188} Menochio, \textit{De arbitrariis iudicium}, n. 20, p. 519.
Medical discourses regarding generation, pregnancy and its termination, in relation to understandings of the female body, underpinned ecclesiastical and secular attitudes and practices surrounding abortion. This medical writing cannot be taken in isolation from theological commitments and the demands of law; these discourses were all interweaved and influenced each other. However, medical conceptions could come to the fore in shaping the ways in which learned and lay onlookers interpreted the signs of women’s bodies and also the ways in which women experienced their own bodies and interpreted their somatic sensations. They also shaped the stories women and men could tell others and themselves in order to explain the appearance of their bodies, to dispel accusations of pregnancy and to obfuscate charges of intentionally procured abortion. In early modern Italy, abortion was always open to interpretation because pregnancy, the operations of the female body, and healing were never certain.

Even under constant scrutiny, the early modern female body remained unpredictable. The signs of pregnancy could be interpreted as symptoms of illness and vice versa. Medicines procured for healing could cause abortion and also death. Medical practitioners listed numerous signs that might indicate what was transpiring with a woman’s body, but that body remained opaque. This meant that ignorance of what was transpiring within the body was real and that accidents could and did happen. It also meant that discourses of uncertainty could deployed to cover up nefarious actions and impure intentions. The assumption that women and men procured abortion by means of duplicity was true but we should not assume that women or men always lied and cheated. Pregnancy could be a real surprise and abortion an unintended consequence of medical intervention. Credible medical explanations existed which could be deployed by women and men to pursue a course of action that best benefited them. Women who were not supposed to be pregnant or who did not want to be could believe, especially in the first few months of
pregnancy, that they were ill, suffering from menstrual retention and dropsy, both very common illnesses. Even married women who had no particular incentive to deny pregnancy could genuinely believe themselves ill and not carrying a foetus. At the same time, women who did suspect that they were pregnant could choose to perform their bodies as ill and in need of a purge. The body could be perceived, experienced, and performed in multiple ways for a variety of reasons.

The medical sources analysed here suggest that abortion was a complex and ambiguous event that elicited numerous, competing and apparently inconsistent responses amongst medical practitioners. Abortion could mean different things in different medical contexts, but the termination of pregnancy always carried a heavy moral load. This chapter has argued that abortion could be procured by women and men and administered by an array of healers for a variety of medical reasons, both intentionally and accidentally, for reasons deemed illicit and criminal, but also for purposes of healing. Medical sources such as learned and vernacular treatises, medical consilia, works of pharmacology and even familial letters suggest that healers and ordinary men and women knew what to use to terminate pregnancy and that products and services were widely available and could be procured with relative ease. What these sources do not tell us, however, is how decisions to purge the womb were made in real time. At what point would a woman start to suspect that she might be pregnant and therefore try to procure purgative medicines to abort? At what point would a man responsible for an unwanted pregnancy resort to violence to terminate it? Furthermore, at what point would a medical practitioner judge a woman to be in significant amount of risk to warrant medical intervention that could kill a foetus?

Action was likely related to the level of threat; the higher the threat and the more dangerous the pregnancy was to a women’s health or her reputation, the sooner a woman, a man
or a healer might pay attention to a woman’s body and try to intervene; the less risky it was, intervention might be sought latter in pregnancy or not at all. For a single woman who worked as a domestic servant or a virgin deflowered through seduction, violence or incest, pregnancy could be catastrophic. She, a family member and possibly the man responsible for the pregnancy might monitor her body closely and therefore procure purgative medicines at the first suspicion of pregnancy. Most early modern discourses primarily associated abortion with women caught in these situations. However, women in less threatening situations, such as women who were married or who were in stable but extra-marital relationships, also procured abortion, though likely with less urgency. Furthermore, these abortions would likely have elicited less attention from onlookers and from authorities. The meanings ascribed to the event of abortion were not only determined by medical discourses but equally by the social and political contexts and circumstances in which they occurred. The next chapter will explore four criminal cases of aborto paying close attention to the social circumstances in which they occurred and privileging the testimonies of lay individuals.
Chapter 5

Abortion in Criminal Court

1. Introduction

The preceding chapters of this dissertation have explored several early modern discourses on generation, pregnancy and its termination within broad understandings of women’s bodies, illicit sexuality, sin and crime. Educated and professional men deployed these discourses in a variety of published sources. In order to expand the array of voices on these themes, this chapter explores another type of source material and another context of discourse, manuscript testimonies given in criminal cases tried in Rome and its countryside. Through the examination of two cases of miscarriage caused by assault (1581 and 1603) and two cases of procured abortion (1598 and 1613), I examine some of the contexts and social circumstances in which these events occurred and analyse some of the ways uncertainty shaped understandings and descriptions of these events. Attending to the words and experiences of witnesses of diverse social positions, this chapter seeks to give a more nuanced and fine-grained account of what aborto might have meant to individual participants.

Witness testimonies in criminal cases are among the few sources currently available with which we can begin to evaluate representations of abortion beyond the purview of highly educated men as articulated in prescriptive and normative literature. The thoughts and concerns of ordinary men and women as voiced in criminal proceedings shed light on whether and how the moralistic discourses, opinions and concerns of churchmen, statesmen, and physicians held currency in daily negotiations. We have seen that medical practitioners, jurists or even clergy did
not necessarily subscribe to the Counter-Reformation rhetoric that identified abortion as a mortal sin and a form of homicide. At the same time while physicians and jurists carefully investigated many medical and legal aspects, learned and professional discourses conceded that certain knowledge both of specific causes that brought pregnancy to an end and of human intentions behind those actions was likely unattainable. This chapter argues that discourses of uncertainty shaped the ways in which miscarriage caused by violence and procured abortion were processed at the situational level and, in particular how narratives of these events were presented in court. The women and men who deposed in these cases actively drew on discourses of corporal uncertainty in order to make and challenge these cases. Some of the uncertainty was genuine and stemmed from the uncertainties of generation, pregnancy and its termination, in relation to the physical ambiguities of the female body. Uncertainty was also deliberately constructed by the plaintiffs and corroborated by their witnesses in order to make cases and by the defendants and their witnesses for exculpation.

The four cases analysed here were prosecuted in the criminal court of the Governor of Rome between 1581 and 1613. As part of broader papal campaigns towards centralization, better governance and firmer discipline of deviance, sixteenth and seventeenth century Roman tribunals expanded their compass and intensified their effectiveness both in the city of Rome and its countryside.¹ There were numerous tribunals each with a range of jurisdictions and mandates, but the most important criminal tribunal belonged to the Governor, a prelate and the Pope’s vice-chancellor.² Judges at the Governor’s criminal tribunal heard a wide variety of cases, ranging from rebellion, assassination and homicide to insults and petty thefts. This court initiated

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² On the office of the Governor, see Niccolo del Re, Monsignor governatore di Roma (Rome, 1972) and Fosi, Papal Justice.
investigations *ex officio*, but more often responded to individual complaints, especially in cases of private family or sexual offenses. Three of the four cases discussed here were brought to court by plaintiffs concerning physical injuries and assaults to honour. They asked the court to provide justice by arbitrating between the plaintiff and the defendant. In the fourth case, the small town of Sezze south of Rome was scandalised by the multiple sexual transgressions of a nobleman, culminating in an abortion he procured for his niece, and its residents requested the Governor’s assistance in punishing this powerful offender.

Following denunciations, judges proceeded by inquisition, questioning witnesses in order to acquire evidence with which to evaluate the plaintiff’s claims and to force a confession from the suspect. Evidence was collected by interrogating witnesses without lawyers generally in the court’s offices or in the prisons at the Tor did Nona or Corte Savelli. When needed, judges ordered physical examinations by midwives, physicians and surgeons. Recorded verbatim by the notary, these testimonies formed the magistrate’s ‘process for information’ (*processi per informazione*), the form of documentation analysed here. When testimony was inconclusive and when confessions could not be had, judges passed a sentence based on the evidence available. In the next stage of the trial lawyers generally drafted defences in the form of briefs. The final stage was the verdict. As is common with early modern legal records, it is very difficult to track a case through its several phases. Since the judgments of the Governor’s tribunal are not well preserved, it is often not possible to discover sentences or even to know if they were rendered in specific cases.³ In many cases, proceedings were dropped after the depositions, as the parties settled out of court and left no further records.⁴

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³ I have only been able to discover how one of the four cases analyzed here ended.
The testimonies generated in many investigations have, however, survived relatively well. These provide the historian with a wealth of information regarding perceptions of crime and justice drawn from the voices and experiences of women and men generally hidden or obscured in other sources. In their responses to specific questions, witnesses communicated, in their own words, their knowledge of events, their opinions and their experiences. The generation of testimonies through the inquisitorial process also gives historians the opportunity to hear conversations between diverse segments of society and to juxtapose the views of the authorities with the subaltern, the rich with the poor, the educated with the unlettered, the urban with the rural, men with women. In doing so, these conversations help illuminate some of the convergences and divergences between the thoughts, perceptions and practices of different segments of society and of different genders and ages on given themes, in our case pregnancy and its termination, violence and illicit sex. From these testimonies, we can access numerous viewpoints towards certain crimes, but we also learn a great deal about aspects of everyday life that were incidental to the issues under investigation. Analysing testimonies thus offers the opportunity to illuminate wider aspects of early modern life. Among these areas of enquiry, trial

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materials have much to offer histories of medicine and of the body. Historians have increasingly mined criminal and inquisitorial archives to recover perceptions of ordinary people towards their bodies, illness, and healing, as well as to elucidate the interactions between lower order healers, such as midwives, barbers, apothecaries, herbalists, exorcists, and learned professionals.6

Trial records can, therefore, be very rich sources, but they are also complex and require careful reading. Unlike printed sources, which were intentionally composed for a public readership, testimonies from criminal investigations record the voices, thoughts, concerns and experiences of people who, in most cases, did not choose to speak freely. Testimonies only exist because they were demanded by the authorities and shaped by the formal and professional culture of the institution. Answering questions posed by judges, the illiterate speak only through the mediation of clerks and scribes. Testimonies reflect the legal culture as much as they do personal experiences and opinions. Historians also have to tackle with the fact that testimonies were given under forms of duress. Most testified in intimidating environments, such as in prisons. The threat of torture loomed large over what witnesses said and how they said it. Of course, witnesses lied and embroidered the truth. Often fearful of the outcomes of their testimonies, witnesses tailored their stories towards their concerns and the consequences – social, professional, financial, punitive – they and their allies might face. Witnesses were never disinterested. Though varied in their skills and strategies, many witnesses did not volunteer more information than was necessary to further their own interests, which were guided by specific

social imperatives – these were often, though not always, clear to the judge, but may be less so to the historian. Trial records, therefore, must be read through the lenses of social relations between plaintiffs, the accused and their witnesses. They are not open windows onto early modern society, but rather heavily constructed discourses that require careful reading, contextualization, and informed speculation: “strategic speech invites strategic reading.”7 Analysing the discourses presented in trial testimony allows the historian to explore the complex and tangled webs of social relations that characterized daily life in pre-modern urban Italy. We may not always be able to disentangle these webs or fully understand the social imperatives, the imbalance of power or the hidden agendas (or even if there were any) that influenced testimony. Nevertheless, for our purposes, trial materials are a rare source in which we can hear what ordinary people might have thought about abortion and how it might have affected their lives. Indeed, they illuminate aspects of abortion and miscarriage that are not found in other sources.

The four Roman cases analysed here do not reflect what abortion was in late Renaissance Italy, but rather represent four specific events and the meanings these were given within their specific context. Miscarriage and, to a lesser extent, procured abortion were, of course, ordinary parts of everyday life. The cases investigated by the authorities were anomalous and exceptional because they disrupted the everyday and made it to court, which is the reason we now have some traces of these events. In these cases someone with a personal stake brought allegations of abortion and of miscarriage caused by violence to the attention of the authorities. The authorities took interest because someone sought compensation for injury and loss (in cases of miscarriage by violence) or because the protagonist(s) scandalized their communities with their transgressive behaviour. Abortions that were kept secret, that did not arouse the interest of the community, or

situations in which no “injured party” sought retribution, for instance, cases of married couples who procured abortion to avoid extra mouths to feed, or in cases of miscarriage caused by domestic violence, would likely not have found their way to the Tribunal of the Governor. Those instances remain hidden from the historian. While anomalous and exceptional, the cases analysed here are very informative and reveal some of the ways miscarriage caused by violence and procured abortion were processed by a variety of people in specific circumstances and how they were represented in court. While the perceptions and experiences expressed in testimonies are specific to the cases under investigation, they also reflect broader narratives and discourses shared in early modern Italian culture and were widely diffused throughout society.

This chapter is divided into two parts. The first examines two trials for miscarriage caused by violence; the second studies two allegations of procured abortion. In all four cases, the plaintiffs and the defendants as well as lay and expert witnesses mobilized discourses of uncertainty in regards to pregnancy and its termination in order to level or to dispel the charges. Women and men drew on multiple discourses regarding the ambiguities of female body and the uncertainties of pregnancy and its termination in order to argue their cases. A reading of these trials that attends carefully to contexts and circumstances uncovers several layers of uncertainty that shaped understandings of events. These include: first, the ambiguity of women’s experiences of their own bodies; second, the uncertainty that emerges from onlookers’ recognition of bodily signs and the differing meanings ascribed to these; and third, uncertainty deployed as a legal strategy by the accused, the accuser, and witnesses in order to further self-interests.

The uncertainties of women’s experiences of their bodies and of onlookers’ interpretations of the signs of female bodies were both very real. As we have seen, to early modern observers, the female body stood as a murky, mysterious and disorderly entity whose
inner workings remained elusive, even under constant expert scrutiny. Women did not necessarily know what was transpiring in their wombs and often gave multiple and contradictory descriptions of sensations and their meanings. Such views were confirmed by medical practice and theory, both academic and popular, as well as reflected in jurisprudence. The signs of pregnancy were open for interpretation, both for the woman who might be experiencing it and especially for observers. The causes of pregnancy termination were equally if not more contestable. In criminal investigations of abortion, the uncertainty of experience and the contradictory testimonies that emerge from witnesses who observed and scrutinized bodily signs, then, ought not to be dismissed wholesale as legal strategies for furthering self-interests. However, in some cases, it may very well have been just that. In the cases analysed below, the uncertainties of generation, pregnancy, and abortion, as well as the ambiguity inherent in women’s illnesses, were deployed as discursive strategies in making and challenging cases of miscarriage and procured abortion. Because the physical evidence on which these cases depended was so slippery, claiming that miscarriage had a different cause, arguing that intentionally procured abortion had not occurred, or giving different interpretations to the signs of the body and meanings to the products that were expelled from the womb, were all tropes of criminal investigations. Accusers, defendants, and witnesses gave imaginative explanations for alleged miscarriage and abortion. Nevertheless, it is important to stress that these positions, though generally self-serving, were not necessarily lies or unrepresentative of experiences. This realization, then as now, did not allow for quick or simple understanding of what had occurred to the women of these trials. In all four cases, uncertainty and doubt framed and shaped the investigations.
2. Miscarriage from Violence

Miscarriage caused by violence was a crime and punishable offense in early modern Italy and was actively investigated by criminal tribunals. As we saw in Chapter 3, causing a woman to miscarry by means of violence was taken seriously not only because inflicting corporal harm on another, especially on a woman in such a fragile state as pregnancy, was always a crime, but also because it was understood to be a type of theft where the woman and her family were robbed of a future child. In early modern Rome, a pregnant woman who suffered such violence might appeal to the Governor’s criminal tribunal for retribution for the danger caused to her life and compensation for her loss. In these cases, the women who brought the charges and their witnesses argued for a causal relationship between the assault they claimed to have suffered and the termination of pregnancy. The accused challenged the allegations by denying the assault, by problematizing the causal link between their fight and miscarriage, and also by calling pregnancy and miscarriage into doubt. In the following cases, judges and witnesses struggled to process the signs of these women’s bodies and to determine the causes that brought pregnancy to an end.

i. *Injury with miscarriage* – Orsolina de Mirandola vs. Germanico Rastello, May 1581.\(^8\)

On the 28\(^{th}\) of May, 1581, Orsolina de Mirandola, a boarding-house keeper of perhaps 45 years,\(^9\) called a notary for the Governor’s court to her house just west of Castel Sant’Angelo. She wanted to denounce Germanico Rastello, man of unknown vocation but of some means, of

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8 Archivio di Stato di Roma (ASR), Tribunale criminale del Governatore (TCG), Processi, XVI sec., 1581, b. 175, fols. 982r-997r.
9 The accused states this approximate age as part of his defence strategy.
severely beating her during a fight three weeks earlier and causing her to miscarry, a few days later, a two-month old male foetus. Germanico admitted striking Orsolina, but only in self defence. He claimed that she and a male companion had attacked him first. More importantly, however, was Germanico’s allegation that he could not have caused Orsolina to miscarry because she was not pregnant. Countering her denunciation, Germanico accused the woman of fraud: Orsolina was trying to pass off menstrual blood as a dead foetus. In this case, the judge had to sort out two issues: first, to discover whether Germanico assaulted Orsolina with what severity; and second, to determine whether she actually suffered a miscarriage.

This fight, like many others that transpired on early modern streets, began over money. Orsolina told the judge that Germanico was supposed to pay her a certain sum on behalf of a former lodger, Cencio Cossa. Germanico was Cencio’s security (sigurta) responsible for covering the latter’s debts if he defaulted. At a recent meeting Germanico had assured Orsolina that she would be satisfied. A few days later, Orsolina, accompanied by another lodger Fabio Martini, ran into Germanico outside an apothecary shop (Spetiaria del Spagnuolo) in the Piazza di Torre Sanguigno, where she had gone to settle a debt of her own. Once Orsolina and Germanico had greeted each other, she pressed him (lo pregai) for the money. Likely embarrassed because she brought this up again so soon and in public, Germanico became immediately enraged and started to shout: “you are a scoundrel! I will have you whipped.”

Public displays of anger such as this were standard strategies to put off creditors and also ways for the debtor to bolster his or her honour by challenging that of the asker. Orsolina retorted: “I am neither a scoundrel nor am I a bitch, and I am not scared of a whipping, I have done nothing

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10 See Guido Ruggiero, Violence in Early Renaissance Venice (New Brunswick, 1980), pp. 11, 179.
11 She did not tell the judge anything about this debt other than that the owner of the Spetiale, Petro de Girona, had made a complaint against her to the Tribunale del Vicario.
to merit the whip.”

At this, according to Orsolina, Germanico and his servant attacked her with “many blows, kicks, punches, and slaps.” Germanico also pulled a dagger (she could not recall whether a *stilettto* or a *pugnale*) and wounded her head. Had other people not intervened, Orsolina said, “they would have killed me,” also a generic statement in lawsuits regarding assault.

Orsolina’s injuries worsened and she miscarried a few days later.

I say that from the wounds and the many hits that [Germanico and his servant] gave me, with weapons and without, I was close to dying, and after about four or five days from the beating, I began to urinate a lot of blood and later, when the bleeding stopped, I expelled from my body a dead foetus, which was male according to the midwife and in my opinion also, and, from what I can remember, the foetus was around two months old.

Orsolina denounced Germanico Rastello for violence to herself and to her sixty-day old male foetus. She asked the court generically for “*giustizia*,” for Germanico and his servant to be “chastised as they deserve.” She was, most likely, also seeking financial compensation for the assault and her loss.

To back up her complaint Orsolina identified witnesses for the beating and for her injuries and miscarriage. For the beating, she named Fabio Martini who was present at the assault. He later corroborated her story. Orsolina also suggested questioning the people on the street at the time, especially those who were in the pharmacy. On 30 May, the judge heard from several witnesses to the altercation who worked in the piazza: Petro de Girona, the owner of the
pharmacy where Orsolina had gone the day of the altercation, and his apprentice; Bernardino, a tailor; Attilio, a barber’s apprentice; and Antonio, a fruit vendor. These bystanders told, more or less, a similar story. Orsolina and Germanico quarrelled in the piazza; most witnesses said that Germanico started the exchange of insults, threatening to have her whipped, and that Orsolina retaliated with her own calling him a cuckold and his wife a scoundrel (*poltrona*) and a whore. Then, these witnesses stated that Germanico and his servant Andrea began to beat Orsolina, giving her kicks and punches. Germanico had a dagger in his hand and hit her with it two or three times before bystanders jumped between them. Breaking free, he hit her some more with the handle of the dagger, giving her several blows to the face, neck, and shoulders. Two witnesses said they saw blood, a significant piece of information which made the assault legally more grave; the others said they could not see with clarity from their positions. According to Petro, Germanico and his servant Andrea treated Orsolina “*molto male.*”\(^{19}\) However, none of these eye witnesses said whether they knew that Orsolina was pregnant and the judge did not ask.

Orsolina also had several witnesses who could testify to her injuries and to the miscarriage. Directly after Orsolina’s deposition and in her house, several of her lodgers, friends, and neighbours testified to having seen the aborted foetus.\(^ {20}\) Two of her tenants, Capitano Fabio Marchese de Priveno and Paulo Vacarino, and her neighbour Madonna Angelica testified that, about three weeks earlier, Orsolina came home looking beaten and with a wound on her head. Fabio Marchese and Angelica reported that Orsolina took to bed quite ill and after a few days she began to expel a lot of blood. All three witnesses testified to seeing in a basin a piece or pieces of

\(^{19}\) fols. 988r-991r.
\(^{20}\) fols. 983v-984r. Orsolina testified that three or four physicians also saw the aborted foetus but “I, being like dead, do not know who they were.” There appears to have been no attempt to find these physicians and have them testify. “Three or four physicians” was quite a lot of medical attention.
flesh ("un pezzo di carne", “certi pezzi di carne”). Fabio Marchese and Paulo Vacarino said that the midwife Agata examined the blood and material in the basin, and found “a piece of flesh which she held in her hands and said ‘behold, this is a creatura,’ which was masculine.”

According these witnesses, it was the midwife who recognised that Orsolina had miscarried. The midwife would later dispel this claim by stating that Orsolina herself had diagnosed her expulsion as a miscarriage before the midwife was called to her bedside. Later and without the midwife present, Angelica also examined the expulsion (sconciatura) and discerned that it was a foetus. “In my opinion,” Angelica said, “Orsolina had miscarried (era sconcia e disperata). But, whether it was male or female, I don’t know.” The gender of the foetus was inconclusive, not surprisingly for a foetus of sixty days. Interestingly, these witnesses said nothing about Orsolina being pregnant. It appears that her pregnancy had not been known or obvious.

The most authoritative testimony regarding the miscarriage came from the midwife Agata, who was questioned on 29 May in judge Vittutio’s office in the Savelli prison. Agata was called in not only as a witness to the miscarriage but also as an expert to assess its causes.

Married to a Florentine baker, Agata had been practicing midwifery for almost thirty years, ten in Florence and eighteen in Rome. The experienced midwife recounted what she saw but insisted that she did not know a lot of the details. She was also unwilling to speculate. According to Agata, “a few days ago” a woman brought her to see another woman who had just miscarried.

She said that she did not know their names but would recognise their faces, a standard form of identification. When Agata arrived at the house, she saw the patient in bed looking ill. Orsolina told the midwife that she had suffered many blows including a wound to the head, and that this

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21 fols. 985v-986r.
22 “…e maneggiandosi tra detto sangue furno trovati certi pezzi di carne li quali, a me et altri, parsero una creatura, et anco giudico la detta Orsulina si era sconcia e disperata. Ma si era maschio o femmina la creatura io non la conobbi. E quando io veddi detta sconciatura non ci era la mammana” fols. 986v-987r.
had caused her to miscarry. On this point Agata did not say whether she believed this to be true – she simply reported what the bed-ridden woman told her. Orsolina then instructed Agata to look at the basin where she had expelled blood. The experienced midwife looked at and handled the bloody expulsion and there, she opined, “found a small piece of flesh [un pezzetto di carne] which was a foetus.” Visual and tactile information were required to decipher the contents of the basin. “From the experience that I have in this art, I judge it to have been male.” The judge asked Agata about its age and she responded that it “could have been around two months [old].”

Agata’s involvement in this case and her testimony give rise to several points. The midwife was called to the house only after Orsolina miscarried, though we do not know precisely how much time had elapsed between the miscarriage and Agata’s visit. Evidently, she was not needed to help Orsolina through the event, nor did she appear to intervene medically afterwards. Agata was not called in as a healer. Rather, she was brought in afterwards to confirm that the “piece of flesh” was a miscarried foetus, to determine its gender and stage of development, and to potentially speak to the causes of the miscarriage. From Agata’s testimony, we get the impression that Orsolina was deliberately building a case against Germanico. Agata was called to her bedside as an expert who could diagnose what happened and who might later testify as an expert witness should Orsolina seek legal action or to potentially dispel any charges that she herself procured an abortion. Agata stated under oath that she saw an expelled foetus, described simply as “un pezzetto di carne.” She did not say whether it was formed, whether or not its limbs were articulated or how large it was. Agata was, however, confident that it was a male foetus and around two months, and this was significant. Based on Agata’s estimation of the foetus’  

23 [...] vi trovai in esso un pezzetto di carne il quale era una creatura, che detta donna haveva dispersa mentre si era sconcia, et anco giudizio per la esperienza che ho in questo exercitio era maschio.” fol. 988r.  
24 Ibid.
gestational age, Orsolina may have miscarried what the theologians and jurists would have called an animated foetus. As we have seen in previous chapters, this was theoretically a more serious offence than the miscarriage of a less developed foetus. But the foetus’ status was not well defined; the neighbour Angelica could not discern whether it was male or female.

On the testimonies of several witnesses, Germanico was guilty of assaulting Orsolina, who had subsequently suffered a miscarriage. The causal relationship between the miscarriage and the assault was not, however, firmly established. The midwife Agata confirmed that Orsolina had expelled a foetus but she was unwilling to speculate over the causes of the miscarriage. Agata preferred to relate to the judge the narrative that Orsolina had told her, rather than to give her own diagnosis of why the pregnancy failed. In addition to determining whether the assault caused the miscarriage, Judge Vittutio had to establish whether Germanico knew that Orsolina was pregnant. Recall that none of the witnesses who testified, neither her tenants and friends, nor the bystanders who witnessed the fight in the piazza, said anything about Orsolina’s pregnancy. This was important as penalties were considerably more severe for assaulting a visibly pregnant woman than one whose pregnancy was not obvious. In fact, if pregnancy was in doubt, or not discernible to an observer, Germanico might only be tried for assault rather than for the heavier crime of causing miscarriage.25

Judge Vittutio had Germanico arrested and questioned him at the Tor di Nona prison. The official began with a standard question posed to all prisoners – did he know why he was arrested? Germanico replied that he knew only what the warrant told him: Orsolina demanded money from him and he responded with blows and stabbing (stilettate), which she claimed caused her to miscarry. “For this reason,” Germanico said rhetorically, “I have committed

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25 See Chapter 3 of this dissertation.
homicide.” No one had officially accused Germanico of committing homicide; he likely made this statement in order to exaggerate the charges and make them appear ridiculous. He denied the accusations made against him by making accusations of his own. Germanico claimed that Orsolina had assaulted him and was now committing fraud by claiming that he was responsible for a miscarriage.

According to Germanico, he was the victim, not Orsolina. While purchasing chicory from a vendor outside his home on the 10th of May, Germanico felt a tug on his jacket. Before he had a chance to speak, Orsolina began to cry “I am that poor, unfortunate woman” and so on, and then began to hurl insults first at Cencio Cossa who owed her money and then at his backer Germanico, accusing him of being a false witness: “The two of you have destroyed me,” the woman shouted. Germanico told her to shut up and go away, and, he admitted, he threatened to have her whipped. Orsolina retaliated by calling him a cuckold and his wife a whore, as well as other similar words which, Germanico claimed he was ashamed to say. Making quite a fuss, Orsolina kept on swearing and shouting, and then began to hit herself in the head, saying that she had a hard head. Germanico tried to leave this scene. As standers-by told him that arguing with such a woman was beneath him, a man wearing a yellow jacket and red socks yelled “stop there,” grabbed him and started to hit him. Germanico pulled a dagger, which he carried for protection, not to hurt her or the man in the yellow jacket, he insisted, but to keep them back. Orsolina lunged at him and he reacted by hitting her three or four times with the butt-end of the dagger. These blows were not too serious, Germanico claimed, resulting in a very small wound and without any danger. After this altercation Germanico allegedly looked for the Governor (or

26 “Donna Orsolina venesse un giorno a dimandarmi delli denari e ch’io le detti delle botte et delle stilette, che per lei patisse abhorto e consequentemente che per questa causa io havessi commesso homicidio.” fols. 991v-992r.
27 Germanico said this was specifically to defend himself from his brother’s enmity. No further information is given regarding his feud with his brother.
one of his officers) to report the matter but apparently he could not find anyone.\textsuperscript{28} Germanico then went home and only recently found out that Orsolina had lodged a complaint against him. In his testimony, Germanico represented Orsolina as a quarrelsome and troubled woman.

In his defence, Germanico not only downplayed the severity of the assault and his culpability, but also questioned the very miscarriage that Orsolina and her witnesses claimed that she had experienced. He maintained that she could not have miscarried because she was never pregnant. “She could not have been pregnant,” Germanico explained, “because she must be more than forty-five years old.” Orsolina, he claimed, was beyond the age of fertility. Moreover, he stated that she did not have any other children, implying that she had been infertile for most of her life.\textsuperscript{29} It is unclear how Germanico knew these facts about Orsolina, but he likely would not have made these claims unless he thought the judges might find them credible. Perhaps Orsolina was visibly old and would have been judged so by onlookers.

Germanico’s counter-claims to the charges of causing miscarriage rested on the lack of evidence of Orsolina’s pregnancy and, indeed, of its implausibility. Even though the midwife and others had testified that Orsolina had miscarried a foetus, and, therefore, that she must have been pregnant, Orsolina’s condition may not have been discernible to observers. Furthermore, her age, which Germanico put as about forty-five years old, may have banished any thoughts that she might be fertile. This was, of course, a defensive strategy and not necessarily convincing. But, Germanico may truly not have known that Orsolina was carrying when he hit her. However, this was also a standard defence in line with contemporary assumptions regarding the uncertain appearance of pregnancy, especially in its early months. As we saw in Chapter 3, jurists warned

\textsuperscript{28} He did, however, find an unnamed signore Arciprete and told him the story.
\textsuperscript{29} “le botte mie non furno tale che potessero causare aborto, quando bene domina Orsolina fosse stata gravida, ma io ve dico che lei non si ingravidò mai, né mai hebbe figli, tanto manco può esser gravid adesso che deve avere più di quaranta cinque anni”. fol. 994r.
judges to expect such defences in cases of miscarriage caused by violence, but they were not easy to discredit and, in many cases, might have been genuine.

Interrogated again on 8 June, Germanico did not change his story: “I told you before that the blows she received from me would not [...] have made her miscarry [spurgarsi], and the truth is that she was not pregnant.” Between interrogations, Germanico had been building up his own case against Orsolina and now had more information to offer the judge. At the time of their altercation Orsolina, he reported, was menstruating. She could not have been pregnant if she had her period, Germanico argued. He had witnesses to corroborate this. Ludovico Monticuli, a surgeon who treated Orsolina after the beating,30 allegedly told Germanico that he had wanted to bleed her but she resisted because she had her period – letting blood while she was menstruating, it seems, would have been debilitating. Germanico also discovered, though he did not say how, that Orsolina had asked her neighbour Bernadina Puttaroli to stay with her for two or three days after the fight so that the woman Bernardina might later testify that Orsolina was very ill and did indeed suffer a miscarriage. Realizing this might be a bad idea, Bernardina sought the advice of another woman named Diamante, who also claimed that Orsolina had asked her for this same favour, i.e., to falsely claim that she was very ill and had eventually miscarried. Diamante warned Bernardina not go to comply so as not to risk whipping for perjury. Germanico also claimed that another woman called Dionora went to see Orsolina right after the altercation. Helping her undress, Dionora saw that Orsolina had her period – she saw Orsolina take off her pad (la pezza del marchese) so that no one else would see it and know that she had her period. Since she had her period, Germanico argued, “she could not have been pregnant.”31 Evidently,

30 Domina Angelica said that he was present in the room when she saw the basin with bloody urine.
31 Germanico had two more witnesses who could confirm that she was menstruating. After the beating, Germanico, perhaps feeling guilty, sent Domitio Stefano and Giovanni Bernardino from Zagarola, healers of some sort, to give Orsolina aqua da costei (a healing cordial). Orsolina told these two men that Germanico had caused her
Germanico saw no contradiction in claiming that she was menstruating with his previous claim that she was beyond the age of fertility. The evidence that Germanico provided all spoke to fraud: Orsolina was setting him up.

Judge Vittutio apparently assigned little weight to this new evidence; he neither asked any follow up questions nor did he summon any of the witnesses. Rather, continuing to press Germanico, the judge had the notary read out all the testimonies collected regarding the miscarriage, which was standard procedure. Germanico challenged the witnesses’ conclusions and their credibility: “I understand what has been read to me and I say that this is not the truth [...] this was not a miscarriage.” He did not question Orsolina’s bleeding but rejected the interpretation: “people who understand this thing much better [know] that this was not an aborto.”

These were Germanico Rastello’s last words in this trial document. Judge Vittutio released him from isolation (la segreta) to be set “at large” in the public rooms of the prison in order to prepare his formal defence. With his last testimony, Germanico challenged Orsolina’s reputation with the new evidence he had provided. He admitted that he hit her, but not to the extent that she was claiming. Germanico called her a liar and a cheat – she could not have miscarried because she was not and could not have been pregnant.

Both sides of this suit played on the uncertainties of pregnancy and its termination in their testimonies. Though we do not know how this case ended – perhaps Orsolina and
Germanico settled out of court? – we do learn about perceptions of pregnancy and of its termination from the claims of the accuser, the accused and the witnesses. Witnesses and the judge knew that violence could bring on miscarriage, but they also shared the assumption that it was very difficult to prove with certainty what the actual cause was. Orsolina’s allegations were textbook. Germanico was a cheat who owed her money and he was quick to violence. He gave her many blows, kicks and punches, and also slashed her head with a dagger. The injuries she suffered were debilitating and led to her expelling a bucket full of blood and a two-months old foetus. The accusation was plausible because everyone knew that violence could cause miscarriage.

From Germanico’s defence, however, we learn that pregnancy, especially in its first few months, was not clearly discernible and that it could be contested in a court of law. As the Roman jurist Prospero Farinacci wrote, a judge should be lenient on the person who hurt a woman without knowing she was pregnant. In such cases, the assaulter could be charged for violence and injury, but not necessarily for causing the miscarriage or for terminating the life of an unborn. It is particularly striking that the judge did not question the witnesses or Orsolina herself regarding the alleged pregnancy. Did Orsolina know that she was pregnant before the altercation? Her own silence on this issue, as well as that of her witnesses, may imply that no one knew that she was pregnant. As we saw in Chapter 4, pregnancy was extremely difficult to recognise in its early months, both for women and especially for onlookers. Orsolina may not have known that she was pregnant before she miscarried, and she may very well have believed that Germanico’s assault was the cause. In this case, discovering whether or not the defendant

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34 “Et rursus eadem conclusio procedit in percutieta mulierem, quam praegnatem sciebat; secus si ignorabat, tunc enim etiam abortu sequuto, non tenetur de eo, vt videtur de mete Iacob. Butrig. [...] vbi iustam, & probabilem dixit ignorantiam, quando ex aspectu mulier non apparebat grauida, & sic non habebat corpus tumidum,” Prospero Farinacci, Praxis, et theoricae criminalis (Louvain, 1631), n. 153, p. 219.
Germanico’s defence was, however, more complicated than simply claiming that Orsolina was not visibly pregnant. Aside from trying to discredit Orsolina’s reputation by representing her as crass, irrational and violent, Germanico also claimed that she was not pregnant and had not miscarried but was trying to pass off menstrual blood as the death of a foetus. He never discussed the “piece of flesh” that witnesses testified Orsolina had expelled along with bloody water, but he maintained that “people who understand this thing much better [know] that this was not an aborto.” Rather, Germanico explained that this was menstrual blood. Authors of works of jurisprudence warned judges that blood expelled from the vagina could have multiple meanings. For instance, the Roman jurist Prospero Farinacci surmised that men are often fooled into thinking that they have deflowered women when in fact they have had intercourse with a woman while she was menstruating. In his defence, Germanico was consciously deploying well worn narratives of female duplicity in matters pertaining to the body and generation. As we saw in Chapter 3, jurists assumed that women could use the ambiguities of their bodies in exactly this way. The Florentine jurist Antonio Cospi warned that women get into fights when they are pregnant in order to later accuse their opponents of causing them to miscarry. Women also tried to pass off menstrual blood as miscarriage. Women were cunning and deceptive and could represent their bodies in numerous ways for personal gain. Germanico

35 “[…] et provato da gente che se n’intendano molto meglio di loro che questo non e aborto.” fol. 996r-v.
36 “Verum ista probatio est fallax, quia iste sanguis potest, quandoque venire a menstruo, & quando que etiam provocatus a callidis mulieribus, qui pluribus fraudibus, & artibusutuntur ad faciendum credere viro, quod tempore carnalis cognitionis era virgo […]” Farinacci, Praxis et theoricae criminalis, De delictis carnis, quest. 147 Probatio, tit.16, n.149, p. 727.
explicitly stated that he was not responsible for the miscarriage because Orsolina was not pregnant. Orsolina, he argued, was a cheat.

Both the accused’s and the accuser’s claims were plausible. Both hung on the shared assumptions that women’s bodies were ambiguous, that the causes of miscarriage were almost always uncertain, and that uterine expulsions could be given various meanings. Without a sentence, we are left wondering what the judge was thinking. Whose story was more believable?

ii. Miscarriage – Angela da Filettino vs. Venere Bolognese, 1603.38

On Saturday 4 October, 1603, Angela de Filettino, a prostitute who lived near the Leoncino inn, denounced Venere da Bologna, also a prostitute living nearby, to the Governor’s criminal tribunal for assault that allegedly brought her close to death. Angela was six or seven months pregnant at the time. A few days into the trial, Angela miscarried a dead foetus. As in the 1581 case previously discussed, this trial hinged on the causes of the miscarriage. However, unlike in the previous case, here the accused never called into doubt the pregnancy or the miscarriage; Angela’s pregnancy prefigured the fight and she miscarried during the trial. Rather, Venere’s defence was built on the claims that she never hit the pregnant woman and also that the miscarriage could not be blamed on an altercation that occurred almost one month earlier. Uncertainty regarding the causes of miscarriage framed this investigation. Although collecting testimonies from numerous witnesses, the court mainly relied on the expert testimony of two medical professionals, a physician and a midwife, who were called on to examine Angela’s body and that of her aborted foetus in order to assess the severity of the assault and the damage inflicted, and, ultimately, to discover the causes of her miscarriage. While they agreed that it was

38 ASR., TGC., Processi, 1600-1619, b. 28bis, fols.770r-791r.
possible for a woman to miscarry several weeks after assault, both medical practitioners could not say with certainty that Venere was responsible for Angela’s miscarriage.

In her denunciation, which took place in her house, Angela recounted the events that led up to the beating and, in her mind, the miscarriage. The women clearly knew each other well and shared the same networks of acquaintances. Angela claimed that around twenty days earlier she had heard from a friend that Venere was insulting her in public. Specifically, Venere was saying that Angela accepted sodomy. Also, while Angela’s young son (putto piccolo) passed through the street, Venere allegedly pointed to him and said “this child is the son of that buggeress (bugiarona).” Even more insulting, Venere threw a quattrino at the child and asked him “where does your mother get fucked, in the ass? [dove si fa fottere tua madre, in culo?]” Hearing this slander, Angela marched to the Via del Leoncino to confront Venere, whom she found sewing outside on her doorstep. The two exchanged words and then Venere allegedly charged Angela, choked her and kicked her in the belly. The pain was intolerable, Angela told judge Carretto, “because I was pregnant.” After the beating, Angela felt very ill and took to bed. A few days later, she had decided that the foetus must be dead in her body because she could no longer feel it move. Even though her body had not yet expelled the unborn, Angela filed suit. She demanded that Venere receive swift punishment for her injuries and loss. Like Orsolina in 1581, Angela was likely also seeking compensation. Venere was arrested later that day (4 October) and brought to the Tor di Nona prison on the grounds of having given “numerous punches and kicks

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39 Cesarina Casanova says that this word was a standard insult hurled at prostitutes in Bologna. In fact, calling a woman a bugiarona was synonymous with calling her a prostitute. Prostitutes allegedly allowed for this type of ‘pollution’ in order to avoid pregnancy. Men also requested anal intercourse for this reason. Crimini nascosti, pp. 114-115.

40 “Et lei all’hora mi cominciò a dare delle calci nella panza che tutta mi rovinò perché io son gravida, et dall’hora in qua io non son stata più bene et non mi sono levata da hier sera in qua che da nove di in qua mi è morta la creatura in corpo che io non me la sento più et sto molto male. Che Dio lo voglia che io ne campi! Però io ne dò querela et domando che detta querelata sia castigata conforme al giusto.” fol.771r-v
to Angela, who was six or seven months pregnant, and causing Angela to come close to dying.\textsuperscript{41} The charges as they appear on the court records were not, at this point, for causing miscarriage but for assault and injury. Though Angela claimed that her unborn was dead, the charge for causing miscarriage would only come if she expelled a dead foetus.

As was common, the judge, Giulio Carretto interrogated other witnesses before questioning Venere. First, he called the physician Dr. Timoteo Camotio whom the court had sent to Angela’s house to evaluate two medical issues: first, the health of the mother and the causes of her injuries; and second the alleged death of her unborn. Dr. Camotio had examined Angela three times in two days, each time finding her progressively worse. He examined her first on 5 October, the day after Angela made her complaint, and again the next morning. He found her in bed and visibly ill. He felt her body \textit{(trattatoli il corpo)} (he did not specify where) and found it cold. Camotio also reported seeing in the room a birthing chair. Angela, it seems, was getting ready to deliver. Examining Angela’s body, Camotio saw that the umbilical cord had fallen outside of her vagina and described it as black, motionless, and cold – all signs that her unborn was dead.\textsuperscript{42} It is unclear whether anyone else was present during Camotio’s examination. Evidently, it was not deemed improper for Angela, a prostitute, to be examined by a physician, nor did Camotio express hesitations in touching the prostitute’s body or viewing her genitals.\textsuperscript{43} However certain Camotio was that the unborn was no longer alive in Angela’s belly and that this was putting her life at risk, he did not give her any medicine to expel it. As we saw in the previous chapter, physicians had, at least in theory, many purgatives at their disposal with

\textsuperscript{41} According to the warrant. The court sent officers \textit{(sbirri)} to arrest Venere on the night of the 4\textsuperscript{th} but she had fled to the house of a neighbour and hid under a pile of hay, fol. 772r.
\textsuperscript{42} fol. 771v. It is unclear whether Camotio touched it himself or whether he was repeating what someone else told him. For a similar examination by another Roman physician, see Cohen, “Miscarriages of Apothecary Justice,” p. 501.
\textsuperscript{43} This was an emergency situation and should not be taken as representative of daily practice in healing women.
which to expel a dead foetus from a suffering woman. However, the decision to use such a purgative was not as easy as prescriptive medical literature pretended. Even though he testified that a black, cold, and motionless umbilical cord that had fallen outside of a woman’s body was a “manifest sign” that the foetus was dead, and that the woman carrying the dead unborn was at risk of death, Dr. Camotio, it seems, was unwilling to intervene and abort Angela’s failed pregnancy.\(^{44}\)

The physician did not, however, have to wait long for Angela to miscarry. She expelled her dead unborn the next day (6 October). Dr. Camotio paid her another visit that afternoon and returned to court to give further testimony. He examined the “dead foetus” and reported that it was in bad shape; he described it as long as one and half palms, rotten and putrid; its head was black, all bruised and misshapen. The physician said that this could have been caused by the violence that Angela said she suffered, but he was unwilling to be more definite. Despite the body’s condition, Camotio was able to discern that it was male.\(^{45}\) He told the judge that there were a number of witnesses present who also saw the expulsion and who could testify to its appearance.\(^{46}\) Angela herself was still very ill and her life in danger. Camotio did not say whether he gave her any medicine to ease her suffering.\(^{47}\)

With the expulsion of the dead foetus, the case had now officially turned into an investigation into \textit{aborto}, that is, miscarriage due to violence. The court sought witnesses who could attest to the assault and its gravity. Four women were brought in to testify on the afternoon of 5 October: Angelica Buschetti, Astonida da Jesi, Caterina da Jesi, and Laura da Firenze were...

\(^{44}\) Perhaps Dr. Camotio was instructed to refrain from hastening the miscarriage in order to see when the foetus would be naturally expelled? However, compare this to a 1610 case where a physician purged a woman in similar danger in an attempt to save her life, Cohen, “Miscarriages of Apothecary Justice,” p. 501.

\(^{45}\) The physician was not, however, sure of what to call it; in Latin, he referred to the expulsion as a “foetus, or abortion, or so-called \textit{creatura}” (\textit{Quem fetum seu abortum et dictam creaturam}), fol. 772r.

\(^{46}\) The judge would later hear the testimony of some of Angela’s witnesses who also described the foetus as a dead male baby, black, bruised and rotten. fol. 774v.

\(^{47}\) fol. 772r.
all present when the fight occurred. These women were likely prostitutes and three of them lived on the same small street as Venere. All four women appear to have been Angela’s friends and, adding a few new details, they corroborated her story. They all testified that, after some verbal sparring, Venere ran into the street and assaulted Angela, grabbing her by the throat and strangling her, punching her in the mouth and in the stomach and kicking her.

Aside from establishing whether Venere actually hit Angela, Judge Caretto wanted to know whether Venere knew that Angela was pregnant. This was important. If Angela’s pregnancy was not obvious, or could be called into doubt, then Venere’s assault would have been less grave and the case for causing miscarriage more complicated. Angela’s four witnesses testified that Venere knew well that she was assaulting a pregnant woman. Angela was known to be pregnant. This was not information privy only to her friends: “I knew [Angela was pregnant],” Astonida told the judge, “because she had a large belly [corpo grosso],” a sign which would have been obvious to any observer, including Venere. Angela’s pregnancy, it seems, was a social fact in their neighbourhood. These witnesses reported that, when Angela first confronted her, Venere allegedly said “Get out of here. I do not want to get into it with a pregnant woman.” These witnesses also reported that Venere’s roommate Livia, who was present, tried to break up the fight by shouting at “Venere, think about what you are doing!” “Stop, don’t do it! You want to turn your back to Rome! [i.e., be whipped] Don’t you see she’s pregnant?” to which Venere allegedly responded “Me importa assai a me!” and she kept her hands on Angela until someone else (the witnesses did not say who) broke it up. Evidently, Venere knowingly attacked a pregnant woman.

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48 fols. 773r-775r. According to Laura da Firenze, Venere allegedly said “Levameti dinanzi, che io non mi voglio mettere con le donne pregne.” fol.774v
49 fols. 773v-774r.
With these testimonies and those of the physician Camotio, Judge Carretto was ready to interrogate Venere on Monday 6 October in the Tor di Nona jail. In Venere’s version of the story, this whole affair stemmed from a misunderstanding. She claimed that it was not she who asked Angela’s son if his mother accepted sodomy but a fruit vendor named Sguercino. This fruit vendor allegedly threw the boy a peach as he passed by Venere’s door, asking him where his mother receives intercourse; the boy answered by pointing to his backside and demonstrating how it is done. A few days later, Angela’s son again passed Venere’s door, this time completely unlaced. Venere was with a priest at the time (she could not remember his name) who commented on the child’s depravity: “Look at how this putto goes [around]!”

Venere told the priest and onlookers about the exchange between the boy and Sguercino the fruit vendor, and this got to Angela, who later stormed to Venere’s house and began hurling insults at her. Venere apparently tried to explain the misunderstanding, but Angela was livid and irrational. When Venere accused her of being drunk, Angela responded with more insults.

Judge Carretto asked Venere whether she knew that Angela was pregnant. She did: “I knew that Angela da Filettino was pregnant when I yelled with her, because she had a big belly and had been known to be so earlier.” Unlike in the 1581 case, here pregnancy clearly prefigured the fight and Venere never denied it. Because Angela was pregnant, Venere allegedly tried to end the confrontation several times: she told Angela, “If you were not pregnant, I would teach you how to speak! Go to the devil.” But Angela would not leave. She was looking for a fight, allegedly saying: “Do not look that I am pregnant [Non guardare che io sia gravida.]” Venere admitted to picking up a rock with the intentions of striking her, but Livia, her

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50 fol. 776v.
51 fols. 776r-779r.
52 fols. 778v-779r. “Signorsì che io sapevo che detta Angela da Filettino quando io gridai con lei che era gravida, perché si conosceva che haveva la panza grossa et era innanzi.”
companion, held her back, reminding her that she would get in trouble for fighting with a pregnant woman. Coming to her senses, Venere backed off, returned to her doorway and sat down to sew, and Angela went on her way, crying. Livia would later confirm Venere’s story that Angela egged her on: according to Livia, Angela allegedly said “forget that I am pregnant; come out because I want to get into it with you.” Angela, it seems, was being deliberately provocative in flaunting her belly. Venere, however, was adamant that she never hit her.

In Venere’s version of the story, this whole affair stemmed from a misunderstanding and escalated due to Angela’s temper, which was directed at the wrong person. Venere knew that Angela was pregnant and therefore knew that she should not touch her. She claimed to have defended herself with words. “I did not do anything other than talk,” Venere insisted, “I did not punch, kick or touch her. Whoever says otherwise is lying.”

Why would Angela and her four witnesses make up such a story? Venere said that after their altercation, someone – she could not remember who – told Angela that Venere was planning on making a complaint against her. So Angela retaliated with a lawsuit for assault and causing the death of her unborn. Regarding the testimonies of Angela’s four witnesses, Venere explained that they lied because they wished her ill: Astonida and Laura hated her because she stole two of their clients; Venere told the judge that she was in a feud with Angelica because the latter stole one of her clients, a wine steward to the Cardinal Mattei, who allegedly wanted to marry her. Venere, it seems, had a history of conflicts with these women.

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53 fols. 776v-777r.
54 Livia testified on 13 October, fol.787r-788r.
55 It is unclear whether the court tried to find the fruit vendor Sguercino or the priest Venere was allegedly with the day of the altercation.
56 fol. 777v.
57 fols. 776r-777v. In the 1581 cases examined above, Germanico Rastello made a similar claim, saying that he tried to bring a lawsuit against Orsolina and that she retaliated with one of her own. This appears to have been a standard strategy of the accused in order to demonstrate that they were the victims and not the aggressors.
58 fol. 778r-v
Inquiring into the defendant’s relationships with witnesses often gave the judge a sense of the person’s character, their reputation and of their *fama* in their community and, most importantly, who wished the person ill. Testimonies also revealed some of the social contexts of events. Venere, it seems, was notorious in the neighbourhood as a trouble maker, a quarrelsome prostitute who stole other women’s clients. Yet Angela’s four witnesses were also troublemakers and likely had ulterior motives when they testified. In exposing these relationships, Venere cast these women’s testimonies into doubt. As was standard in criminal investigations, she was forced to confront Angela’s four witnesses. They confirmed their testimonies and Venere accused them of lying because “they wish me ill.” “Signore, I have never hit Angela and she did not miscarry because of me. And that which the witnesses said to my face is not the truth. If your lordship wants to give me the *corda*, do as you wish, I cannot do anything else.” Venere was willing to face torture to prove her innocence. Judge Carreto, it seems, was not ready to take this step.

Besides denying ever having touched Angela and challenging the intentions of her witnesses, Venere’s legal strategy also questioned the causes of the miscarriage and, in particular, its timing. How could her confrontation with Angela have caused a miscarriage almost one month later, Venere asked? If the alleged beating was as severe as Angela and her witnesses had claimed, would she not have miscarried sooner? Venere was adamant that Angela’s miscarriage had another cause. She offered Angela’s occupation: “why does she sleep

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60 On Tuesday 7 October.
61 On fols. 781v-783v.
62 The *corda or funi* was a frequently used means of torture. It consisted of having one’s hands tied behind one’s back, and another rope tied around the wrists which was thrown over a beam in the ceiling from which the witness was hoisted up above the ground, dropped from various heights, and hoisted up again. The body’s weight would all bear on their inverted shoulders, eventually resulting in dislocation. See Edward Peters, *Torture* (Oxford, 1985), p. 68.
63 fol. 83v.
every night with *bertoni*?" The word ‘bertoni’ covers a range of meanings from boyfriends to lovers, with an implication of illicit relations.

64 "[..] non saria stata tanto a sconciarsi come ha fatto ne se saria sconciata all’hora, ma per altro bisogno che se ha sconciata che per questo. Ma perchè lei dorme ogni notte accompagnata con li bertoni." fol. 777v. The word ‘bertoni’ covers a range of meanings from boyfriends to lovers, with an implication of illicit relations.

65 "Non si debbe anco prestar molta fede alle pubbliche meretrici, qualle dicono d’auer fatto aborto per colpa d’alcuno, perché queste o non concepiscono, o non portano bene il parto. La cagioni sono molte, e particolarmente, per che la frequenza degli atti venerei tiene tuttavia aperta la matrice, la quale in quello stato non puo ritenere il seme, e per questo la matrice si rende aco piu umida: nella quale pol viene il seme a soffocarsi […]. Cospi, *Il giudice criminalista*, p. 507.
more since I did not hit her.” Venere maintained that she never hit Angela and that her miscarriage could not have been caused by the events that transpired over three weeks earlier.

On Tuesday 7 October, after hearing the inconclusive confrontation of witnesses, Judge Caretto set out to gather more information by questioning medical experts. He began with Cleria de Tibaldo, a Roman midwife who had been called to Angela’s house several times since the alleged beating, and then turned again to Dr. Camotio. Cleria told her version of the story backwards. A few days ago, she came to Angela’s house, found the foetus beginning to be “born,” and she helped Angela deliver it. The foetus was dead, it smelled terrible, its head was rotten and its bones dissolved. Cleria asserted that it had been dead for at least ten days because, on her previous visit, ten or eleven days earlier, she had touched Angela’s belly and “did not feel the foetus.” She could not detect its presence because the foetus was not moving. On another visit, Cleria found that Angela had expelled white and “rotten blood,” and that part of the umbilical cord (budello) was outside of her vagina – it was black and rotten. Like Dr. Camotio, she knew this as a “most certain sign” that the foetus was dead, especially because “the umbilical cord did not palpitare at all, as it is supposed to.”

Judging her to be an authority in such matters, judge Caretto wanted to know Cleria’s judgement on the cause of Angela’s miscarriage. Could it have been caused by violence experienced so many days earlier? Cleria replied that miscarriage could indeed occur one month after receiving a beating. She based her knowledge on experience: “I have had some [women] who have carried dead foetuses in their bodies for as much as twenty-two days, some for fifteen,

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66 “Io dico a Vostra Signoria che se fusse vero che io l’havesse dato de pugni et calci nel ventre come dicevano quelle vicine che subito se saria sprecato la creatura dalle reni et non saria stato tanto tempo, ma bisogna che sia stato per altra causa, tanto più cheio non li ho dato.” fol. 778r.

67 “Et questo io lo giudico perché essendoci stata chiamata un’altra volta diecie o dodici giorni prima che detta Angela stava male, et havendoli messe le mani sopra al corpo io non li sentei la creatura, se bene lei diceva sentirsela, et tre di prima che partorisse li venne fuora della natura un budello nero et fracido che era segno evidentissimo che la creatura era morta in corpo, perché detto budello non palpeggiavante come è solito, et dalla natura gli usciva sanguaccio bianco et fracido.” fol. 779r-v.
and others for ten.” This, Cleria explained, depended on the complexion and the vigour of the foetus. It also depended on where it was hit – if in the head, it dies quickly, but if it is hit in other parts, it lives longer and it takes longer to die. “And this I know from the examinations (prove) I have done and from experience.”

Evidently, Cleria had attended several miscarriages. Nevertheless, Cleria could not say with certainty what specifically caused Angela’s miscarriage:

I cannot judge whether Angela’s foetus died because of the blows that she said she was given, because [the miscarriage] could also have been caused from her sexual encounters [negotiare] or from illnesses [or injuries] that she has, but I do not know what illnesses these might be. For this reason, I cannot judge whether the foetus was dead because of the beating, but the physician may be able to say.

Like many other expert witnesses giving testimony in criminal matters, this midwife was cautious and disinclined to speculate. Her testimony that it could take weeks for a beaten pregnant woman to miscarry made Angela’s claims plausible. However, Cleria also raised doubts. Angela’s miscarriage may have had other causes, including, as Venere suggested, her dishonest line of work. Cleria, it seems, recognised that certainty about the causes of Angela’s miscarriage could not be had.

Judge Caretto also called on Dr. Camotio to give further testimony on the causes of aborto. The physician’s answers were taken straight out of his medical books, but, like the midwife, he recognised multiplicity. Generally speaking, miscarriage could occur from blows to the belly, jumping, a fall, fear, anxiety, and also sexual activity. If a pregnant woman was hit in

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68 “Io so per vita e per esperienza che una donna gravida havendo recevute botte o percosse puol fare l’aborto un mese dopo che ha così recevute dette botte, perché come ho detto io ne ho havute alcune che hanno portato le creature morte in corpo sino a vintidui giorni, alcune quindici et altre diece, et più o meno secondo la complessione et gagliardia della creatura. Et so anco che se la creatura che sta in corpo è percossa in testa subito more, ma se è percossa in altre parte vivrà più e tardarà più a morire. Et questo io lo so per le prove che ne ho fatte et per l’esperienza.” fol. 779v.

69 “Negotiare” was a common colloquialism for sexual intercourse – from the family of words for doing business or selling things. Cohen, “No Longer Virgins,” p. 172.

70 “Io non posso giudicare che la creatura di detta Angela sia morta per le percosse che lei dice esserli state date, perché può anco esser causato che lei si habbia fatto negoziare, et perché anco lei ha male abbasso, ma io non so che male se sia, et per questo io non posso giudicare che detta creatura sia morta per dette percosse, ma il medico forsù ve lo sapra dire.” fols. 779v-780r.
the stomach, especially near the womb, miscarriage would likely follow. The miscarriage could take as long as one month following such a blow. Camotio explained that this would depend on the strength or vigour of the pregnant woman. A strong woman could withstand the effects of the beating for beatter, thus taking longer for the foetus to die and for miscarriage to occur. A foetus could be dead in a woman’s body for up to a week before the woman expelled it. Any longer than seven days, Camotio believed, would result in the mother’s death.71

The crucial question in this case was how long had Angela da Filettino’s foetus been dead in her body before she expelled it? Midwife Cleria estimated that the foetus had been dead for at least ten days. Based on his estimations, Dr. Camotio thought that the foetus would have been dead for only six or seven days.72 Holding the learned physician’s opinions in higher regard than the midwife’s, or perhaps recognizing the impossibility of arriving at a certain knowledge on this issue, judge Carretto did not try to reconcile Dr. Camotio’s and midwife Cleria’s estimations. Nevertheless, according to the opinions of both medical practitioners, it was conceivable, then, that the assault Angela suffered over twenty days earlier lead to the death of her foetus approximately ten days later. Due to Angela’s strength and vigour, it took a while for her unborn to die, and she was able to withstand the dangers of harboring a decaying carcass in her body for about a week before she expelled it.

Judge Carreto questioned Venere again with this information and, maintaining a woman cannot carry a dead unborn in her belly for that long, she rejected both these expert witnesses’ testimonies. In any case, Venere still insisted that she did not touch Angela. She was in no way responsible for the miscarriage.73 Legal and medical culture, however, had another argument that might hold Venere responsible. Judge Carretto knew that agitation and fear could prompt a

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71 fol. 784v.
72 fol. 785r.
73 fols. 780rv and 786r.
miscarriage. A few years later, the Governor’s Criminal Tribunal would investigate the charges made by candymaker against his guild for causing his wife to miscarry and later die by storming into his shop and frightening her with allegations of fraud. As we saw in Chapter 4, it was well known that sudden fear caused the tightening of the belly, which could kill the unborn or force it to come forth prematurely. Perhaps Venere terrified Angela with threats and this caused the delayed miscarriage.

Venere’s comments acknowledged this possibility even as she discounted it in the case. She admitted that she picked up a rock and threatened Angela with it, but she continued, “My face is not so ugly as to make her [that] scared. […] Angela] did not miscarry because of fear.” And, even if Angela had been frightened, Venere still maintained that she would have miscarried much sooner, within three or four days and not twenty-four. Venere did not deny the connection between emotional assault and miscarriage but dispelled it as a cause of Angela’s miscarriage on the grounds of timing. “Even if your lordship has all of Rome [claiming that I caused her miscarriage], it would not be true that I hit her or that [she miscarried] out of fear from our argument.” Judge Carretto had no more questions for Venere. She was moved from solitary confinement to the general holding area of the jail.

Before concluding his investigation, judge Caretto questioned Angela da Filettino once more at her house on 22 October, twelve days after Venere’s final examination. The judge wanted to hear from Angela herself when she had stopped feeling the unborn and how long it took for her to expel it. Following the alleged beating, “when did you start discharging water and blood?” Three days, she replied, adding that after about five or six days she felt a great weight in her womb. Angela specified that the heaviness meant that the unborn was dead weight, that it

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74 Cohen, “Miscarriages of Apothecary Justice.”
75 fols.785v-786r.
76 fols.786v.
was not moving, and, therefore, no longer alive. She also stated that she felt pain in her kidneys and hip, and that she could not hold her urine or stool. “Did you smell anything foetid emanating from your womb [utero], when did this odour start, and for how long did it last?” Judge Carretto asked. To these very specific questions, Angela responded with precision. From about five or six days following the beating, she said she smelled stinky and foetid odours. So bad was the odour that she could barely remain in the house and no one could come and visit her. The smell was a strong indication of when the foetus had died as odour signified putrefaction. But why had no one else mentioned it? Angela added that soon after the beating, she expelled “pieces of blood (pezzi di sangue) black like carbon and stinky like a carcass.” Judge Caretto asked why had Angela not come to make a complaint immediately after the altercation? “Because I was stunned,” she said, “I was completely undone/shattered (sbattuta).” Following the beating, she said she went mad, “as a woman without a brain,” and that she could not stand on her own feet but walked around the house on all fours and writhing in pain. Angéla’s experience of miscarriage was consistent with medical and legal expectations. Evidently, Judge Caretto accepted Angela’s description of her miscarriage and did not require midwife Cleria or Dr. Camotio to interpret this last testimony.

The trial record ended there. On 15 November, the court sentenced Venere to pay thirty scudi – fifteen to Angela and fifteen to the court. This was a substantial sum. Ultimately, Angela prevailed. Venere’s claims that she never hit Angela, even though she was willing to be tortured to prove it, and her argument that a miscarriage could not be blamed on a minor

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77 fols.788v-790r.
altercation that occurred one month earlier, appeared inconsistent with the evidence and the testimony of the expert witnesses.

Venere was found guilty of wrongdoing. But it is not clear whether she was found guilty of causing the miscarriage. Her penalty of thirty scudi was not commensurate with the penalties found in early modern statutes for causing a woman to miscarry due to violence. Recall that in several communes in the Papal States, the penalty for causing a woman to miscarry by means of violence was very steep: 400 lire in Monterubbiano and 500 in both Senigallia and Macerata; 100 lire in Monterubbiano if the miscarriage was “accidental,” and 500 in Fermo because negligence was no excuse. Was Venere fined 30 scudi (approximately 210 lire) for causing a miscarriage or because she assaulted a woman? In comparison to another Roman case of 1610 of miscarriage followed by death allegedly caused by fear studied by Elizabeth Cohen, Angela’s compensation was significantly low: the widowed husband asked for reparations in the amount of 1000 scudi for the loss of an offspring and four-thousand for the loss of his wife.79 Was the fifteen scudi Angela received compensation for the death of her foetus or because she was hit and injured? The latter seems more probable.

Cases of miscarriage caused by assault were never easy to investigate. Judges faced a very difficult job in determining the causes that brought pregnancies to an end and in discovering the intentions behind the actions of the individuals involved. Both parties could mobilize discourses of uncertainty in regards to pregnancy and its termination in order to level or to dispel charges of causing miscarriage. In the two cases examined here, the accused and their accusers drew on multiple discourses regarding the ambiguities of women’s bodies and the uncertainties of pregnancy and its termination in order to argue their cases.

Orsolina de Mirandola’s 1581 case against Germanico Rastello and Angela da Filletino’s 1603 case against Venere Bolognese clearly demonstrate the social and legal expectation that pregnant bodies were not to be assaulted. The vulnerability of the pregnant body was a social, medical and legal fact; physical and emotional assault towards it was recognised to be a punishable offence. Orsolina and Angela claimed to have suffered miscarriages because they were assaulted. Both women and their witnesses made a firm connection between physical and emotional assault and the termination their pregnancies. Their previously healthy bodies were damaged because Germanico and Venere did not treat their bodies in the ways they were supposed to.

Defendants could challenge allegations made against them by claiming that they never assaulted pregnant women, that miscarriage had not taken place, or that it was caused by other factors. Germanico admitted to mildly assaulting Orsolina, but he argued that she was not pregnant. The body he assaulted was not harbouring fetal life and therefore he was not guilty of causing miscarriage. Germanico’s case was built around the fact that Orsolina’s body gave no indication of pregnancy. Neither Orsolina nor the witnesses who testified stated that she was pregnant. Germanico, therefore, was not required to deal with her as if she was. Germanico also went on the offensive and accused Orsolina of duplicity, of using the ambiguities of her body to frame him. Orsolina, he argued, was trying to pass her menstrual blood as a miscarriage in order to get him into trouble. What did Orsolina actually expel in the basin following her fight with Germanico? Some witnesses, including the midwife Agata, thought the expulsion was a sixty day old foetus; Germanico, however, maintained that “people who understand this thing much better [know] that this was not an aborto.” Nevertheless it could very well have been

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80 “[…] et provato da gente che se n’intendano molto meglio di loro che questo non e abhorno.” fol. 996r-v.
Germanico who was consciously deploying discourses of ambiguity and projecting these onto Orsolina in order to obfuscate the charges levied against him.

In contrast, Angela’s miscarriage was never in doubt. Her body was recognised by all the witnesses and the defendant to be special because it was known to be harbouring fetal life. With pregnancy prefigured, Venere’s assault was especially criminal. Hence Venere’s roommate Livia shouted during the fight: “Venere, think about what you are doing! […] Don’t you see she’s pregnant?” Venere knew that she must not assault a pregnant woman and therefore her defence was to claim that she had not. However, according to Venere, Angela did not comport herself in ways pregnant women were supposed to. She instigated the fight and even encouraged Venere to strike her. Angela put her body in harm’s way without concern for the life of her unborn. Unlike Germanico, Venere could not challenge Angela’s miscarriage. The court appointed doctor and a midwife both clearly stated that Angela had miscarried a dead male foetus around six-months in development. Instead, Venere’s strategy was to deny the allegations that she was responsible for a miscarriage that occurred almost one month following their altercation and to suggest other causes: “Why does she sleep every night with bertoni?” Venere asked. Neither the experienced midwife nor the learned physician could say with certainty that Venere caused the death of Angela’s unborn. Both these experienced healers may have thought that it was most likely the violence or the scare that that led to Angelas’s miscarriage, but they were not willing to discount other causes such as the perils of her job as a prostitute or other illnesses that she may have had. Unlike Orsolina, Angela’s miscarriage was a prolonged event and the lag time between the assault and the miscarriage shaped and complicated her case.
3. Procured abortion

Cases of procured abortion were even more filled with doubt and ambiguity than cases of miscarriage. In these trials, judges had not only to evaluate the ambiguous signs of the body but also had to unravel complex webs of lies, calculated silences, and withheld information regarding illicit sexuality and homicidal sin. Unlike in miscarriage caused by violence that typically occurred in streets and piazzas, procured abortion took place in relative domestic privacy. Cases of procured abortion also made their way to court for different reasons. If pregnancy stemming from an illicit sexual relationship came to light, and if that pregnancy was then terminated by means of abortion, specific individuals or neighbours with a vested interest or a personal stake might object and want the protagonists punished. Sex and abortion that transgressed what communally acceptable boundaries and that offended public moralities would be reported to authorities and investigations would be conducted. In the second of the two cases analysed here, the townspeople of Sezze, a small town south of Rome, were scandalized by a young woman who had an abortion after her rich uncle deflowered and impregnated her. The first case examined below, however, does not follow this pattern. Here, a dishonoured husband sought compensation from the man who allegedly deflowered his now wife, forced her to have an abortion, and then married her off as a virgin. The husband was likely seeking material compensation and pursuing revenge. However, he brought this case to the Governor’s tribunal as a denunciation of abortion, perhaps thinking this would elicit the Governor’s interest more than defloration alone.

Though different, these two cases shed light on several aspects of procured abortion: the sorts of people who sought them and the situations and circumstances that motivated them to
choose these measures. In the testimonies, we see witnesses discoursing on the roles of men and women in the procuring of abortion; the methods they used to terminate pregnancy; the networks used to locate materials and methods; the ways abortion might have been covered up by those involved; the ways in which procured abortions were presented to authorities; and the ways the courts set out to investigate these allegations and interpret evidence. Though they are not representative of all procured abortion, these cases illuminate, in their own specific contexts, the consequences of generation stemming from illicit sex and the benefits abortion had for those who sought and experienced it. These trials also demonstrate how difficult it was to sort through lies and trace secret sexual relations, as well as how multiple meanings and varying interpretation could account for the signs of women’s bodies.

iii. Abortion – Giuseppe Ansaloni vs. Giovanni Manello, 1598

On 27 June 1598, Giuseppe Ansaloni came to the Court of the Borgo to denounce his brother-in-law Giovanni Manello, who lived near the Arco Sant’Angelo. The complaint concerned Rosana, Giovanni’s wife’s sister, and now Giuseppe’s wife. It charged that, three years earlier, Giovanni had violently raped, deflowered, and impregnated his unmarried sister-in-law and then forced an abortion on her. Allegedly, Giovanni had concealed Rosana’s pregnancy and then procured an abortion by convincing a barber that she was suffering from dropsy.

While these were serious allegations, the court did not take up the case. After hearing Giuseppe’s denunciation and the corroborating testimony given by his brother Giacomo, the

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81 ASR., TCG., 1598, b. 310, fols. 905r-910v.
82 The small area known as the Borgo, stretching between Saint Peter’s and Castel Sant’Angelo, had its own tribunal, which mostly served prelates and their entourage who lived in the area. It tried criminal issues but, according to Fosi, its main purpose was “whisking a privileged population tied to the curia out from under the surveillance of Rome’s other judges.” Papal Justice, pp. 29-31. Nevertheless, ordinary Romans who lived nearby, such as Giuseppe Ansaloni, used the court to settle their disputes.
barber who supposedly performed the abortion by bleeding Rosana under false pretext, Judge Bennino dropped the case without questioning Rosana or the accused Giovanni. With only two testimonies and without the voices of the accused or the woman at center of this affair, this case is not as rich in perspectives as we might wish. Nevertheless, from the two depositions we learn about some of the shared cultural assumptions underlying the practice of abortion, some of the ways in which it could be procured, and the circumstances that led men and women to choose it to deal with unwanted pregnancy.

Unfortunately, the two testimonies that comprise the record yield no biographical information about the plaintiffs Giuseppe and Giacomo Ansaloni and very little about Rosana and the accused Giovanni – mostly details incidental to the alleged defloration and abortion. From Giuseppe’s testimony, we learn that as a nubile girl (zitella), Rosana had lived in the house of her mother, Fantilla da Poli a laundress, now dead, and that her sister Pelegrina lived with her husband, the accused Giovanni Manello, a Sicilian rosary-maker, in the room upstairs. It is unclear whether Rosana’s father was dead or simply absent. Giovanni, it seems, was the man of the house.

Giuseppe had married Rosana around two and half years before the trial. “She was given to me as a virgin,” he said, but after consummation he discovered that she was no such thing. He kept asking her what happened, “why she is not a virgin.” After repeated denials, Rosana told him about her defloration. In the middle of one night, Giovanni got up from his marital bed and went downstairs to Rosana’s room, which she shared with her mother. After muzzling her with a cloth so that she could not cry out, Giovanni had sex with her “with force.” Her mother, who was

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83 Giuseppe did not specify how much time had passed between the consummation of the marriage and her confession.
sleeping with her – possibly in the same bed – woke up and saw what was happening.\textsuperscript{84} Fantilla began to shout, but Giovanni placated her with “belle parole” and returned to his wife’s bed.\textsuperscript{85} The next morning Fantilla wanted to make a lawsuit against her son-in-law, but he convinced her not to by promising a dowry for Rosana. Lacking a better chance for her now comprised second daughter to marry, Fantilla apparently agreed to this arrangement.

Rosana’s troubles, however, did not end there. About three months later, “it was seen [fu visto]” that she was pregnant. She was likely showing, though Giuseppe did not specify. Her impregnator and brother-in-law Giovanni decided to procure an abortion. In her husband’s later account, Rosana resisted this intervention but Giovanni convinced her, saying it would be “her salvation [la ventura] and she would not be put to shame.”\textsuperscript{86} Both to cover up her pregnant state and to procure the abortion, Giovanni told people that she was suffering from dropsy, a blockage of fluids stemming from menstrual suppression, which commonly afflicted young women. As we saw in Chapter 4, dropsy mimicked pregnancy: “the belly enlarges, and it seems to the woman as if she is pregnant,” the author of one of the most important works of women’s medicine explained.\textsuperscript{87} Therefore, this affliction was often used as camouflage to conceal pregnancy.

Furthermore, purgatives, cures for dropsy, and phlebotomy, were also standard means to procure

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\textsuperscript{84} Describing the sex as violent and non consensual (per forza), and having Rosana muzzled so as not to cry, may have been an accurate representation of what transpired, but it was also standard rhetoric in the legal construction stupro, involuntary and forced defloration. See Cohen, “No Longer Virgins;” idem., “Rape as History;” See Lucrezia Troiano, “Moralità e confine dell’Eros nel Seicento toscano,” \textit{Ricerche storiche} 17 (1987): pp. 237-259 for Florentine legislation and discussion of cases tried in the Otto di Guardia; Casanova, \textit{Crimini Nascosti}, pp. 148-167. Renato Barahona, \textit{Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735} (Toronto, 2003), ch. 3. Barahona, p. 62, has found 7 lawsuits were the victims’ claimed their mouths were covered with a hand or with cloth during the sexual aggression.

\textsuperscript{85} “[…] nell’ora della mezza notte detto Giovanni si levò di letto di sua moglie et se ne callò a basso e per forza hebbe da fare con detta Rossana sua cognata ponendoli un suagiatore alla bocca acciò non gridasse e non facesse rumore alcuno. Nondimeno donna Fantilla sua matre che dormeva con lei se ne acorse et volle gridare, ma detto Giovanni con belle parole vedendosi così scoperto che le quietò promettendoli di fare et di dire, et se ne parti e retornò a dormire cpi Pelegrina sua moglie.” fol. 906v.

\textsuperscript{86} “[…] sarebbe la ventura sua et che non seria svergognata.” fol. 907r.

\textsuperscript{87} Giovanni Marinello, \textit{Le medicine partenenti alle infermita delle donne} (Venice, 1563), bk. 2, ch. 25, folos. 193v-196r.
abortion. Giovanni arranged for a barber to bleed Rosana and to provide medicines. What is perhaps unexpected is that the healer to whom Giovanni turned for the abortion was her future husband’s own brother, the barber Giacomo Ansaloni. At the time of Rosana’s pregnancy, Giovanni and Giacomo were good friends. We do not know whether Rosana was betrothed to Giuseppe at this time.

In the only other testimony in this transcript, the barber Giacomo told the judge that he was duped into bleeding the pregnant woman. In the barber’s self-protective account, both Giovanni and Rosana said that she was suffering from dropsy and assured him that a physician had prescribed that she be bled. As we saw in Chapter 4, it was very difficult for medical practitioners to distinguish the symptoms of dropsy of the womb from the signs of pregnancy. Evidently, this barber was not skilled enough to tell the difference between the two, and/or he was not looking too hard. Giacomo likely knew that he was prohibited from drawing blood from a woman without a written prescription, but he did so anyway in order to help his friend’s suffering sister-in-law. In his testimony, the barber made it seem as though he was tricked into bleeding Rosana. His services were elicited under false pretenses. Apparently, Giacomo had only discovered what he had actually done two and half years later when Giuseppe confronted him after Rosana’s confession. Giacomo confronted Rosana and she told him the whole story, adding that, following the bleeding he had administered, Giovanni had given her a beverage (a

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88 In his testimony, the barber Giacomo referred to Giovanni as being his “grande amico” up until the time that he realized that Giovanni had impregnated Rosana, tricked the barber into giving her an abortion and falsely marrying her off to Giuseppe as a virgin.

89 See Chapter 4 for the Roman Protomedicato’s bylaws.

90 Nevertheless, some details Giacomo provided are dubious. He told the judge that he bled Rosana from the arm, but as we saw in Chapter 4, it was bleeding a pregnant woman from the foot, specifically from the saphena vein (also called the vena della madre), that was a standard therapy for dropsy – drawing blood from the foot encouraged menstruation and promoted the expulsion of fluids trapped in womb, which caused swellings and pregnant-like symptoms. It was also bleeding a pregnant woman from the foot that would cause abortion. Any barber would have known this. Was Giacomo an inept healer, or did he lie when he told the judge that he bled Rosana from her arm? The judge did not ask.
sciuroppo di Santo Onofrio)\textsuperscript{91} to drink and gave her blows to the belly to ensure that she would miscarry.\textsuperscript{92}

The bleeding, the beverage and the beating worked and Rosana expelled the foetus at home into a basin, held by her sister Pelegrina. Giuseppe told the judge that the foetus was around three months ‘old’ but he did not report a gender. Rosana, “almost dead,” was bed-ridden for about two months. To cover up the physical evidence of his transgression, Giovanni threw the expulsion down the well in the house’s courtyard and washed the basin. However, the foetus resurfaced a few days later as Rosana, helped by a friend, drew water for a bath. Her mother then took the foetus and buried it in the courtyard. This was the end of the story that Rosana allegedly confessed to her dishonoured husband and his brother.

Before bringing this matter to court, the Ansaloni brothers confronted their kinsman Giovanni. He first denied the allegations but eventually said, according to the plaintiff: “What do you want from sinners! Penitence? Even Saint Peter sins. And for this [affair] you two want me to leave my sons and my wife? But let’s see if I can remedy [this situation].”\textsuperscript{93} These words appeared to have been an admission of guilt and a promise to compensate the angry husband. Giuseppe apparently waited for two-and-a-half months for Giovanni’s “remedy” before he brought this case to court.\textsuperscript{94} Angry and insulted, Giuseppe asked that Giovanni “be punished in conformity with justice,”\textsuperscript{95} the standard conclusion of a complaint.

\textsuperscript{91} I have been unable to find this product in early modern pharmacological or medical literature.
\textsuperscript{92} fol. 909r-v.
\textsuperscript{93} Both brothers reported this: “ma che volete a peccatori! Penitenza, pechò San Pietro ancora, e per questo volete voi che io lasci li mei figlioli et la mia moglie? Ma vedete se si può remediere.”’ fols. 908r and 910r.
\textsuperscript{94} Instead of compensating the angry husband, Giovanni allegedly spoke secretly with Rosana and Pelegrina and told them to keep quiet about this whole affair and to admit to nothing. Giovanni said that he would make this ugly situation go away – that he would find two witnesses to testify that “mi [i.e., Giuseppe] haverebbaro aperto, che io fossi un furbo” and to send me to the galleys,” promising Rosana that he would find her another husband. A good wife, Rosana allegedly told her husband all this.
\textsuperscript{95} fol. 908v.
Giuseppe’s decision to resort to the law was problematic for him. He felt he deserved compensation from Giovanni for deflowering Rosana and marrying her off as a virgin. Yet prosecution brought scandal to the family. The delayed denunciation – about two and half years after the rape and abortion – made such a suit difficult to prove on several points. There would have been no way to prove that Rosana was deflowered by force. Denouncing Giovanni for the alleged abortion was also unlikely to yield compensation as Giuseppe had no claim to the foetus Rosana aborted. Rather, there may have been other, unreported motivations behind Giuseppe’s denunciation. Perhaps Giovanni had promised Giuseppe a dowry he was unable to deliver. The lawsuit may have been launched to apply pressure. This may have worked and they may have settled out of court, which could explain why the case was not further investigated. Or, perhaps the court was simply not interested in investigating this alleged abortion or punishing its procurers.

It is also possible that the judge thought that the brothers made up the story or misrepresented it for personal gain. When Giuseppe married, did he know that Rosana was not a virgin and that she had had an abortion? Giovanni turned to the barber Giacomo for the abortion and Giacomo very likely played some part in his brother’s marriage to Rosana. The barber may have known that Rosana was pregnant and agreed to help her abort and did not tell his brother. On the other hand, it is also possible that Giuseppe knew about Rosana’s history and that it did not bother him so long as he would receive the promised dowry. Though no information was given as to the timing of the marriage in relation to the abortion, it may have occurred shortly thereafter to cover up the transgression. Giovanni may have asked his grande amico Giacomo to find a husband for his now damaged kinswoman. Did Giuseppe see it as a ‘good deal’ to wed such a woman in order to receive a decent dowry? Had Giuseppe brought the case to court
because he never received his compensation? Without further documentation, we are left to speculate.

Frustratingly, the woman at the center of this affair remains silent. Rosana’s traumatic experience, if in fact it was real, was told in the words of her husband and his brother; their concerns and motivations shaped the narrative of the events in question. The Ansaloni brothers described Rosana as a victim without options. She was violently robbed of her precious virginity and forced to have an abortion in order to “not be put to shame” and to have a relatively decent life, which was purchased with the promise of a dowry. Though Rosana was married and, in a sense, regained her lost honour, the events of that fateful night and the aftermaths never really went away; her husband allegedly pestered her about it and attempted to use her sexual assault and abortion for financial compensation. He also put her and his own honour at stake before the court in order to get something from Giovanni.

Whatever the real story might have been, Giuseppe’s deposition and his brother’s testimony give insight into the contexts and the practice of procured abortion in early modern Rome. This tale may have been pure fiction, but the brothers Ansaloni crafted it in a way that could have been believable. The story they told played on several cultural assumptions: a vulnerable woman without the protection of a father or brothers could be forcefully deflowered by a relative on whom she and her mother may have depended on financially. In this case, incest and violent defloration resulted in pregnancy. Abortion was a means of concealing the sexual transgression. Terminating the pregnancy protected the impregnator, the family, and Rosana from scandal. From Giuseppe’s and Giacomo’s testimonies we learn that abortion could be procured by means of deceit. Giovanni was portrayed as the engineer of the illness narrative that was used to procure the abortion. He concealed Rosana’s pregnancy by labelling her condition
dropsy, an ambiguous illness which made women appear pregnant. Giovanni used this illness to fool the barber into performing illicit surgery that ultimately ended up killing the foetus in Rosana’s belly. In his testimony, the barber Giacomo portrayed himself as completely innocent. He may have ended up causing the abortion but he did so unintentionally. He was deceived by the illness narrative and by Rosana’s body; this barber was unable to distinguish pregnancy from an obstructed womb. Of course, it could have been the Ansaloni brothers who crafted this whole tale and who were trying to deploy discourses of illicit sex and abortion procured by means of duplicity in order to extort Giovanni Manello. In any case, what this trial demonstrates is that procuring abortion could be represented as an entirely male affair. Whether or not the events in question actually happened, the brothers’ tale must have been plausible enough to try on the magistrates.

iv. *Defloration, incest, and abortion in Sezze*— Superio de Magistris and Maria de Vecchis, 1613

In July of 1613, the Governor of Rome received a letter from Angelo Cima, a public prosecutor (*fiscale*) linked to the papal government in the town of Sezze, about 80 km southeast of Rome, requesting permission to prosecute Superio de Magistris, a local man of wealth. Superio allegedly deflowered his niece Maria de Vecchis, continued a sexual relationship with her resulting in pregnancy, and then procured an abortion when she was about five months pregnant. The magistrates of Sezze had apparently begun an investigation into the incestuous

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96 ASR., TGC., Processi, XVII secolo, 1613, b. 116, the trial begins on fol. 831r and has its own internal foliation, fols.1-194r. The latter is cited here.
97 Superio’s son Simone was also accused of having sex with Maria but almost no attention was given to Simone in this investigation.
relationship a few months earlier, but Superio allegedly “corrupted the authorities” with a bribe of 500 *scudi*.\(^98\) Everyone in Sezze knew what Superio had done, Cima stressed, but no one wanted to proceed against him for fear of being shot (*archibugiate*). Cima apparently refused the bribe and was not scared to proceed. He wrote to the Governor of Rome so that the main criminal tribunal of the Papal States could bring justice to Sezze.\(^99\) Perhaps Cima was also trying to advance his career by demonstrating his zeal to Rome and also by attempting to show up his corrupt colleagues.

The Governor agreed that a full inquiry was needed and sent a special judge, apostolic commissary Ottavio Giandi, to investigate.\(^100\) Superio and Maria were both charged in early August. The documentation created in this investigation is long and varied, comprising many witness testimonies, subpoenas, and letters between various authorities regarding the organization of the investigation.\(^101\) In late August, the proceedings moved from Sezze to Rome where Judge Girolamo Felicio Lunte presided and the protagonists were held in the Savelli and Tor di Nona prisons. In Sezze and in Rome, many pages of testimony were procured from a variety of witnesses, most of whom spoke against Superio and Maria. Unfortunately, no resolution for this case has been found. Rather than analysing every testimony and issue of legal procedure that shaped the development of this case, I will focus on the matters that most pertained to the alleged abortion.

While the charges against Superio and Maria included defloration, incest and abortion, it was this last offense that most preoccupied the court, in part for reasons of evidence. Sexual transgressions, especially incest, were generally well-kept secrets. While defloration left signs on

\(^98\) We do not know how or why this trial began.
\(^99\) fol. 6r.
\(^100\) Angelo Cima periodically appears in the trial documents but he did not participate in the questioning of witnesses in Sezze or in Rome.
\(^101\) This documentation does not pursue the alleged bribery of the Sezze magistrates.
a woman’s body, identifying the culprit and circumstances was always difficult. Abortion, however, left more recoverable traces. Much of this trial focused on interpreting the signs of Maria’s pregnancy and delivery and on investigating the healers who may have provided materials and techniques for the abortion. Attestations to Superio’s role in the abortion would also lend credence to the more elusive charges of incestuous relations with his niece.

Maria’s body was a primary source of information in this case, but her body was not straightforward. Several medical practitioners examined her body and concluded that she had been pregnant and had recently delivered. Yet defence arguments challenged these observations. It was well known that Maria was sickly. Alternate medical discourses could explain the shape of her body, and she and Superio drew on these to deny the charges of pregnancy and abortion. Superio admitted to procuring medical attention for his niece, but insisted that he sought only to heal her disorderly body. Furthermore, the authorities went to great lengths to find the healers who assisted in the alleged abortion, but, out of a possible eight suspects, only one, an 89 year old Franciscan friar, confessed to procuring abortifacient drugs for Superio, and his confession was suspicious. What emerges from witness testimonies and the judges’ investigative strategies is that even though everyone was likely convinced that Superio and Maria were in fact guilty, uncertainties and ambiguities of Maria’s body problematized the allegations made against them and greatly complicated the assessment of several types of evidence.

Though we lack much biographical information for the protagonists of this case, we can piece together some details. Maria de Vecchis, of unknown age, lived with her mother Cornelia and her older brother Mutio. Maria’s father is absent from this story, although it is unclear whether he was dead or had left Sezze. Maria had had another older brother, Tolomeo, who had died a few years earlier. On all accounts, Maria belonged to a good family, but, sickly and
hunchbacked, she remained unwed. Less is known about Superio de Magistris. A member of a
noble family with branches in Sezze, Terracina, Priverno and Rome, Superio was wealthy and
powerful. He had at least four acknowledged sons, but it is unclear whether he was married or
a widower at this time.

The de Vecchis and de Magistris families were related. Superio was Maria’s kinsman –
she used the word “uncle” – by virtue of being first-cousins with her mother Cornelia. The two
families also had a commercial relationship as they collaborated in a legume business: crops
were stored in a supply room attached to de Vecchis house and Superio would visit to take count
of stock that he would later sell in Rome. The de Vecchis, it seems, depended on this business
and their collaboration with Superio for their livelihood. It also gave Superio occasion to visit.

Based on the testimonies Superio had been taking advantage of his position and
relationship with the de Vecchis family for some time. Everyone in town knew that Superio and
possibly his son Simone had been having regular sexual relations with Maria for at least two
years. Maria’s neighbours claimed to have seen Superio enter or leave her house; some said
they saw him kissing her through a window from their adjoining house. Most witnesses,

102 It is possible that Superio was related to Pompeo de Magistris, who occupied several ecclesiastical
offices in Rome under the papacies of Sixtus V, Innocent IX, Gregory XIV, Clement VIII and Paul V, and died in
1614 as the Bishop of Terracina. The de Magistris family would continue to occupy positions in the curia and the
Bishopric of Sezze and Terracina from the seventeenth to the nineteenth centuries. See Teodoro Valle da Piperno,
La regia et Antica Piperno (Naples, 1637), part 2, p. 13 and Gaetano Moroni, Dizionario di erudizione storico-
ecclesiastica, vol. 65 (Venice, 1854), p. 58.

103 Cima’s summary of the allegations fols. 7v-8v; the following testimonies are the most informative:
Pietro Normesino fols. 32r-33r; and Giuseppe Contuggi, fols. 35r-37r; Giovanni Ranucci, fols. 43r-46r; Tommaso
Ciammaricone, fols. 46v-47v; fols. 56r-57r; Giovanni Battista Colasanti, fols. 58r-59r. The women who testified in
this case all appear to be Maria’s neighbours: Orsidea de Tantis, fols. 53v-54v; Lisa Antoni, fols. 54v-55r;
Alessandra da Citta di Castello, fols. 55r-56r; Antonia Catuti, fols. 56v-57v.

104 Some witnesses thought that Superio’s son Simone impregnated her but there was little evidence for this
assertion and it seems that the judge was not especially interested in investigating the younger de Magistris.

105 Pietro Normesino, fol. 31r.

106 Francesco Scarpellino, Orsida de Tantis, fol.54r; Lisa, wife of Giovanni Antonii from Chieti fol.54v; Alessandra, wife of Luca da Citta Castello, said she saw Superio praticare with Maria. fol.55r. On the porosity of early modern domestic settings and the information that neighbours could acquire by peeping, see Elizabeth Cohen and Thomas Cohen, “Open and Shut: the Social Meanings of the Cinquecento Roman House,” Studies in the
however, repeated the gossip as they heard it on the street. Most testimonies followed the standard pattern of “he told me that…”, or “we were talking and they said that they heard from someone else that…” Even though most witnesses did not claim to have directly observed Superio’s and Maria’s sexual encounters, their transgressions were held to be public knowledge.

Retrospectively, the townspeople of Sezze disapproved of the illicit sexual relationship, but their clamor seems to have intensified after Maria allegedly became pregnant in early 1613 and had an abortion in early summer. Everyone in town “knew” that she had been pregnant, but only a few witnesses testified to seeing Maria with a large belly, and this was not in public but again through the openings of windows. Maria was shut up at home and did not leave her house for a few months in order to conceal her pregnant state. During this time, Superio went to great lengths to procure an abortion, allegedly soliciting the services of various local and foreign healers and requesting bloodletting (some witnesses specified from the foot) and purgative herbs. Maria’s mother Cornelia was said to be fully aware of these efforts; some even reported that Superio supplied purgatives so she could administer them to Maria. In May when Maria was five or six months pregnant, they were able to make “the creatura go away,” although it was not clear who provided the successful remedy. One witness reported that Maria had expelled the foetus on a Friday in May and then came out of her house on Monday to go the fountain and show the world that what everyone had been saying about her was not true. The townspeople of Sezze were not fooled. Everyone believed that Superio or his son Simone


107 Antonia Catuti specified that Maria was pregnant during Lent, fol. 56v.
108 Lisa Antonii saw Maria pregnant through a window, fol. 54v. Pasquale de Tantis reported “Ma mentre è stata gravida per sei mesi non è mai uscita per benchè fusse solita ad uscire.” fol. 8r.
109 According to Giovanni Battista Colasanti, “procurato di far andare via la creatura,” fol.58r; Antonia, wife of Matteo Catuti, used the phrase “farci andare il ventre.”fol. 56v.
110 “Essendo seguito l’aborto il venerdì di maggio, il lunedì poi seguente usci con una cera cattivissima et andò alla fontana per mostrare al mondo non esser vero quell si diceva [...],” fols. 8r; 71r.
impregnated Maria and that she had an abortion, “Even the chickens know,” one witness reported, “so much is this fact known” (tanto il fatto e noto).”

Like Rosana in the case from 1598, Maria de Vecchis was vulnerable. However, testimonies do not describe her as a victim to be pitied and in need of protection. Rather, Maria was as guilty of wrongdoing as Superio. The fact that Maria and her mother had not denounced the sex and had concealed the pregnancy and the abortion meant that they were complicit – perhaps there were financial, social or political gains to be had? Maria was not, however, the primary person the court and the community wanted punished. This case was centred on and most of the allegations were made against Superio. It was Superio who deflowered and impregnated his niece and he was the one who procured the abortion. While these crimes were grave, the authorities and the local people who made the original denunciation may have used them as occasions to proceed against Superio, whom perhaps they resented for other reasons.

Superio had also bribed the court and threatened townspeople not to proceed against him. Maria was a small fish, but she was the material evidence of the crime. In the absence of reliable witness testimony, the court turned to Maria’s body to discover physical evidence of Superio’s transgressions. However, as we will see, Maria’s body did not yield straightforward signals.

Superio and Maria were questioned three times in Sezze and once in Rome. Each time, the judges urged the defendants to freely confess their crimes, but they maintained innocence. Maria’s was disgusted by the accusations of incest: “they are my relatives” she said, “I have done no such thing.” She attempted to dispel the accusations of pregnancy and abortion by insisting that she had never had sexual intercourse: “I have never been known carnally by anyone and I have never been pregnant,” Maria repeated several times, “nor have I miscarried [sconcia].

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111 Cima summarized what was being said on fol.7r-8v. See also Pietro Normesino and Giuseppe Contuggi’s testimonies on, respectively, fols. 32r-33r and 35r-37r.

112 Fols. 126v.
or sought out to commit an abortion [aborto] or to make myself miscarry [sgravidare] with any kind of remedy (remedio).“

Maria also challenged the accusations that she had locked herself up at home to conceal her pregnancy by telling the judges that she was often seen in public as she regularly attended church services, especially during Lent (late February and March).114

Superio, too, denied any sexual relationship with Maria. He became increasingly incensed at the accusations that he had impregnated her then had solicited healers to give her an abortion. He admitted to visiting Maria often and to bringing healers to see her, but this was on account of her chronic bouts of illness. He explained that he engaged healers as a favour to Maria’s mother, who may not have been able to afford the treatment on her own.115 In her only testimony, the mother, Cornelia de Vecchis confirmed Superio’s story.116 Superio, Cornelia and Maria portrayed Superio as a caring relative and Maria as a sickly girl in need of regular medical intervention. It was not unheard of for a woman without a husband like Cornelia to ask her wealthy and connected cousin for help in acquiring medical assistance for her sickly daughter. They challenged the suggestion that Superio’s familial visits to the de Vecchis house and his involvement in his niece’s therapy was something nefarious and evil. Confronting their accusers,117 Superio and Maria called them “mad liars and infamous,”118 accused them of telling “a thousand lies” and of saying terrible things because they wished them ill.119

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113 “io sia stata mai conosciuta carnalmente da persona alcuna, et non mai sono stata gravida, né meno mi sono sconcia, né ho cercato di commettere aborto né di farmi sgravidare con remedio alcuno” fols. 126r.
114 fols. 176r. The court did not try to confirm this with the parish priest.
115 Superio said that had Cornelia de Vecchis not asked him to talk with a physician or a surgeon about her daughter, “I would not have meddled.” fols. 65v.
116 Perhaps realizing that she would not forthcoming, Judge Giandi never asked Cornelia about her daughter’s sexual history, the alleged incest or the abortion. Rather, he asked about Maria’s health and who generally treated her, fols.67v-68r. In Rome, Judge Lunte did not question her.
117 13 witnesses in total. Maria fols. 126v-133v; 145v-147v and Superio fols. 139v-148v; 149r-152r.
118 fols.139r.
119 fols.126v-133v and145v-147r for Maria; fols.139v-145r and 149r-151r for Superio.
Regardless of what the defendants claimed, the court deemed Superio and Maria’s incest, and her resulting pregnancy and abortion to be “facts” known “by public voice and reputation” (*per publica voce et fama*).\(^{120}\) This was a legal designation. Such public proclamations constituted real forms of evidence and, in the absence of confessions or material evidence, could lead to conviction.\(^{121}\) Yet, especially for serious charges, the court sought to build the case on more than just hearsay and gossip. Out of many witnesses, only a few neighbours claimed to have seen Maria pregnant, and no one offered first-hand knowledge of the abortion. Rather, the witnesses repeated the gossip they had heard around town. For instance, Pasquale de Tantis told the judge that he heard from several people that Maria aborted on a Friday in May, and so he repeated this to other people. But who told him this and how did they know? Judge Giandi pressed him to give up a name but Pasquale did not: “I can think about this for a thousand years,” he said, “but I will not be able to remember [the person who told me] and I cannot say anything else.”\(^{122}\) Was Pasquale protecting his source or was he guilty of spreading unsubstantiated gossip and slander?

An examination of Maria’s body was undertaken to determine whether the allegations had any foundation. To ascertain whether Maria had in fact been deflowered, impregnated or miscarried, the court turned to midwives. Maria was physically examined once in Sezze and again one month later in Rome by a total of six women. In Sezze, the three women from nearby villages: Giulia from Ceccano (35km north-east), and Adlotia and Beatissima from Roccagorga (10 km north-east).\(^{123}\) In Rome, the court brought in Antonia, Ginevra, and Lucia. All six who

\(^{120}\) The judges used this legal concept several times in referring to the crimes. See fols.7v, 11v, 125v.
\(^{121}\) Bettoni, “Voci malevole.”
\(^{122}\) fol.71r-v.
\(^{123}\) fols. 12r-v and 15r. There may not have been enough midwives at this time in Sezze or perhaps the court wanted witnesses from outside the town in order to get impartial testimony. Perhaps there was suspicion that Superio might bribe the locals.
felt and inspected Maria’s body were experienced midwives. They had helped many women through childbirth and likely treated other women’s illnesses. One wonders, however, whether any of these women had any experience examining a body in a forensic capacity.

Nevertheless, they were expert witnesses. If these midwives found Maria to be a virgin, this whole case might well fall apart. On the other hand, if Maria’s body displayed signs of pregnancy or miscarriage, this would likely mean that she was guilty of sexual transgressions. However, expert testimony, then as now, was not unchallengeable.

Following an intrusive tactile inspection of Maria’s body, all six midwives were unanimous: Maria was not a virgin, she had been recently pregnant and had miscarried or given birth. Examining Maria “down below [parte da basso],” the midwives found her vagina (natura) to be quite large and stretched, indicating that she had delivered. The Roman midwives also found that that the “piece of flesh” inside her vagina (likely referring to what medical authors called *myrtoides caruncula*) was divided, which happens, Antonia Agnelli explained, when a woman gives birth. There were further signs that Maria had been pregnant. An unmarried woman (*zitella*) who had never been pregnant was supposed have a tight abdomen, but Maria’s looked like a flabby sac (*zaino muscio*) and was all wrinkly (*tutto grepposo*). In addition, when the midwives squeezed Maria’s breasts, milk came out. For these medical practitioners, this was a most certain sign (*cosa sicurissima*) of Maria’s recent pregnancy and delivery. Ginevra did not

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124 Their years of experience ranged from Lucia de Balconi’s eight to Ginevra Mariotti’s thirty; most had at least ten years of practice.
125 The Roman midwives may well have as the court tended to call on “experts” that it knew.
126 “[…] ho trovato spartito quel pezzo che sta dentro la natura, quale si spartisce nel parturire che fa la donna, et ancora spartita la pellicella da basso verso il cesso.” fol. 192r. According to Paolo Zacchia, these pieces of flesh get “obliterated” during childbirth. In a consilium composed in the early 1600’s, Zacchia chastised midwives for accusing a woman of being pregnant and delivering in secrecy after they failed to notice that these pieces of flesh were still intact in her vagina, evidence that she was innocent. Paolo Zacchia, *Quaestionum medico-legalium* (Louvain, 1661), tomos posterior, bk. 10, cons. 69, pp. 298-300. See his further discussion of these pieces of flesh in tomus prior, bk. 3, tit. 2, quest, 9, pp. 234-235, ns. 18-19. Interestingly, the rural midwives who testified in Sezze did not pick up on this sign; the Roman midwives did, perhaps suggesting that they were better educated or more experienced in forensic examinations, or perhaps that they instructed to look for these signs by the judge.
need her thirty years of experience to expose Maria’s lies; she claimed that even “a blind [person] would know” that the girl had been pregnant and had recently given birth. Yet the midwives could not tell exactly how. Maria had “either given birth or had miscarried [sia sconcia],” Adlotia said, “I cannot know which.” Procured abortion, miscarriage, and natural delivery, it seems, all left undistinguishable signs on the body.

The midwives’ testimonies were consistent with what the townspeople of Sezze were saying about Maria. However, Maria ascribed different meanings to the signs and the shape of her body. Maria admitted that she was not virgin, but still insisted that she had never had sexual intercourse with a man. Maria was not playing word games. She told the judge “how this disgrace has happened to me.” About a year ago, Maria had been in the countryside outside Sezze with her brother Tolomeo. Staying with them was a woman named Silvia and her little boy. One day Maria and the boy went off to play. As they were running around playing, they came across a ditch. Maria tried to jump over it, but, “being small, I ruptured myself [mi sborsai].” She told the judge that “I began to feel a great heat down below, that is in my natura, and then I began to leak out a great quantity of blood.” Silvia later examined her and said that Maria was now deflowered (sverginata). Maria told judge Giandi that her brother was furious when he found out what had happened—i.e., “that I had been deflowered by jumping.” Tolomeo began to yell, calling Maria a disgrace. He said that “I have ruined myself for nothing,”

Unfortunately, Tolomeo could not confirm this tale for the court because he died the same year

127 fols. 19r-22r and 192r-193r.
128 The midwife Beatissima told the judge that Maria had told her this story of losing her virginity by falling. Beatissima said that she did not understand what Maria was saying, but also stated that it sounded weird (non mi pare che questo che lei dice possa haver garbo). fol. 22r.
this “disgrace.” The court did not ask other witnesses, not even Maria’s mother, about this story.

Whether or not the judge bought this tale, Maria’s explanation for the appearance of her vagina relied on a common or popular opinion on how “virginity” could be lost. Defloration (sverginare) was commonly depicted as the rupturing of a seal, the material evidence of which was the flow of blood. In Maria’s case, her maidenhead was not taken by a man through sexual intercourse but rather was lost in an accident. She thought that it was plausible to claim that her vagina was wide because she spread her legs too much jumping across a ditch. This story was certainly suspicious but it was not absurd. Early modern Europeans heard and repeated stories of bizarre and terrible things that happened to women who ran too fast or jumped over obstacles. They could even be transformed into men: the womb, sometimes thought of as an inverted penis, could be incited to fall out the body due to great heat or stretching. In this world, Maria’s explanation for the appearance of her vagina was not an impossibility.

Maria also had an explanation for the milk in her breasts. She did not deny lactation, but insisted that, not pregnancy, but her periods (purghe) were the cause. “When my period comes, I usually get milk in my breasts.” Her flabby stomach, she explained, also came from her illnesses – “my male made me like this,” she said. A bout of dropsy might have stretched her stomach to make it appear as though she had been pregnant, while menstrual retention transformed blood into milk and escaped through her breasts. According to Maria, all these

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129 fols. 22v-23v.
130 Thomas Laqueur, Making Sex: The Body and Gender from the Greeks to Freud (Cambridges, Mass, 1990), pp. 126-128.
131 Furthermore, even a woman who was known to have had sexual intercourse could still be regarded a virgin if her penetrator did not break the seal of virginity, the material evidence of which was blood. This is discussed in Baernstein and Christopoulos, “Interpreting the Body in Early Modern Italy,” in preparation.
132 fol. 24r. This sentence is underlined in the processo and there is a number sign in the margins – a marker perhaps alerting Giandi to investigate this claim. See Ulinka Rublack, The Crimes of Women in Early Modern Germany (Oxford, 1999), p. 176 for German women making similar claims for milk in their breasts.
133 “[…] io sono stata sempre male da piccola, et il male mi ha accocinato come mi vedete.” fol. 24r.
“certain signs” did not indicate illicit sexuality, pregnancy, and crime but spoke to a disorderly body shaped by an accident, chronic illness and imbalanced purgation.

Professional opinion on these points was mixed. The midwives disagreed with Maria’s explanations, especially regarding her lactation. Midwife Adlotia mockingly asked Maria “this milk came from the heavens?”

Giulia said “My girl, a young [woman] who has [not been pregnant] and who has not given birth cannot have milk the way that you do.” Maria’s explanation for her lactation was not, however, as ridiculous as these midwives made it out to be. As mentioned in Chapters 3 and 4, learned physicians and jurists knew that lactation did not necessarily mean that a woman was pregnant or that she had given birth. In their views, a woman might lactate due to problems associated with menstrual purgation. Even a virgin or a chaste nun could have milk come out of her breasts, and even men were prone to lactate from time to time.

The shape of Maria’s body along with the secretion of milk from her breasts may have indicated that she had been recently pregnant, but these signs could also have been pathological. The judges likely trusted the midwives’ testimonies, but they could not discount Maria’s own explanations because these were medically credible. Maria’s sickly and disorderly body muddied the allegations of pregnancy and abortion. In their testimonies, Maria, Superio and Cornelia drew

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134 fol. 26v
135 fol. 25v. Beatissima said the same thing, fol. 27v.
136 According to Zacchia, it was a “fallacy” to equate lactation with pregnancy. Nevertheless, Zacchia stated that lactation stemming from problems of purgation generally did not produce the same quantity or quality of milk as that produced in pregnant and post-partum women. *Quaestionum medico-legalium*, bk. 1, tit. 3, quaestio, 1 n. 20-27, pp. 51 and again in a discussion on how to tell whether a woman had given birth, bk. 3, tit. 2, quest. 10, n. 13, p. 235. Jurists also recognised that lactation had multiple medical meanings. Discussing defloration, the Florentine jurist Cospi wrote: “questo segno [i.e. lactation] ancora non è del tutto sicuro, perche non tutte quelle fanciulle, che anna commerzio con uomo anna latte nelle mammelle, se non restano grauide. Et all’incontro quand le fanciulle passano certa eta di tredici, o quattordici anni molte di esse anna il latte nelle mammelle ancor, che sia no vergini, e particolarmete se per qualche tempo cessarino loro le purghe. Perche essendo la donna molto copiosa di sangue, quando la natura non espelle il superfluo per quella parte, che suole lo trasmette alle mammelle, come veggiamo nelle donne grauide, che non fanno la solita espulsione.” *Il giudice criminalista*, p. 527.
attention to Maria’s frequent bouts of illness to dispel accusations of incest, pregnancy and abortion.\textsuperscript{137}

Along with trying to read Maria’s body, the judges sought confessions from the healers allegedly solicited for the abortion. Evidence linking Superio and Maria to a provider of abortifacient medicines or techniques would solidify the case against them. The court’s investigations into the suspected “abortionists” offer useful details on the ways in which someone like Superio might have procured an abortion: the networks one turned to and the materials and services requested.

According to witnesses, Superio asked several local and foreign healers for abortifacient materials and therapies. In May, he allegedly sent the empiric Cola Cocchiarello to procure the purgative aristolochia from the shop of Pasquale de Tantis. Pasquale gave Cola the purgative even though he had heard that Maria was pregnant. Cola allegedly assured him that he was treating Maria for some illness.\textsuperscript{138} Although Cola was ordered to appear in court in Sezze, he had skipped town. His mother, Tarquinia Marchioni, told the judge that Cola had left home around ten days earlier for his brother’s vineyard in the countryside, but that she had no idea whether he was actually there. Although Cola was never found, searching his house, the authorities did uncover a handwritten book containing various remedies, as well as several herbs and roots. These were shown to Pasquale de Tantis who identified a good quantity of aristolochia as well as other purgatives such as rue, centauria, roots of valeriana, and powdered colocynth. As we saw in Chapter 4, these could be used to induce abortion, but combined with many other products.

\textsuperscript{137} The physician Ortensio Simeoni testified to treating Maria off and on over the last few years, most recently a few weeks before the start of the investigation on account of a fever stemming her liver, fols. 90r-92r. During the trial, Maria was also seen by the physician Antonio Saccoccia, again on account of fever, fol. 158r. Pasquale de Tantis, fols. 7v-8r, 51v-52r; Tommaso Ciammaricone, fol. 47v; Domenico Pellegrini, fols. 72v-73r

\textsuperscript{138}
Cola had, they could also have been used to heal a variety of illnesses.\footnote{fols. 73r-75v.} The court also summoned the communal surgeon of Sezze, Mario Todesco, who, according to Cornelia, regularly bled Maria.\footnote{She had been most recently bled earlier in the summer apparently to assuage a bout of fever, fols. 67v-68v.} He also had suspiciously left Sezze one day before Maria was arrested.\footnote{fol. 69r-v Marió’s wife Laura testified that he received a letter from his sister asking him to come to Naples to see her. She also said that Mario asked permission to go from the offitiali of Sezze. The offitiali, Leonardo Valeriano, later confirmed that Mario asked for permission to travel to Naples because his sister was sick. fol. 82r. The judge put a citatio on Mario but it is unclear whether he was found or if he ever testified, fol. 117r.} The court further tried to find a healer named Pignatella whom Superio allegedly brought from Ponte Corvo but to no avail.\footnote{Pietro Normesino, fols. 7v and 32r; Giuseppe Contuggio, fol. 36r-v, A letter from an official at Ponte Corvo stated that they could not find anybody by that name in the land. fol. 157r.} Perhaps Superio had sent these men away so that they would not be questioned.

The judges, however, did interrogate the apothecary Tomeo Ciolli, the physician Ortesio Simeoni and the barber Marzio Bracci. According to the tailor Emilio de Bonis, Superio had asked Tomeo for a remedy to make a “woman from a good family” abort in order spare her from scandal, but the apothecary refused because “this is a sin.”\footnote{“[…] era per una donna di buon parentado, et che haverebbe remediato alli scandali che potessero nascere, cheperò di gratia lo facesse.” fol. 50r; fol. 48r-v Other witnesses who named Tomeo include: Pietro Normesino, fol. 33r; Giovanni Ranucci, fol. 45r; Antonio Senemici, fol. 65r.} Similarly, a few witnesses said that Superio asked Dr. Ortesio, who had a history of treating Maria,\footnote{He testified to treating Maria off and on over the last few years, most recently a few weeks before the start of the investigation on account of a fever stemming her liver, fol. 90r-92r.} for a prescription to have her bled, but the doctor would not give it without examining her first.\footnote{Giuseppe Contuggio, fol. 36r; Giovanni Battista Colasanti, fol. 58r.} A few witnesses reported that the barber Marzio was explicitly asked to give Maria an abortion by bleeding her, allegedly for the sum of fifty scudi.\footnote{Pietro Normesino, fol. 32r; Giuseppe Contuggio, fol. 36r; Tommaso Ciammaricone, fols. 46v-47r; Tranquillo Pacifici, fol. 50v; Antonio Senemici, fol. 65r; Sebastiano Baratta testified that Marzio himself told him that he was asked to give Maria an abortion, but that he did not disclose who requested it, fol. 72r-v.} These healers, not surprisingly, denied that Superio approached them for an abortion. “This never happened,” Tomeo said.\footnote{fols. 99v-100v.} Ortesio, too, denied such a
Marzio, however, confirmed that he had been asked to bleed Maria, but that the solicitation came from fra Pietro, a French Franciscan who was in Sezze at the time and had visited the de Vecchis women, and not Superio. It was also not clear whether the bleeding was explicitly meant to cause an abortion, as some witnesses testified, or even whether Superio asked fra Pietro to secure this service. Fra Pietro, too, had left Sezze and could not be found.

Suspected of lying, all three healers were detained in prison in Rome. Tomeo Ciolli was especially suspect. A foreigner in Sezze with a chequered past, including jail, Tomeo had debts amounting to several hundred scudi. In their confrontation, the tailor Emilio challenged Tomeo “you must tell the truth and not be a false witness for anyone.” Later, Judge Lunte had the apothecary tortured on the cord (funi). As Tomeo hung in agony, the judge urged him to confess that Superio had asked for abortifacient remedies, but according to the notary, Tomeo “persisted in his lies.” He endured this torture for a quarter of an hour without a confession.

Interrogating these healers did not yield the evidence the judges sought. Surer evidence of Superio and Maria’s misdeeds, however, came from an 89 year old roaming Sicilian Franciscan named fra’Maccabeo (Iohannes Iosephus Siculus). Several witnesses testified that Superio asked this friar for the help with the abortion while he was in Sezze. After some effort, the court located fra’Maccabeo in Terracina, about 75km southeast of Rome. He was brought to the city

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148 fols. 61r-62r; 90r-92r; 176r-181r.
149 fols. 52r-53v.
150 Originally from Bassiano (about 10km north of Sezze), Tomeo practiced as an apothecary in his home town, in Priverno and in Rome before coming to Sezze in 1610. There, he worked as a garzone at the Pillorci shop, but he had recently been fired; Tomeo did not say when or why he lost his job or whether it was in any way related to the events surrounding this investigation. Tomeo was a trouble maker and had been jailed several times in his life. He had also amassed quite a large debt: he owed 100 scudi to the clerics of San Nicolo a Bassiano, 50 to the cavaliere Carlo de Lutiis of Sezze, and 110 scudi on behalf of his now dead brother (Tomeo was his security). With a criminal past and large debts to pay, Tomeo may very well have been solicited to help Superio procure an abortion.
151 “Dovresti dire la verità et non fare il giuramento falso per nessuno.” fol.101r, erroneously numbered fol. 111r.
152 See n. 62 above.
153 fol. 185r-v
and questioned in the Savelli prison. Fra’Maccabeo provided the judges with a complete
confession that confirmed Superio’s transgressions and admitted specifically to procuring
abortifacient medicines for him.

Fra’Maccabeo told his story uninterrupted to the judges. In January Superio had
approached him in the town’s piazza with a request for a “big favour” (un servigio grande).
Superio told him that he had deflowered a zitella and impregnated her, and that she was now two
or three months pregnant. Fra’Maccabeo said that Superio never told him the girl’s name and
that he did not ask for it. Superio told him that he had tried a few remedies to abort the
pregnancy – he had the girl bled from the foot and gave her purgative herbs\textsuperscript{154} – but these
therapies did not work. He wanted more effective abortifacients. Fra’Maccabeo replied that he
did not have any such remedies, but Superio begged and he finally obliged. The friar was going
to Terracina for three or four days and, on his return, he would bring suitable remedies. Superio
promised that, if the remedies worked, he would give fra’ Maccabeo a new habit (habito).\textsuperscript{155} The
next morning, Superio waited for the friar outside the convent and begged him not to let him
down. Superio, it seems, was getting desperate.

Superio asked fra’ Maccabeo for help with the abortion because, other than the fact that
he travelled in and out of Sezze and could traffic materials without raising too many eyebrows,
Maccabeo was a well-known healer. His speciality was healing women from bewitchment (le
fatture).\textsuperscript{156} Along with spiritual cures, exorcists used purgatives to literally purge “evils” (male)
out of bewitched bodies.\textsuperscript{157} In Terracina, the friar procured an infusion of colocynth from a

\textsuperscript{154} fol. 163r-v
\textsuperscript{155} “Et detto messer Superio mi promisse, se la cosa havesse effetto, di farmi un habito novo, sebene io gli
resposi et dissi che facesse quello che gli piacesse, perché io non mi curavo di niente.” fol. 161r.
\textsuperscript{156} fol. 163r.
\textsuperscript{157} See Seitz, Witchcraft and Inquisition in Early Modern Venice, esp. ch. 4 and 5; Gentilcore, From Bishop
to Witch, pp. 107-118.
source he did not name.\textsuperscript{158} He thought this infusion, which had milder effects than consuming the raw gourd, would cause the abortion, because “I know that it vigorously moves the body.” He could have procured stronger purgatives but, “the woman, being two or three months pregnant [at the time], I thought that this infusion could achieve the desired effect.”\textsuperscript{159} The priest knew what he was doing. This was likely not the first time he procured herbs to purge a woman’s womb. Back in Sezze, he gave Superio the drink and was confident that if the woman drank it in the morning, she would abort (\textit{spregnata}) later that day. Two days later, however, Superio reported that the infusion did not work.\textsuperscript{160} 

At this point, late January or early February of 1613, fra’ Maccabeo was getting ready to leave again, this time for Rome on Franciscan business accompanied by Frenchman fra’ Pietro. Superio begged him to procure fresh savin in Rome. Savin, fra’ Maccabeo explained to the judge, was “good for causing abortion.” Superio knew the effects of this herb well; he told fra’ Maccabeo that he already used savin on the girl, but that it did not cause the abortion because it was dried. Evidently, the fresh herb was stronger.\textsuperscript{161} Superio arranged to meet fra’ Maccabeo in Rome in a few days at the Hostaria del Paradiso in the Campo di Fiore to collect the herb. Fra’ Maccabeo stayed two nights at this inn with Superio. Without any difficulty, he was able to buy fresh savin from an herb peddler at the Piazza Navona, a transaction which was specifically

\textsuperscript{158} Fra’ Maccabeo’s business in Terracina (along with some ill health he suffered while there) kept him longer than three days. Anxious, Superio went to Terracina to see what the holdup was. The friar apologized for the delay and assured him that he would bring the goods to Sezze soon. Because he was delayed, fra’ Maccabeo caught a ride with a boatsman named Tuccio across the swamps and marshes between Terracina and Sezze. The court tried to find Tuccio but he was missing; according to his brother Giovanni, he had disappeared sometime at the end of August, fol. 185v.

\textsuperscript{159} fol. 163r.

\textsuperscript{160} fol. 162r.

\textsuperscript{161} Alessandro Pastore tells of a case tried in Bologna in 1665 where Andrea Sacchi was denounced for deflowering a girl and forcing her consume savin – the girl however refused this “diabolic” option. \textit{Il Medico in Tribunale}, p. 138, n. 27. Pastore fails to speculate whether this refusal to consume the abortifacient was an attempt on the girl’s part to force marriage or the payment of a dowry.
prohibited by the Protomedicato without a physician’s written prescription.\footnote{In theory, this herbarolo could have been fined 25 ducats; see Chapter 4. On the goods available in the Piazza Navona, see Anna Modigliani, \textit{Mercati, botteghe e spazi di commercio a Roma tra Medioevo ed eta Moderna} (Rome, 1998).} After giving the savin to Superio, fra’ Maccabeo returned to Terracina with his companion fra’ Pietro.\footnote{fol. 162v.} That was the last interaction. However, Maccabeo learned through fra’ Pietro, who returned to Sezze during Lent, that the fresh savin also did not work. Superio allegedly told fra’ Pietro that he found something else that would get the job done.\footnote{fol. 163r.}

Based on this testimony, Superio was guilty of seeking and attempting an abortion. Unlike the apothecary Tomeo Ciolli and barber Marzio Bracci, here was a witness who frankly admitted to procuring abortifacient remedies. Superio, of course, denied this testimony. After some hesitations, Superio admitted that he had seen the friar in February in Rome and that they dined together,\footnote{fol. 168r-v.} but denied that he ever asked Maccabeo to procure abortifacient herbs and claimed to know nothing about the herb savin.\footnote{fol. 168r-v.} Judge Lunte called the friar into the interrogating room for a confrontation. When fra’ Maccabeo confirmed his testimony in front of Superio, Superio dismissed it all, calling fra’ Maccabeo a liar, “pathetic” (\textit{un tristo}) and a “defrocked scoundrel sorcerer!” (\textit{sfratato poltrone fattochiero!}).

Fra’ Maccabeo’s motives are puzzling. Why did he confess these things without fear of being punished himself? He told the judge that the remedies he provided did not result in abortion, but this surely would not exculpate him from any wrongdoing. His clerical status protected him to a certain extent, but he could have been transferred to an ecclesiastical court for prosecution. Furthermore, as we saw in Chapter 2, a priest who was responsible for an abortion could, in theory, lose his clerical privileges and be tried as a layman. And “delinquent clerics”
were sometimes turned over to secular courts for judgement.\textsuperscript{167} His complete confession was suspect. Judge Lunte considered torturing the priest to see if his story would change but could not on account of his old age and his clerical status. The magistrate warned the priest that even though he could not be tortured and punished in that court, he would surely suffer in the afterlife if he was lying. Fra’ Maccebeo maintained that everything he said was the truth.\textsuperscript{168} The friar was released, and Superio returned to his cell.\textsuperscript{169}

Fra’ Maccabeo’s testimony pertained to Superio’s wrong doings, but, even though he did not mention her by name, it also pointed to Maria. Aside from the midwives’ examinations of her body and their conclusions that she had been pregnant, there was no direct physical evidence that Maria had had an abortion. Hoping to get one more piece of evidence from her body, the judges had Maria examined one more time at the very end of the investigation, but this time by a surgeon. The judges had heard from numerous witnesses that Maria had been bled several times during her alleged pregnancy.\textsuperscript{170} The judges, however wanted confirmation that Maria had in fact been bled in a way that would cause the abortion. And so, in Rome, Judge Lunte called the surgeon Vincenzo Pastore to the Tor di Nona jail to examine Maria’s foot. Pastore’s was the final testimony in this trial record. He told the judge that he had studied Maria’s feet and found that she had a scar on her right foot caused by a lancet used to draw blood from what is

\begin{footnotes}
\item[168] “[…] signore, vedete, quell che io ho detto nel mio essame è l’istessa verità, et se non fusse la verità come volete mai che sono sacerdote et religioso sono venuto qua a dirlo et a fare una testimonianza tale che fosse in pregiudizio del’anima mia et del prossimo.” fol. 171v.
\item[169] fols.170r-171v.
\item[170] Fra’ Maccebeo did not name Maria but he told the judges that Superio had his pregnant girl bled. From several other witnesses, the judges heard that Superio had approached the physician Ortenso Simeoni and the two surgeons, Mario Tedesco and Marzio Bracci for the bleeding. Mario was suspiciously missing from Sezze and Ortenso and Marzio denied the allegations. Giuseppe Contuggi, fol. 36r; Tommaso Ciammaricone, fol. 47r. Ortenso denied bleeding Maria during these months, fols. 61v, 66v, 91rv, 92r, 176v. In Rome, Judge Lunte asked Dr.Ortenso what would happen if a pregnant woman were to be bled from the foot? Ortenso replied: “To pregnant women, signore, one does not draw blood from the foot because the pregnancy can be aborted, because, as Hippocrates says ‘secta vena abortit.’”’ fols. 180v-181r.
\end{footnotes}
“popularly called the *vena della madre.*”¹⁷¹ The surgeon did not speculate as to why this vein was cut or even when this phlebotomy occurred. The judge likely knew that there was no way of proving that Maria’s foot was bled in order to procure abortion; after all, this was a standard form of therapy to heal illnesses stemming from poor purgation. On Maria, however, the scar on her right foot, in tandem with the evidence the six midwives who examined her genitals, stomach and breasts found, as well as with fra’ Maccabeo’s confession, likely confirmed what everyone thought.

Almost two months after they were arrested in Sezze, Maria and Superio were released into the open quarters of the jail in Rome, likely in order to prepare formal defences.¹⁷² While, the case appears to have gone forward, so far, no record has been located concerning the court’s judgment.

This case of procured abortion is multifaceted, and does not allow for easy conclusions. Like the 1598 trial of Rosana’s alleged rape and abortion, this case was centred on a vulnerable woman without a father, though with an older brother, who appears to have been deflowered and impregnated by a relative with whom she and her household collaborated and on whom they depended on financially. The abortion was an attempt to conceal an illicit sexual relationship that produced a pregnancy. Unlike the 1598 case, though, the pretext for this abortion did not seem to be the preservation of the girl’s honour. Maria had no prospect of marriage. Rather, her abortion seems to have been specifically intended to eliminate the material evidence that would substantiate the alleged incest and compromise the larger family’s reputation.

¹⁷¹ fol. 193v.
¹⁷² fol. 194r.
In both cases of procured abortion examined here, the men responsible for the pregnancies organised the abortions. Like Giovanni Manello from the 1598 case, Superio de Magistris tapped into his networks of acquaintances, local and more distant, in order to secure products and services for abortion. He allegedly consulted a variety of healers: a physician, a surgeon, a barber, an apothecary, two lay or folk healers, and two priests. These men offered specific services and knew how to terminate unwanted pregnancies. A foreigner to Sezze with a criminal past and considerable debts to pay, the apothecary Tomeo Ciolli was likely someone who could be bribed to provide abortifacient materials. Perhaps Superio had established personal relationships with Cola Cochiarello, the surgeon Mario Tedesco, the barber Marzio Bracci and the physician Ortensio Simeoni, and trusted they would not betray him because they had vested interest in his acquittal. Superio also turned to foreigners with whom he had weak ties. Traveling priests like fra’ Maccabeo might render a favour in exchange for compensation without causing too much noise, although this proved not to be the case. Regardless of what Superio’s specific relationships were with these healers, abortion was here figured as a man’s crime. Superio himself also knew quite a bit about abortion. He specifically requested purgative herbs such as savin and venesection from the foot. These methods were not secret or specialized knowledge. Rather this was information that men in Superio’s situation had to know in order to conceal their transgressions.

Superio organised the abortion by seeking out people he believed could accomplish it, but strikingly, not midwives or women healers in general. Was this because midwives could not be trusted? Furthermore, save for a few testimonies, Maria’s mother Cornelia did not overtly

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173 Some midwives had ties to the state and the ecclesiastical establishment and many likely had close bonds with their clients. See Nadia M. Filippini, “The Church, the State and Childbirth: The Midwife in Italy during the Eighteenth Century,” in The Art of Midwifery. Early modern midwives in Europe, ed. Hilary Marland (London, 1993), pp. 152–75.
figure in the planning of the abortion. Rather, men, like Superio, sought abortion primarily with the help of other men. Perhaps male healers would understand the situations men like Superio were in and might sympathize with them? Or perhaps they simply thought that male healers such as apothecaries and surgeons knew more about abortion than midwives.

While midwives were not asked to help bring about Maria’s abortion, they were asked to serve as expert witnesses to the crime. Only midwives were suitable for conducting the invasive tactile examinations of the girl’s body needed to discover whether or not she was a virgin, whether she had been pregnant, and whether she had an abortion. Although all six midwives who touched and scrutinized Maria’s body were convinced that she was no virgin and had recently experienced pregnancy, they could not tell whether she had an abortion.

Problematically, the signs of Maria’s body could be interpreted in completely different ways, as indeed Maria and Superio proposed. Abortion had no signs in itself; it would have to be inferred from other evidence. The milk that leaked from Maria’s breasts when they were pressed was a sign that she had given birth. But lactation had multiple meanings; it could have been caused by an imbalance in her menstrual purgation. Maria’s vagina was wide, and this implied that she was not a virgin. But such an inference was not unchallengeable. Maria insisted that this was caused by her jumping over a ravine. Her stomach was as loose as a woman who had given birth; but Maria maintained that this was a consequence of all the illnesses that she suffered from. “My male made me like this,” she insisted.174 Furthermore, the scar on her foot indicated that she had been bled from the saphena vein, which suggested an effort to purge her womb, though for unspecific reasons.

With the signs of Maria’s body ambiguous, external factors came to shape the judges perceptions. The evidence of “publica voce at fama” corroborated an explanation of sexual

174 “[…] io sono stata sempre male da piccola, et il male mi ha accocinato come mi vedete.” fol. 24r.
transgression and abortion. Nevertheless, unlike Rosana in the 1598 case, Maria de Vecchis had a voice. She completely denied any sexual relationship with her uncle and insisted that the allegations regarding her pregnancy and abortion were “great lies.” Maria may very well have been a victim of sexual exploitation – a sickly and crippled girl without a father forcefully deflowered, subjected to frequent sexual intercourse, impregnated by her rich uncle, and then forced to have an abortion – yet in this investigation she too was a defendant. Cornelia and even Maria herself may have permitted the sexual relationship with Superio for fear of straining their familial and commercial ties. Moreover, Maria, having no prospect of marriage or of romantic attention, may have been seduced and a voluntary participant in incest. Joanne Ferraro has observed that women in such situations may have accepted incest as the only sexual relationships that were available to them.\textsuperscript{175} If this was the case and Superio and Maria had repeatedly engaged in illicit sex, as many of the witnesses suggested, then Maria and her close family were also complicit in this sordid affair. Cornelia almost certainly knew what was going on in her house, allowed, if not encouraged it, and lied about it. Nevertheless, even though Maria was prosecuted, it does not mean that either the townspeople of Sezze or the judges deemed her guilt equally as deep as Superio’s.

In this case of procured abortion, the townspeople of Sezze disapproved of Superio and Maria’s relationship. Though this trial was officially filed as an investigation into defloration, incest, and abortion, the judges mostly concentrated on the abortion – finding the healer(s) responsible for the abortion was a way of proving that Maria was pregnant and might confirm that Superio was responsible. And yet, it seems as though the abortion was not necessarily important in itself – neither judge asked whether any of the witnesses had seen the aborted

\textsuperscript{175} Ferraro, \textit{Nefarious Crimes}. 
foetus. The abortion, it seems, was important because it confirmed the illicit sex that lay behind it and scandalized the community.

4. Conclusion

In early modern Rome, miscarriage caused by violence and procured abortion were crimes and punishable offenses. Examining witness testimonies in cases tried by the Tribunal of the Governor shines light on how these events were perceived, experienced and reported by early modern Romans. The four cases discussed here suggest that miscarriage and procured abortion were controversial and contentious events that were not easily dealt with in court or in the world at large. All four cases were shrouded in doubt and ambiguity, legal, medical, and social. Rooted in the physical complexities of generation and pregnancy, and in the ambiguities of the female body, some uncertainty was genuine. It was also deliberately exploited by the plaintiffs in order to make cases, and by the defendants for exculpation. Close reading of multiple testimonies highlights the fact that the meanings of aborto were shaped by specific contexts and circumstances, including especially the social relations among the accusers, the accused and their witnesses.

Uncertainty shaped each of the four trials presented here in different ways. In cases of miscarriage, it was difficult and often impossible to determine with certainty the specific cause that brought an otherwise healthy pregnancy to an end. Not only could numerous factors account for a terminated pregnancy, but the very miscarriage itself was not self evident and could be challenged. Orsolina de Mirandola alleged to have miscarried a two-months developed foetus on account of beating she suffered when she publicly insulted Germanico Rastello’s honour by
asking him to make good on a debt. Germanico, however, responded to the charges by arguing that Orsolina did not miscarry because she was not pregnant and could not have been on account of her age. Orsolina was likely not showing at the time of their altercation and none of the witnesses who testified knew that she was pregnant. This was significant and meant that Germanico, or anyone else, was not required to interact with her body as if it harboured fetal life. Germanico could not deny that he assaulted Orsolina as many witnesses saw him do so, although he maintained that he reacted in self-defence and not as severely as she claimed. Germanico thus positioned Orsolina as the aggressor, an unruly woman, and his conduct as a reasonable. Furthermore, Germanico accused Orsolina of misrepresenting her menstrual blood as a miscarriage in order to frame him. In doing so, he intentionally drew on available discourses of female duplicity in matters pertaining to pregnancy and its termination. He likely crafted this strategy in order to obfuscate the charges levied against him. Nevertheless, this does not necessarily mean that Germanico was lying. He may have truly believed that Orsolina was not pregnant and that he was innocent of her charges.

Like Orsolina, Angela da Filettino believed that she miscarried because of assault stemming from a confrontation over slander and defamation. One prostitute insulted another and the subsequent fight in the street led, according to Angela, to the death of her unborn and its expulsion almost one month later. Unlike Germanico Rastello, Venere Bolognese did not deny that Angela had been pregnant or that she miscarried, but rejected the accusation that she was to blame. Recognising that Angela was in a weak and vulnerable state, Venere, in her account, showed restraint and did not hit Angela despite her provocation. Besides claiming that she did not strike Angela, Venere challenged the causal relationship between their confrontation and the miscarriage. To Venere, the twenty four days that separated the two events indicated that they
were not causally related. Venere offered a more proximate cause for the death of Angela’s foetus: her vocation. In connecting prostitution to miscarriage, Venere drew on the cultural and medical assumptions that frequent sexual activity led to failed pregnancies. She directly linked Angela’s miscarriage to her sinful life. Although the court asked several medical practitioners to determine the causes of Angela’s miscarriage, they could not do so with the level of certainty the law desired. Based on the evidence drawn from Angela’s body and assessed with personal experience and book learning, both midwife Cleria and Dr. Camotio stated that the physical and emotional assault on Angela might have been, in various ways, responsible for the miscarriage three weeks later. They could not be sure, however, that it was principal cause and discount other factors, especially her line of work or an illness. In the end, Venere was sentenced to pay a fine, but it is unclear whether she was found guilty of causing Angela’s miscarriage and the death of her unborn, or whether she was penalized only for slander and assault.

Cases of procured abortion were even more uncertain and complicated. In the two cases examined here, abortion was sought to cover up illicit sexual relationships and to avoid their consequences. The trial regarding Rosana Ansaloni’s alleged abortion differed from the three other cases because her voice was not heard. Nevertheless, in the trials men’s perspectives were central. The testimonies of Rosana’s husband and brother in-law teach us about male cultural assumptions regarding procured abortion. The brothers represented Rosana as a weak, vulnerable and fatherless nubile girl who was violently deflowered and impregnated in her own home by a relative, the only man in a household of three women. Recognising that the pregnancy would lead to scandal and perhaps punishment, Giovanni duplicitously engineered a plot to get Rosana an abortion. He concealed Rosana’s condition by labelling it dropsy, an illness whose symptoms mimicked the signs of pregnancy. Rosana was publicly known to be a virgin and this perception
influenced the way onlookers understood and interacted with her swollen body. In the story the brothers told, the barber Giacomo was tricked by the illness narrative and by his trust in Rosana and his friend Giovanni into bleeding her, which may have caused the abortion. From this case, we learn that men also used the ambiguities of women’s bodies in order to pursue their own goals. This story may have been made up to get Giovanni in trouble for entirely other reasons, but, in crafting it, the brothers drew on several available discourses that made their case plausible.

Similar discourses were deployed in the 1613 case of Superio de Magistris and Maria de Vecchis. This trial is different than the other three explored here in that the court, and not an individual plaintiff seeking compensation for damages, sought to bring justice to offenders of public morality. Superio and Maria’s incest and her resulting pregnancy and abortion were notorious and troubled the townspeople of Sezze and so the Governor’s tribunal investigated the affair. Many neighbours testified to knowing, through gossip, that Maria was pregnant by her rich uncle Superio and that he procured her an abortion, but the judges were hard-pressed to find physical evidence to substantiate these allegations. Numerous witnesses also reported that Superio had solicited several healers to abort Maria’s pregnancy. Yet most of the healers questioned, not surprisingly, denied the allegations. Furthermore, Superio and Maria insisted she had undergone many medical interventions on account of her chronic illnesses, a story also confirmed by the town’s physician. Maria’s illness narrative was treated as ambiguous by the court, which turned to her body for physical evidence of the alleged crimes. Through repeated intrusive examinations of her body, six midwives testified that Maria had a large *natura*, a loose stomach, and milk secreting from her breasts – all signs that pointed to pregnancy and delivery. But uncertainty still persisted. These signs were not conclusive evidence that she was
impregnated by her uncle and had had an abortion. Alternative medical explanations existed to explain the appearance of Maria’s body. Maria may have truly understood her body to have been shaped by her illnesses, menstrual irregularities and the accident that allegedly deflowered her. Her explanations for the state of her body, regardless of how fanciful they may have sounded to the midwives and the judge, had to be taken seriously because they were medically plausible. In the end, a healer confessed to procuring abortifacient medicines for Superio, but Maria’s disorderly body greatly complicated the allegations made against them.

In all four cases, the accused and their accusers deployed multiple discourses to give meaning to ambiguous signs and uncertain events. In their testimonies witnesses did not simply retell what they saw, heard, perceived or experienced but rather said what they believed might further their own goals and have the least negative impact on their lives. The plaintiffs and the defendants shaped their narratives according to the circumstances. They told stories that they might truly have believed, but they also said what they believed the court might accept. That these discourses were generally self-serving and that they could be inconsistent and contradictory does not mean that they were disingenuous. In all four cases, the female body was regarded to be opaque and ambiguous, and the processes that brought pregnancy to an end uncertain. This was true for both ordinary people and for medical and legal professionals. The fact that most witnesses could, in varying degrees, draw on medical discourses to explain miscarriage, abortion and the appearance of women’s bodies indicates a fluidity between learned and vernacular perceptions and experiences of the body and its processes. The signs and operations of women’s bodies were always open to interpretation, both by women themselves and by lay onlookers and medical professionals.
Perhaps surprisingly, in the four cases examined here, homicide was not a meaning assigned to abortion. For the defendants, their accusers, the witnesses, and even the judges, these cases of miscarriage and procured abortions were not homicides or murders. These were much more mundane crimes and part of everyday life. Miscarriage resulted from violence stemming from insults exchanged in streets and piazzas; abortion was procured to cover up illicit sexuality. Nevertheless, aborto was always uncertain and its meanings open to interpretation.
Chapter 6

Conclusion

This dissertation has asked a deceptively simple question: what did *abortion* mean in late Renaissance Italy? Implicit in the question is the assumption that abortion is not trans-historical or trans-cultural but rather has specific meanings produced by individuals operating within specific social and political contexts and within distinct cultural fields. In early modern Italy, abortion was a complex and contested physical event that elicited varied, inconsistent, and often contradictory responses. *Aborto* was a word used to describe a failed or terminated pregnancy, but the particular significances ascribed to the physical event varied in relation to context and circumstance. In some situations, abortion could be interpreted as mortal sin and crime, and was a punishable offence; in others it was forgivable, acceptable, necessary, and even deemed charitable. This study has found that attitudes and responses, as well as perceptions and experiences were influenced by gender, social status, family structure and age, and the motivations behind the abortion. They were also shaped by the uncertainties surrounding generation and pregnancy, and by the physical ambiguities of the female body. Numerous and contradictory meanings could be ascribed onto women’s bodies and the products of the womb, and this greatly complicated understandings of abortion. In early modern Italy, abortion was open to interpretation and to negotiation at the institutional level, in regular social interactions with neighbours and familiars, and also at the level of a woman’s personal experience.

My approach in this study has been to historicize abortion by recovering and joining together, from a broad base of sources, as many representations and images, points of view and
voices on this subject as possible. The preceding chapters have sought to unpack a range of collectively available discourses that early modern Italians used to construct meanings in specific situations. I have analysed discussions and perceptions drawn from authorities and elites such as popes, civic magistrates, lawyers and professors of medicine to lesser health practitioners – barbers, apothecaries and midwives – and ordinary women and men, literate and unlettered, urban and rural. I have privileged variety and contention in order to better recover some of the complexities that abortion posed for early modern individuals.

Against the backdrop of the dramatic religious and social transformations that characterized the early modern period, this study has found both changes and continuities in Italian attitudes towards abortion. Shifts can be especially detected at the institutional level as reflected in official and public rhetoric. During the later sixteenth and early seventeenth centuries, heated rhetoric, moralising, and legislation were directed against procured abortion across the peninsula. These suggest a growing discomfort with the practice, on the part of ecclesiastical and civic authorities, and an aspiration to change attitudes and reform behaviours through catechetical education and the threat of discipline. As part of broader campaigns of moral and religious reform and state building, the Catholic Church and secular governments in Italy increasingly condemned abortion by linking it with sexual immorality and also with homicide. In religious and legal sources, abortion was widely regarded to be a form of killing and a crime against a potential life. It was viewed as especially grave if the unborn foetus was ensouled. The death of an unbaptised soul increasingly came to weigh on the minds of some authorities who discussed and legislated on procured abortion. If women and men did not engage in illicit sex, the rhetoric went, they would not find themselves in situations where they had to
kill a potential human being in order to escape dishonour, public punishment, or the burden of bastard children.

Changes in institutional attitudes were especially pronounced at the legislative level and in the threat of discipline. Throughout this dissertation, I have pointed to Sixtus V’s 1588 bull Against those who Procure Abortion as the most extreme and controversial attempt by a post-Tridentine authority to change mentalities towards abortion, which Sixtus believed was widely practiced and socially tolerated at all levels of society and especially by clerics. The bull was unprecedented in equating all abortion with homicide and in seeking to punish offenders with excommunication and capital punishment. This approach to the issue was rapidly deemed too severe, controversial and practically unenforceable, and therefore was quickly revoked. Theologically and legally, there was no precedent for equating all abortion with homicide and punishing procurers with excommunication and capital punishment. Politically, Sixtus’ bull infringed on the jurisdiction of bishops, established at the Council of Trent, to rule in these matters. More representative of institutional efforts to curb the practice were the prohibitions and corresponding penalties contained in the bandi of civic magistrates and health boards and in bishops’ constitutions and ordinances, or the increased attention given to the practice by confessors’ manuals and didactic works on morality. Different types of texts addressed diverse audiences, but the messages were, by and large, similar and diffused throughout society. In prescriptive literature, authorities told their subordinates not to practice abortion because God deplored it; procuring abortion put one’s soul in jeopardy, it deprived the soul of an unborn child of salvation, and therefore invited harsh punishment. Ecclesiastical and civic authorities sought to discipline the practice with the threat of increasingly severe penalties, including spiritual sanctions, fines, beatings, banishment, and, in some places, even capital punishment. Though we
do not see anything in the early modern period remotely resembling twentieth-century public campaigns against abortion, we do find concerted efforts by early modern Church and states to change attitudes towards the practice by means of education, moralising, legislation, and the threat of harsh discipline.

The impact of these prohibitions and moralising on attitudes towards abortion is, however, difficult to discern. As the preceding chapters have shown, the successful implementation of sharp discipline should not be overestimated. Prescriptions that clearly demarcated licit from illicit, and that imposed harsh penalties for crossing the line, reflected ideals that failed to percolate down through the messiness of daily life. This study has found that there were indeed significant gaps between the moral precepts regarding abortion as articulated in religious, legal and medical discourses of prescription and the actual practices and behaviours of ordinary women and men, as well as of ecclesiastical and civic authorities. Chapters 2, 3 and 5 have shown that, while the upper echelons of Church and states attempted to control and eradicate the practice of abortion with the threat of discipline, in practice most authorities were not intent on enforcing harsh moral precepts. Ecclesiastical authorities preferred to have confessors handle cases of abortion in the privacy of the confessional rather than having procurers publicly investigated. Civil jurists resisted the equation of a foetus in utero with a born human being and abortion with homicide, and, therefore, thought capital punishment incommensurate to the offense. Milder penalties, to be decided on by the judge in accordance to the specifics of each case, were generally preferred over those found in codes of law. Most of the time, the gender, social status and reputation of the suspects and the potential for causing scandal and social disruption were critical.
Discipline in these matters was also very difficult to enforce consistently as authorities who made the rules often shared attitudes and behaviours with the ruled, and often found themselves in similar predicaments. Priests, who were occupationally committed to preaching against sexual deviance, were known to procure abortion in order to conceal their transgressions and avoid punishment and scandal. Similarly, civic authorities who prohibited the practice of abortion might procure purgative medicines to conceal their own or their kin’s transgressions. Authorities perpetrating a system of patriarchy wanted it both ways. They knew and appreciated that in specific situations, the repercussions of pregnancy could be devastating for people of status and good repute. For some women and men, including elites and members of the clergy caught in specific circumstances, the need to terminate an unwanted pregnancy could be very pressing. Even as ecclesiastical and civic authorities sought to impose restrictive codes of behaviour through legislative sternness and confessional education, they were well aware that abortion fulfilled a common need. Prescribed responses to allegations of abortion were often flexed in order to avoid the scandal and social disruption that might ensue from investigating and making public sexual transgressions. For all their harsh rhetoric, as most early modern ecclesiastical and civic authorities went about implementing moral and legal prescriptions, they showed responsiveness to social contexts and circumstances. Often practical, social and political concerns outweighed the alleged good that could be achieved by strictly enforcing imperatives. In early modern Italy, abortion was never formally accepted, yet evidence suggests that it was relatively common and, within certain limits, socially tolerated. Of course, authorities probably varied in their severity when it came to dealing with illicit sexual behaviours and with the practice of abortion. More research into the judicial practices of specific localities and over a longue durée will refine this picture. However, my preliminary findings suggest that, much of the
time, the repression of abortion was not a great or pressing concern for the authorities who legislated and moralised on it.

Exploring attitudes and responses to abortion also reveals insights into some of the broader issues confronting early modern Italian society. This study sheds light on the ways in which the practice of abortion could be gendered. Representations drawn from prescriptive sources depicted abortion as practiced by unmarried and vulnerable women and commonly associated with the young. This is not surprising. Pregnancy could be disastrous for young unmarried women and their families (if they were involved). For sexually vulnerable women, such as fatherless nubile girls like Rosana and Maria de Vecchis, finding solutions to unwanted pregnancy could be a matter of survival. Abortion procured as early in term as possible was the best option available to women for terminating shameful pregnancies resulting from sexual violence, seduction with a false promise of marriage, sexual relationships with priests or relatives.

Challenging our assumptions of gender roles in these matters, I have also shown that abortion was often represented as a male crime. In early modern Italy, abortion was not only a “woman’s secret” but was also a preferred solution for the men – often the girls’ social superiors – responsible for unwanted pregnancies. Discourses from ecclesiastical, medical and judicial settings picture men, clerical and lay, intricately involved in abortion, as both procurers and administrators. Sometimes abortion appeared to be as much, if not more, a crime of male rather than female honour. Men were assumed to be active and also often knowledgeable in this domain. Men like Giovanni Manello, Superio de Magistris, and the clerics discussed in Chapter 2 requested, forced, arranged and administered abortions on the women they impregnated. They knew who to turn to for assistance and also what to ask for. Male healers – physicians,
apothecaries, surgeons and barbers but also priests and exorcists – knew how to terminate pregnancies. I have suggested throughout this thesis that we need to reassess the assumption that knowledge of the female body and of fertility and birth control was primarily women’s business. Examining the roles men played in organizing and administering abortions gives further evidence that in the early modern period, women’s bodies, especially in regards to matters of generation, were matters of public, and therefore male as well as female concern. The threats of loss of personal and familial honour, of strained social relationships, and of financial and corporal punishments were strong motivators for men to know and to learn how to terminate potentially troublesome pregnancies.

Although this study has been mainly concerned with abortions procured to conceal the products of deviant sex, it has also revealed that we should not assume that abortion was practiced only or even predominantly by women and men in dire or potentially scandalous situations. As represented in an array of sources, women from varying age groups, family structures and social statuses apparently sought to terminate pregnancies for a number of reasons. As we saw in Chapter 2, confessors were taught to suspect married couples of practicing abortion in order to limit family size. Legal discourses analysed in Chapter 3 alluded to wives aborting legitimate pregnancies in order to influence the transmission of inheritance. Medical authors, examined in Chapter 4, also discussed abortion in the context of marriage, though this was mostly abortion for healing purposes and intended to save a woman’s life. While I have not found any cases of married couples prosecuted for attempting to terminate unwanted pregnancy, it is almost certainly the case that they did on occasion practice abortion as a strategy to avoid the burden that additional children would place on family resources. Abortion performed by married couples or men and women in stable lay or clerical concubinal relationships would likely have
gone unreported and unpunished, and may have been regarded as acceptable practice or one which fell within prescribed boundaries. These were not the sorts of abortions that preoccupied legislators and moralists or that turned up in criminal court. More research into other tribunals, especially ecclesiastical, may turn up some cases and shed light on these and other contexts and experiences of abortion.

Another important point that emerges from this research is the highly social nature of the prosecution of abortion. We have seen throughout this dissertation and especially in Chapter 5 that specific social circumstances and personal motivations dictated whether and how abortion was prosecuted. Cases of abortion mostly came to the attention of authorities and were investigated for reasons other than enforcing strict moral discipline and punishing women and men who terminated fetal life. Most often, cases came to court by means of denunciation by someone with a personal stake in the matter or when behaviours associated with the abortion disturbed neighbourhood life. Criminal records show that abortion could also be used as a pretense to air other unrelated grievances in court, even though we may not always be able to detect what these were. Cases that came to trial, therefore, must be examined through a lens considering social relations between plaintiffs, accused, and witnesses. In doing so, abortion trials illuminate aspects of neighbourhood and communal concern and serve as windows onto the complexity of early modern social relations.

Beyond social and political imperatives, the problems of locating and investigating cases of abortion and of disciplining suspected procurers were exacerbated by the difficulty of discovering and distinguishing between causes of failed pregnancies and the intentions that lay behind them. The ambiguities of the female body and the uncertainties surrounding pregnancy and its termination made it difficult to determine what was taking place within women’s bodies,
what was in the womb, what brought it out and why. For early modern individuals, including women, the womb was persistently opaque, pregnancy was notoriously difficult to identify, and causes and processes that brought it to an end were often impossible to determine with certainty.

Bodies, of course, contained evidence and data that could be ‘read’ and evaluated by medical and legal experts and by ordinary women and men, but the meanings of bodily transformations remained negotiable and could be contested. Lay onlookers, such as neighbours, surveilled women’s bodies and gossiped about them when they detected changes that might signal pregnancy. These observations then could crystallize charges of illicit sexual relations. Medical practitioners operating in a forensic capacity and in daily practice scrutinized women’s bodies and strove, often on the demands of jurists, to find standards of proof with which to physically determine whether a woman was a virgin, whether she was or had been pregnant, and whether she had delivered a child, miscarried or had an abortion. While there existed important signs that suggested what the body might have experienced and what it might be harbouring, it was universally accepted that the female body, independent of a woman’s narrative and often in spite of it, was deceptive. All the signs that might indicate pregnancy, such as missed periods, a growing belly followed by the sensation of motion, and even lactation, could have other completely different meanings. Problematically, these signs and sensations could be diagnosed as symptoms of illness that required therapy.

As we have seen throughout this thesis, treating women for womb related illness was risky business as the goal was generally to flush its contents. Purgative medicines were designed to force the womb open and purge obstructions, and could, therefore, be used to cause pregnant women to abort. It was well known to early modern Italians, learned and lay, that the same drugs and surgeries that women used for cure could also bring pregnancy to an end. Physicians
mobilized discourses regarding corporal ambiguity and the uncertainties surrounding generation to buttress their claims to authority and to carve out a monopoly over these aspects of therapy. Such doctors claimed to be better equipped to distinguish between womb-related illnesses and pregnancy than lower order healers, such as midwives or surgeons. Health boards sought to protect patients from unintended effects of strong drugs by prohibiting the sale and administration of purgative medicines and surgeries to women without a physician’s prescription. But restricting the traffic of purgative medicines in these ways was impractical and never a real possibility because they were ubiquitous and used to heal multiple and completely unrelated illnesses. In Chapters 4 and 5, we saw that information on how to bring about an abortion circulated on various levels and that related products and services were widely sought and available. Apothecaries, herbalists and grocers all sold purgative herbs that were used for a variety of health issues but could also cause abortion. For these reasons, in early modern Italy, the concept of a ‘back alley abortionist’ who sold secret products did not exist. Conscientious and law abiding healers might carefully scrutinize women’s bodies to find physical evidence with which to evaluate the veracity of illness narratives, but certainty could not be had, even for university-trained medical men. Jurists who discussed these matters in print and judges who heard cases in tribunal knew that mistakes could be genuinely made. Accountability and blame were very difficult to establish in cases of alleged abortion and miscarriage caused by violence because cause and intention were very difficult to discover.

Discourses of uncertainty and ambiguity also conditioned women’s perceptions and experiences of their own bodies as much as they shaped the perceptions of onlookers. Throughout this dissertation, I have resisted the assumption that women who claimed ignorance of pregnancy or that they suffered a natural or accidental miscarriage were lying to escape
punishment, regardless of their social status or the specific situations in which they found themselves. The meanings of bodily signs and sensations were not obvious. Women learned to interpret them through instruction and experience. For some, the signs and sensations of pregnancy could be genuinely experienced as illness. For a woman, and her familiars, who did not desire or expect a child, a missed period and a growing belly were causes of concern as they signalled ill health. Addressing these apparently common health issues may often have been routine: women acquired purgative herbs from a variety of sources, and consumed them in order to stimulate menstruation, expel obstructions and regain health. In many situations, women and their onlookers may have interpreted the expulsion of clotted blood and fleshy matter as signs of health regained and not of abortion and the death of an unborn child. The line between healing purges and causing abortion, I contend, was very fine and always open to interpretation, even by the very women who experienced these events.

Of course, women and men did sometimes procure abortions by deception, and claims of ignorance and of unintended or spontaneous miscarriage were standard defences because they were plausible and could not be easily discredited. Women who were not supposed to be pregnant and feared that they might be would likely pay more attention to the signs of their bodies and potentially act if they missed a period or if they noticed abdominal distension. Men who feared that they might have impregnated a woman that they should not have might force the woman to consume purgative medicines as a matter of course, just in case. Nevertheless, women who were not supposed to be pregnant, or who did not want to be, could chose to believe, at least up until a certain point, that they were not pregnant but rather were ill, suffering from menstrual retention or dropsy. The opposite was also true; women who suffered from illnesses of the womb could believe that they were pregnant. Ambiguity worked in both directions. Discourses of
corporal ambiguity and uncertainty were not autonomous but interconnected, and shaped the stories women and men could tell others and themselves in order to explain the appearance of female bodies, to dispel accusations of pregnancy when it was threatening, and to obfuscate charges of intentionally procuring abortion. The female body could be perceived, experienced, and presented in a variety of ways for a variety of reasons.

In early modern Italy, abortion was never a simple or straightforward event. In spite of ecclesiastical, judicial, and medical attempts to define and regulate its practice, the meanings of abortion remained contested and in flux throughout the period. Examining the multiple and contradictory ways in which abortion was represented in various early modern Italian discursive contexts, this study has attempted throw light on some of the broader social, sexual, and gender imbalances that bore directly on perceptions and experiences of the female body and that shaped the ways in which institutions and individuals processed abortions. Far from being black or white, early modern Italian attitudes and responses to abortion were always complex and multifaceted.
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