

unseen foetus, and is, therefore, not so much malevolence to the deceased infant in particular, as any evil design in general—the dictates of a wicked, depraved, and malignant heart, as Foster expressed it,—une disposition à faire une male chose—which may be either expressed or implied in law. It may be taken for a general rule that an act of this nature is malicious, and *should* amount to murder, unless where *justified* by the command or permission of the law, or *excused* on account of accident or of self-preservation, as in cases where the accoucheur risks the life of the child to save that of the mother. But without these circumstances of justification, excuse, or alleviation, the earnest and oft-times tearful plea “I don’t want to be bothered with any more children” would not be sufficient in any court of justice, still less in the forum of one’s conscience, where a faculty may still exist of judging of conduct with reference to some standard of right and wrong. There was an old Roman law by which the slayer of her own child was punished in a much severer manner than any other kind of homicide. After being scourged, the delinquent was sewed up in a leathern sack, with a live dog, a cock, a viper and an ape, and so cast into the sea. Solon the wise, in his laws, made none against this crime, apprehending it impossible, as Cicero says, that any one should be guilty of so unnatural a barbarity.

I have been at some trouble to search out the law on this question, as it has been more than once urged that the death of the mother alone jeopardises the life or liberty of the fiend who accommodatingly assists, or the woman who wantonly permits, or procures, or in any way wilfully occasions, a violent interference with the law of nature; and I find that as society *advanced* (?) the law was modified. By 43 Geo. III., c. 58, and 9 Geo. IV., c. 31, s. 13, it was provided that to administer a destructive thing to procure the miscarriage of a woman *quick* with child should be a *capital* felony; and if she should not be proved to have been *quick* with child, a felony punishable with transportation. But the law is now governed by 7 Will. IV. and 1 Vict., c. 85, s. 6, which provides that whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever, with the like intent, shall be guilty of felony and liable to transportation for life, or not less than fifteen years, or to be imprisoned for any term not more than three years.”