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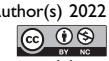
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Trafficking, Rape, or Deceptive Sex? A Historical Examination of Procurement Offences in England

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Abstract

This article examines the origins of procurement offences and their historical development in England. Procurement offences were created in 1885 to tackle so-called white slavery, as trafficking in women was then sensationally called. Through an analysis of a series of lower-level and appeal cases heard between the years of 1885 and 1925 and their social context, this article dispels myths about procurement for prostitution as an international, organised crime, showing instead how it was localised and poverty driven. The article also shows how procurement transformed from a narrowly defined trafficking-related offence into a broadly applied sexual offence. It came to be used as a 'catch-all' sexual offence that had the potential to encompass various distinct offences, from trafficking, rape and child sex abuse to deceptive sex. The legal history of the procurement is of particular importance as deception and questions of conditional consent remain deeply contested in modern criminal law.

Keywords

Deceptive sex, legal history, procurement, prostitution, sexual offences, trafficking in women

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Introduction

On one Sunday morning in the autumn of 1910, 19-year-old Annie[1] was sitting in Kennington Park in south London reading a book (*Illustrated Police News*, 1910d; *Lowestoft Journal*, 1910b). Born and raised in the countryside, Annie had recently arrived in London to work in domestic service. While in the park, she was befriended by a young man called Samuel. Samuel and his friend persuaded her to go for a walk, leading to their residence in east London. While there, Annie was raped by a man in Samuel's gang, then repeatedly assaulted and over the following weeks was forced to work in prostitution (unreported, Old Bailey, 6 December 1910). Samuel and his gang were what the press called white slavers or procurers: men and women who procured women and girls into prostitution by a mix of deceit, force, and coercion. Samuel and his friends were all from Eastern Europe, and in both the press and the court they were spoken of as a violent gang of foreign men. Undoubtedly, Samuel and his men matched the public imagination of what a 'white slaver', or sex trafficker in contemporary language, looked like and their actions and methods matched what the public perceived as procurement. Yet Samuel and his gangs were the exception.

Most so-called white slavers or those convicted of procurement in the period looked nothing like Samuel, nor did his methods of procuring girls match the everyday procurement trials at the turn of 20th century. Procurement offences, created as part of the Criminal Law Amendment Act (CLAA) 1885, were enacted to combat trafficking as a new form of international crime. They aimed to criminalise the procurement of women and girls for prostitution and in specific, the actions of those who attempted to entice, force, or deceive young girls into prostitution. Yet, as the article will show, the CLAA was ineffective in meeting that core aim. Prosecutions for procurement were low, and those prosecuted for procurement most were mostly poor, and many were women known to the complainant. While most cases of procurement were prostitution related, I argue that procurement also came to be used as a 'lesser sexual offence' – a substitute for a rape charge. It continued to be used in that context for the entire 20th century, in cases of deceptive sex, in particular. I will show that this development happened in two stages in the decades that followed the enactment of the CLAA. Firstly, the courts accepted that a person could procure a woman for themselves, thereby accepting that the offences were not limited to intermediaries and third parties in the context of procuring for prostitution. Secondly, the procurement offences became a 'catch-all' sexual offence, cutting across a range of sexual offences, with the potential to encompass various distinct offences.

Little, if anything, has been written about the history of procurement or the cases that shaped our contemporary understanding of procurement, and by extension deceptive sex. In historical scholarship, procurement received little attention beyond its association with so-called white slavery and prostitution (Bartley 1999; Hearne, 2020; Laite, 2012 and 2021). Through an analysis of the prosecutions and the lives of those on trial, the paper also contributes to social history, and the growing scholarship on white slavery that has so far sought to problematise the term 'white slavery' and focused on it through the lens of victimhood (Lammasniemi, 2017), sex work (Laite, 2012 and

2021) and analysed it as a racialised metaphor (Attwood, 2014; Doezema, 2000 and 2010).

In legal scholarship, the history and origins of procurement offences is often a mere footnote – if that – when assessing contemporary applications or concerns with deceptive sex. This article, therefore, makes an original contribution to legal history and history of sexual offences by analysing the origins and development of procurement offences and their prosecutions. Introduced in the CLAA, the procurement offences became integrated into the Sexual Offences Act 1956, the first dedicated Act on sexual offences in England. By the 21st century these offences were very rarely used (Home Office, 2000) and they were repealed, without replacement, when the Sexual Offences Act 2003, the current framework for sexual offences came into force. The issue of procurement is, however, of wider importance as while procurement offences no longer form part of sexual offences law, deception – and when deception vitiates consent to sexual activity – remains one of the most contested issues in modern sexual offences law (Clement, 2019; Dsouza, 2022; Kennedy, 2021). Furthermore, this is timely due to the increasing complexity in cases of deceptive sex (*R v Lawrance* [2020] EWCA Crim 971; *R (Monica) v Director of Public Prosecutions* [2018] EWHC 3508 (Admin)) and the ongoing consultations on how to reform this area of law, which potentially includes the reintroduction of a revised procurement offence (Criminal Law Reform Now, 2021).

This paper analyses previously unexamined, surviving court records from a 40-year period, 1885–1925, following the enactment of the procurement offences, to show how the law developed. The analysis ends in the 1920s as, by then, the use of procurement as a wide-ranging sexual offence had become settled in common law. The paper draws from a wide range of historical and legal historical sources to analyse just over 100 cases in total; consisting of 72 lower-level, unreported cases of procurement, rape, and indecent assault offences along with a handful of reported cases from the Court for Crown Cases Reserved, the then appellate court, along with all related case files from the National Archives. Some unreported cases have also been identified through the archives of organisations invested in law enforcement such as National Vigilance Association and Public Morality Council held at the Women's Library at the London School of Economics and the London Metropolitan Archives, respectively. Most procurement cases discussed in this article were heard in the Central London Criminal Court (Old Bailey) or in Middlesex Assizes. There were few procurement prosecutions outside the capital and so the cases from the region form a realistic picture of procurement prosecutions in the era (Laite, 2021: 109). The majority of cases have been identified through Old Bailey Online or the National Archives, but as these records are often minimal, the case details have been triangulated to other available sources, mainly to online newspaper archives along with census and workhouse records. Despite their problematic and often biased nature (Stevenson, 2014), newspapers are a good means (Grey, 2020) of locating information on criminal cases from the time because of the sparsity of actual court records, depositions, and minutes that have survived.

This paper takes a feminist approach to legal historical analysis and draws from a range of source materials, beyond formal legal records, as is often necessary when doing feminist legal history (Rackley and Auchmuty, 2020). Only a fraction of criminal cases heard in the period have meaningful details of the investigation or trials preserved in

the National Archives and most cases are simply recorded in the Calendar of Prisoners with basic details of the offence. As most cases dealing with sexual offences never made it to court, the state archives hold fragments of fragments when it comes to women's experiences of sexual violence, and of their encounters with criminal justice more broadly. Newspaper, workhouse, and census records can assist in creating a much fuller social and legal history of the cases and so, better demonstrate law's lived reality for women who have been systematically excluded from written records.

In this article, I discuss the origins and development of procurement in two parts. In the first part, I explain the legal and social context of the procurement offences and claim that the offences were created to criminalise trafficking in women. In the second part, I analyse a range of cases from the 40-year period after the enactment of the CLAA to dispel myths about procurement and white slavery, and show that criminal gangs were an exception and most procurement for prostitution was low-level and impacted by gendered poverty. In the final part, I discuss how the procurement offences evolved from relatively small and narrowly defined offences impacting intermediaries into important and influential sexual offences and how procurement became associated with deceptive sex. I show through an analysis of a series of court cases how procurement became used as an alternative to a rape charge, allowing for under-charging of serious sexual offences, particularly in cases where there was alleged deception or coercion.

Criminal Law Amendment ACT 1885: Creation of the Procurement Offences

The law on sexual offences in the late 19th century was not a coherent body of law. The key offences fell within a diverse set of common law principles and statutes, most importantly the Offences against the Person Act 1861, which framed them as an offence against a person, rather than a specific sexual offence (Farmer, 2016: 264). While procurement was not a new concept in the 1880s, it gained a whole new meaning in the period due to its then association with so-called white slavery, as traffic in women was then called.

The late 19th century was a period of rapid transformation of criminal law and ideas of criminal justice (Johnston, 2015; Emsley, 2018), particularly when it came to criminal law's relationship to sexual morality. Within this broader era of transformation, the 1880s play a particularly important part, leading Weeks (2017: 107) to call the year 1885 the *annus mirabilis* of moral politics. Moral politics and campaigning in the period were focused on protecting young working-class girls from perceived sexual dangers (Gorham, 1995; Walkowitz, 1992). This broadly termed sexual danger included harmful sexual encounters, sex outside marriage, seduction, prostitution, and underlying it all, procurement. Procurement was a specific term to describe the actions of those who enticed, coerced, or deceived women and girls into prostitution, yet it was also representative of a deeper concern over girls' exposure to sexual danger. This concern was deeply intertwined with notions of gender and class. The CLAA only included women and girls in its scope, and those who advocated for CLAA solely focused on the working class girls in the campaigns, as they were deemed to be lacking protective familial and community relationships (Lammasniemi, 2020).

Soon these concerns were framed not only as social but also as legal concerns, and so, the CLAA 1885 came into existence within this broader context of concern over public and sexual morality. It was enacted after mass protests and public outrage, fuelled by a scandalous investigative reportage on child prostitution in London by a journalist W.T. Stead (1885), called *The Maiden Tribute of Modern Babylon.* The CLAA was a culmination of demands and years of campaigning by women's rights and moral vigilance groups, attempting to respond to all moral wrongs raised by the campaigners (Bristow, 1978; Nead, 1990; Walkowitz, 1992; Weeks, 2017). It raised the age of consent from 13 to 16, criminalised brothel keeping, and created an offence of gross indecency that further criminalised same-sex sexual behaviour between men. The significance of the CLAA in regulating sexual behaviour cannot be overstated, both in England and in the British Empire (Burton, 2020). For example, the offence of gross indecency was used for most of the 20th century to prosecute gay men where sodomy could not be proved, and gross indecency remains an offence in several countries that were once part of the British Empire (Human Rights Watch, 2008; Rao, 2020; Suresh, 2019–2020).

Amidst all these wide-ranging offences, the CLAA also created provisions to explicitly criminalise procurement for sex and for prostitution, in certain circumstances. From the Hansard Debates within both Houses of Parliament, it is clear that the key aim of these sections was to target intermediaries, the men and women who procured and trafficked women and girls into prostitution, and all but the key sections of 2(1) and 3(1), discussed below, explicitly refer to prostitution (HC Deb 9 July 1885 vol. 299 cc197–211; HC Deb 10 July 1885; HC Deb 7 August 1885 vol. 300 cc1461–508; HL Deb 28 April 1885 vol. 297 cc939–53). While prostitution was not formally criminalised in England, for most of the 18th and 19th centuries it was regulated to a degree through various laws relating to public order and vagrancy (Henderson, 1999). Trafficking in women and girls was not expressly criminalised, however.

Under the CLAA 1885, there were two sections that dealt with procurement of women and girls: sections 2 and 3. Section 2(1) of the CLAA 1885 created a misdemeanour offence of procuring any girl 'under twenty-one years of age, not being a common prostitute, or of known immoral character, to have unlawful carnal connexion'. Further subsections made it a misdemeanour to procure any girl to become a 'common prostitute' or an inmate in a brothel, within the Queen's dominions or elsewhere – targeting procurement to brothels in continental Europe in particular. Under section 3, procuring any woman – including those above the age of twenty-one and 'common prostitutes' – was a misdemeanour under sections 3(1) and 3(3) of the CLAA 1885 but only if there were evidence of force or the woman had been administered a 'drug, matter, or thing, with intent to stupefy or overpower', respectively thereby creating a higher threshold for the prosecution to prove while including a broader range of women and girls in its scope. This definition of the helpless and drugged woman provided a powerful image that became associated with anti-trafficking imagery for decades, if not centuries to come (Andrijasevic, 2007). Under subsection 3(2), procurement under 'false pretences or false representations' was further criminalised but again only applied to women and girls who were 'not being a common prostitute, or of known immoral character'.

By including the words 'not being a common prostitute, or of known immoral character' in section 2, the law explicitly excluded those working in prostitution and any

women considered promiscuous or unrespectable from the scope of the law and made a distinction between those perceived innocent and the others. In practice, this translated to women and girls having to testify to their virginity during trials and to reassure the courts that they had not had sexual relations before being procured or assaulted. Sexual knowledge was enough to de-victimise a girl or woman and make her unprocurable, regardless of which section of the CLAA was used. These explicit and implicit exclusions gained further significance, as discussed later in this paper, as procurement became used as a sexual offence, parallel to rape, and came to be applied more broadly than initially imagined. The 'good character' clause combined with perceptions of good victimhood i.e. sexual innocence meant that in practice nearly all the complainants in the cases sample were teenagers and the courts did not need to engage with the age limit, imposed under section 2.

Translating public concern over trafficking or sexual morality into law was not an easy or speedy process, and many members of the House of Lords opposed the procurement provisions. Parliamentary debates on the Criminal Law Amendment Bill reveal a real sense of the discomfort politicians felt with the Bill and the limits it was imposing on their and their peers' sexual behaviour (*Parliamentary Debates*, vol. 289, cc. 1208–23, 24 June). Lords Oranmore and Brown summarised those views by warning the House that their sons might come within its range in the future, and 'that there were very few of their Lordships who had not, when young men, been guilty of immorality' (*Parliamentary Debates*, vol. 289, cc. 1208–23, 24 June (House of Lords)). To respond to lawmakers' concern over the scope of the law and overcriminalisation, the procurement sections came with several hurdles for prosecution such as the requirement for corroboration in cases where the victim had been procured under threats or false pretences. While it was unusual to include the need for corroboration in the wording of the statute, it was in line with the common law principle of the time that meant that sexual offences charges ought not rest on a single person's testimony with no supporting evidence, as per Sir Matthew Hale's guidance (1736, reprinted 1874: 634.). Sexual abuse cases, closely related to procurement cases, were particularly problematic from an evidentiary perspective and witness testimonies, particularly those of women and children, were treated with suspicion (Lammasniemi, 2020). The evidentiary and procedural aspects of CLAA were fiercely debated in Parliament and, ultimately, put in place explicitly to protect men from malicious prosecutions after earlier Bills were defeated due to similar concerns (vol. 280, cc. 66–75, 18 June 1883 (House of Lords); vol. 286, cc. 1453–61, 3 April 1884 (House of Lords)). As a result of these limitations, the law started from a weakened position – one that explicitly protected potential defendants.

Prosecuting Procurement, 1885–1925

Situating Procurement Prosecutions in the Context of the CLAA 1885 and White Slavery Myths

After the CLAA came into force, there were only a handful of prosecutions each year in the decades that followed, rising to about a dozen in exceptional years (Laite, 2012: 109, and 2017). The low prosecution and conviction rates are particularly remarkable, since

other sections of the CLAA, in particular those involving brothel keeping, were prosecuted with fervour. The CLAA 1885, as shown by Laite and Bland, led to the surveillance of women in working communities and raids on lodgings. This in turn led to mass evictions of sex workers due to fear of prosecution, or they were left vulnerable to paying extortionate rents to cover the elevated risk of prosecution that landladies were taking (Bland, 2001: 101; Laite, 2012: 58). The procurement offences, in other words, were initially ignored in favour of prosecuting brothel keepers.

There are several reasons for this focus on brothel keeping, rather than procurement or other sexual offences within the Act. In part, it reflected the role voluntary organisations played in the enforcement of the law and the ease with which brothels could be placed under surveillance. The police were often unwilling to get involved in raids and surveillance of brothels, leaving the door open for vigilance organisations to form watch groups and fund private prosecutions (Petrow, 1994). In the King's Cross area of London alone, a vigilance organisation called the Public Morality Council (PMC), was responsible for a staggering 800% increase in prosecutions for brothel keeping and related offences between 1902 and 1906 after they mobilised patrols and hired a special watch person to monitor potential brothels in the area (PMC, 1900–1910, A/PMC/097).

The PMC was by no means alone in undertaking this task, and an influential organisation called the National Vigilance Association (NVA) played a particularly important role in enforcement of the CLAA. Then Secretary of the NVA, William Coote, wrote (1916) that the organisation was 'supplying the eyes, ears, feet and hands to the Criminal Law Amendment Act, so that its advantages might be obtained for the girlhood of the nation' after growing increasingly frustrated with the inaction of the police and courts.

A further factor that explains the low prosecution rates for procurement, was the disconnect between real instances of procurement and the perception of the crime. The police were specifically focused on organised, foreign criminal activity, even though there was no evidence that this type of procurement was particularly prevalent. In responding to calls to extend the scope of the CLAA, Sir Edward Ridley Colborne Bradford, then head of the London Metropolitan Police, said (*Letter to the Under Secretary of State*, 1901) that there was no need for it as 'genuine cases are few, far and in between'. In the same letter to the Home Office, he argued that much was said about the white slave traffic but little evidence of it could be seen. Nor did Scotland Yard perceive procurement and traffic in women as a problem, not least because their work and inquiries on the matter focused on foreign-born sex workers and procurers who were in a clear minority (New Scotland Yard, 1903).

Procurement for Prostitution: Prosecuting Women

The police's focus on foreign men and criminals was reflective of much of the campaigns and public discussions where the procurer, or white slaver, remained faceless, and was often a foreign man (National Vigilance Association, 1911). Little has been written on the 'white slavers' and pimps beyond Julia Laite's recent microhistories (2017 and 2021) of two such men, Antonio Carvelli and Alexander di Nicotera. Through their stories, she shows a world of travel, fluctuating wealth, and at times brutal exploitation

of women and girls. Carvelli and Nicotera, and this world of organised international crime, is no doubt what the lawmakers and campaigners had in mind when the CLAA was created. Narratives of white slavery and international trafficking in the eyes of the public, however, did not match the reality of exploitation that most women and girls experienced, which partially explains the low levels of policing and prosecutions. The procurers, in the public imagination in a sense, were 'the ideal monsters, avatars of foreign and externalised sexual violence' (Laite, 2021: 184). Yet this was rarely the case. Within the sample of the 40-year period of cases analysed for this paper, only 6% matched the stereotype of foreign criminal gangs and, furthermore, only in 14% of the cases were one or more of the defendants born outside the UK. In fact, the prosecutions in prostitution-related cases, and the demographics of the victims, show a world far removed from international travel and gangs, instead they show a life of localised crime, driven by poverty and desperation.

If juries were expecting to see the 'exaggerated imagery of the storybook pimp' (Laite, 2021: 184) in the dock, they would have been disappointed. For one, most people prosecuted and convicted for procurement offences were women, often known to the victim. Many of these women were working in the sex trade, and at times they themselves had been victims of abuse or exploitation in their younger years or continued to procure under the influence or coercion of others (*The Pall Mall Gazette*, 1886; *Morning Post*, 1886). In the last category of cases, the women were often working with a man and at times were convicted as an accomplice. The courts rarely had sympathetic words for women who claimed to be historical victims. Instead, past convictions of prostitution-related offences were considered an aggravating factor and evidence of a life of bad character, often leading to longer sentences.

The women on trial for procurement for prostitution included close female relatives, custodians, neighbours, and local petty criminals. Thus, revealing that procurement in this context was a localised, not an international, crime. Within the cases reviewed, there was only one case that triggered a cross-border investigation after an English girl was hired as a travel companion for a trip to Paris. Once in Paris, it was clear that the girl was expected to enter into a sexual relationship with a wealthy and well-known man who was a Member of the British Parliament (Prostitution and White Slave Traffic, HO 45/9724/A52012C and HO 144/236/A52012). The international investigation eventually led to arrests and convictions of both the MP and the woman who acted as an intermediary. It was recommended she be shown mercy by the jury on the account of the MP's influence – unusually, as most women accomplices received equal or harsher sentences than their male counterparts.

After realising what was expected of her, the victim refused the MP's advances and returned to England to live with her parents, and later married a policeman. The victim achieved a seemingly 'ordinary life' and by so doing, went against all expectations. In Victorian imagination and culture, there was long-lasting and powerful imagery around the notion of the 'fallen women' (Nead, 2016), and a fear that once 'fallen' e.g. seduced or procured, women could not regain their place in the society, marry or have a family. Marriage, framed as a protective institution, was perceived as the cornerstone of a good, moral life, for women in particular (Lammasniemi and Sharma, 2021). The assumption that the victim would face a moral and physical downward spiral after

procurement was representative of sexual and moral norms of the time and did not reflect reality. Many women and girls, who were complainants in the procurement cases, did in fact later marry. They had children and joined professions outside the sex trade. Yet most could not easily escape the cycle of poverty and exploitation.

Due to the complex local connections, dependencies, and life-limiting poverty, the victims often remained within exploitative circumstances and relationships, even if the procurer was convicted. In some cases, census and other records show that victims continued to share a house with those convicted of procuring them even after the procurer was released from prison (unreported, Old Bailey, 2 May 1905; 'XXX', Census return for Poplar, 1911). In one case at least, a conviction for familial procurement of a 16-year-old stepdaughter grew into a life-long career of brothel keeping and even hosting an exotic dance club, always involving the same daughter (unreported, Marylebone Police Court, 5 February 1917; Women's Library XXX).

Where mothers were involved in procurement, they were dealt with particularly harshly by the courts and the press, in comparison to other parties involved. While stories of poor parents selling their daughters to prostitution were discussed in the press as if it was commonplace (Stead, 1885), in courts these trials had a definite shock factor. The failure and the shame of the mother was reflected on the daughters too. In at least one case, a 14-year girl was sent to a convent run by the Good Shepherd Sisters until her 18th birthday (*Illustrated Police News*, 1910a; *Reynolds Newspaper*, 1910c) after her mother, along with a female accomplice, was convicted of procuring her into prostitution (unreported, Old Bailey, 11 January 1910). The Good Shepherd was a Roman Catholic order of religion devoted particularly to the care and rehabilitation of girls and young women working in prostitution or who had demonstrated 'delinquent behaviour' (Bartley, 1999) despite there being no evidence that the girl had shown such behaviour beyond the abuse she suffered. The daughter's confinement to convent school outlasted the mother's sentence and so, confining her to a convent was a way to keep the victim away from the mother's corruptive influence while simultaneously, attempting to 'rehabilitate', if not punish, her.

In most cases, procurement was opportunistic and poverty driven. There were few stories of travel to Buenos Aires, and many more of workhouses and poverty. While procurers in prostitution related cases took many identities, perhaps the one and only shared factor in these cases was the relentless cycle of poverty and petty crime. Almost one in four defendants had previous convictions, often for brothel keeping or larceny, and many more had multiple records of workhouse entries throughout their lives. Only a few of the defendants had connections to organised crime such as Samuel's gang, discussed earlier, and most of the larceny convictions were for theft of clothing or shoes, indicating high levels of poverty. Workhouse records of the period show that many of the victims were also in and out of workhouses throughout their childhood, and some returned to a workhouse after the trial had ended. Where moral campaigners from the PMC and the NVA spoke about naivety and helplessness, the victims at times reflected on desperation, lack of employment, and even starvation (unreported, Old Bailey, 9 January 1905).

Reframing Procurement as a Sexual Offence: Prosecuting men for Procuring for Oneself

Soon after their enactment, procurement offences grew a new strain of prosecutions, and by so doing, developed criminal law in a new, interesting direction, merging procurement with sexual offences. While procurement remained closely associated with prostitution, through a series of cases, procurement became also used as an alternative to a rape charge. While initially most instances of procurement as a sexual offence were prosecuted under section 3 – procurement by threats, false pretences, or overpowering substances – by the 1920s, any procurement offence, including section 2, could be used in this context. This new way of thinking about procurement expanded its scope but it did not replace the original aim of tackling procurement for prostitution as procurement for prostitution continued to be prosecuted alongside procurement for sex.

The CLAA did not define procurement and as late as 1910, the courts were grappling with questions of the scope and meaning of the word (unreported, Old Bailey, 15 November 1910). The offence became understood as an alternative to a rape charge through two broad developments: by accepting that a person can be liable for procuring for themselves, and by allowing the procurement charge to be used in a wide range of sexual offences cases. These developments and their significance, in particular in relation to deceptive sex, will be explored in this section.

As the legal meaning of the word 'procurement' gained new meaning and prosecutions became more frequent, the demographics of those on trial became more diverse. Prosecutions for procurement for prostitution illustrate the complex social setting that gave rise to fears of white slavery. They also show how the law and its enforcement cannot be separated from poverty and lack of opportunities for women and girls in working communities. This is not the case for procurement for sex, at least not as far as defendants were concerned. Those on trial were mainly men, often of some wealth. There were fewer women on trial, and when they were, they were mainly prosecuted as accomplices to men. While there was more diversity in terms of professions and status of male defendants, one thing remained constant throughout the 40-year period of the study: the poverty and the youth of the victims. The victims of procurement, whatever form it took, were young, working-class women living in impoverished areas. The victims were not simply lacking opportunities; they had often experienced severe poverty and lack of stability throughout their lives as demonstrated by the multitude of often repeated workhouse entries.

As prosecutions for procurement became more frequent, the first important development was expanding the definition of procurement to include men who procured for themselves. While seemingly a technical development, the ramifications of this development were ground-breaking, effectively transforming procurement sections into sexual offences. While procurement offences, including section 3, were undoubtedly enacted to criminalise intermediaries who procured women and girls for others, this narrow interpretation was soon called into question as courts grappled with questions such as who procurement was for and whether the defendant could be liable for procuring for himself as a primary offender. These arguments were raised in courts from the early days, but the principles were inconsistently applied throughout the first decade

(unreported, Old Bailey, 28 May 1888). It was only in 1898 in the case of *Williams* ((1898) 62 JP 310) that it was confirmed that procurement did not simply apply to intermediaries and traffickers and that a defendant could indeed be liable for procuring a girl for himself. In *Williams*, the defendant, a married man, was prosecuted and convicted for procuring a girl under false pretences after he had intercourse with a young woman, having promised to marry her. During trial, the defence counsel argued that the word 'procuring' in the statute applied only to the procuring for another person, and not for the person himself. Furthermore, he requested the case be sent to the appellate court, Court for Crown Cases Reserved (CCC), if the recorder had any doubt on the point. The recorder on the case declined to send the case to the CCC and confirmed that 'any person included the prisoner himself', following the 1895 case of *Queen v Jones and Bowerbank* ([1896] 1 QB 4). The latter was a CCC case of gross indecency and procurement for gross indecency, brought after a man had sexually assaulted another man. There, Lord Russell confirmed that 'the person who procures the commission of the offence may himself be the person with whom it is committed' ([1896] 1 QB 4, 6). Although *Jones and Bowerbank* was a superior court case and predated *Williams*, the case was rarely cited, potentially due to its homosexual content, and in subsequent cases and legal writing (see, Temkin, 2002: 78; Law Commission, 1990: 22), *Williams* has been posited as an authority for this broader interpretation of procurement.

The principle that a man can procure for himself was, therefore, confirmed from late 1898; however, it was not universally accepted or consistently applied (A Borough Chief Clark, 1951). Till the 1910s and 1920s, defence counsels often tried to argue that procurement could not apply to the defendant himself. While in most cases, these were not successful, and judges took a broad view on procurement, in one case at least, charges were dismissed after both the defence and prosecution agreed that procurement for oneself was not an offence in law (unreported, Old Bailey, 8 March 1910). Despite these inconsistencies, this seemingly technical development was of great importance in the development of sexual offences law for the following reason: it opened the door for prosecutions for procurement in cases of sexual offences, as an alternative to a rape charge.

The Relationship Between Rape, Child Abuse, and Procurement

Rape in the 19th century was narrowly defined and difficult to prosecute. While the legal definition of rape can be traced to the First Statute of Westminster of 1275, throughout the period of the study, rape was referred to as a common law offence, defined as 'the carnal knowledge of a woman against her will' (Hale, 1736, reprinted 1847: 627). The definition remained a common law one until the first modern statutory formulation in s.1(1) of the Sexual Offences (Amendment) Act 1976. While the common law definition had been used for centuries, there was a great deal of ambiguity regarding the meaning of the terms 'will' and even 'carnal knowledge' (Conley, 1986). It was commonplace to require medical evidence, though, and medical experts often commented on whether there had been a recent rupture of hymen (Bates, 2019), thereby, confirming both that penetration had taken place and providing an assessment whether the complainant had been a virgin before the alleged assault. The level of leeway given to judges and jury to interpret commonly raised issues such as how much strength was required to

overpower a will and whether ejaculation was needed for 'carnal knowledge' was of particular importance due to the severity of the charge; for much of 19th century still rape was a capital crime and death penalty for rape was only abolished in 1841.

The underlying stereotypes around sexual violence and gendered prejudices that impacted the way trials were conducted (Lammasniemi, 2020) also impacted the decisions whether to prosecute. Levels of reporting were low, and Bates (2019) reminds us that most reported cases never made it to trial, arguing that the dismissal of cases before trial was the 'most significant, but most poorly understood, processes by which victimhood was denied to girls and women'. In cases of child sexual abuse, over half the cases never made it to trial, and when they did, the defendants were often charged with a lesser offence such as indecent assault (Jackson, 1999: 23). It is little wonder, then, that the ill-defined charge of procurement also came to be used in this context.

The failure to prosecute the full scope and severity of sexual offences was systematic in the period, and as a result procurement was often prosecuted where, on the facts, a rape charge would have been more appropriate. Within the case review for this paper, court records and newspaper reports were full of euphemisms and silences. Often, it was explicitly said that the victim was 'carnally known' but at times, certain euphemisms about shared space were used such as the defendant or men 'entered the room', or the girl 'stayed in premises'. On the facts, therefore, it is often clear that intercourse or sexual activity took place in cases that were prosecuted as procurement, yet defendants were rarely charged with rape or carnal knowledge of a child in addition to procurement, where the victim was young.

Once it became common practice to prosecute the defendant for procurement for himself, procurement was used to cut across a range of sexual offences, including child sex offences. While inappropriate sexual behaviour against children was clearly understood in the period (Jackson, 1999: 3) and the period is marked by remarkable concern over sexualisation of children and related harm (Walsh, 2020), there was no distinct legislative framework that dealt with child sexual abuse (Ring, Gleeson, Stevenson, 2022: 48–51). In many of the procurement cases, the victims were below the age of consent, which was 16 at the time. In a case discussed earlier in this paper – where the prosecution agreed to dismiss all charges after, incorrectly, agreeing that the defendant could not be held liable for procuring a girl for himself – the victim was 13 years old (unreported, Old Bailey, 8 March 1910). Only a month later, another defendant was convicted for indecent assault and given a sentence of less than a year, following the procurement, rape and exploitation of a 10-year-old girl (unreported, Old Bailey, 9 April 1910; Census return for West St Pancras, 1911). These were not isolated incidents but part of a wider pattern of systematically under-charging and misconstruing sexual offences against children and young women. Procurement charges were brought even in cases where the term had to be stretched to its very limits as demonstrated by a case where a man with a history of child sexual abuse was convicted for attempting to procure a young girl after he had exposed himself to numerous girls and assaulted one (unreported, Old Bailey, 28 May 1888; After-Trial Calendar of Prisoners, 1855–1931, 1888).

These cases demonstrate not only the widespread use of procurement as a 'catch-all' sexual offence but also the broader failure to recognise sexual violence against children. The courts ought to have recognised when the victims were under the age of consent, and

defendants should have been tried for rape, or attempted rape, of a child; yet carnal knowledge or defilement of a child was rarely charged alongside procurement. This failure to recognise the victims' lack of capacity to consent or enforce age of consent was not limited to procurement cases alone and can also be seen across sexual offences cases in the period.

Procurement as Deceptive Sex

In contemporary legal terms, procurement is most commonly associated with deceptive sex. This section considers how and why procurement became associated with deceptive sex, while arguing that it was only one, albeit the best known, aspect of procurement in its early days. To understand why procurement gained a 'deceptive element', it is important to discuss how deception and false pretences were understood in the context of rape in the period, and under what circumstances deception could vitiate consent to sex.

Prior to the CLAA, it had already been long established in case law that certain deceptions, such as pretending to be the victim's husband, could vitiate consent and lead to a rape charge (*R v Dee* [1884] 14 LR Ir 468; guidance notes of CLAA 1885, s. 4). Deception as to venereal disease (VD) could also vitiate consent for most of the 19th century as confirmed in cases of *R v Bennett* ((1866), 4 F. & F. 1105, 176 E.R. 925 and *R v Sinclair* ((1867), 13 Cox C.C. 28, 29. In *Sinclair*, it was held that 'consent is vitiated by the deceit practised upon her' as the victim was unaware that the defendant was suffering from VD at the time of the sexual relationship. This principle came under criticism (*Hegarty v Shine* (1878), 14 Cox C.C. 145), and was finally repealed in the better-known 1895 case of *Clarence* from CCC (*R v Clarence* [1888] 22 QBD 23; [1886–90] All ER Rep 133). In *Clarence*, a husband was on trial having transmitted VD to his wife, who had been ignorant of his condition. The court recognised that there are certain situations where deception would vitiate consent for example, deception as to the nature of the act or the identity of the defendant but concluded that 'the maxim that fraud vitiates consent can [not] be carried further than this in criminal matters' and that it was too general to be applied 'as if it were absolutely true'. The court quashed Clarence's conviction, and the case generally has been taken and discussed as an authority (Laird, 2014; Sharpe, 2018: 44–45; Simpson, 2016) on the point that fraud was to be limited to the nature of the act or the identity of the defendant were it capable of vitiating consent.

This was not the end of the matter when it comes to deception, however, and it is important to set *Clarence* in the wider context of marriage and conjugal relations in the period (Lammasniemi and Sharma, 2021). In the ruling, Pollock J, for example, declared in no uncertain terms that 'a wife has no right or power to refuse her consent' as intercourse was a natural part of marriage. Equally, Justice Hawkins said that 'at the time of marriage, she gave him an irrevocable right to her person', and therefore consent is 'immaterial'. Thus, while on the surface the case provides a robust rebuke of fraud generally vitiating consent, this rebuke needs to be set in the context of the CCC's desire to provide a clear precedent against recognition of marital rape as rape.

As the law on rape took an increasingly narrow view of the circumstances within which deception could vitiate consent, procurement offences effectively filled the gap

that the restrictive interpretation in *Clarence* had created. Under procurement provisions it was possible for a defendant to be convicted of procuring under false pretences under section 3(2) of the CLAA even where the victim had not been mistaken as to the defendant's identity or the nature and quality of the act, as would have been required for a conviction of rape. This was first tested and confirmed in the 1898 case of *Williams* ((1898) 62 JP 310) where the deception was in relation to a promise to marry. Williams, a married man, had lied to the complainant and pretended to be a single man living with his mother when he began a relationship with the complainant. The case was brought by the complainant's mother after it had transpired only days before the wedding that the defendant was already married and therefore unable to marry the complainant, who was pregnant at the time of the trial. The complainant testified that the sexual relationship had started after the engagement; in other words, she consented to sex after being deceived about the prospect of marriage (*Reynoldss Newspaper* 1898). Williams was convicted for procurement under false pretences under s.3(2).

Cases like *Williams* with such a clear deceptive element were in the minority among the cases heard in the 40-year period after the enactment of the procurement sections, yet deception became ingrained in the fabric of the procurement offences in the period. In the vast majority of cases, consent was not obtained through deception in the sense it was in *Williams*, yet deception of some kind was explicitly discussed or alluded to. More commonly while in these cases deception was used to lure the victim, the sexual activity was done against the victim's will and consent rather than obtained through false pretences. While section 3(2) spoke explicitly about false pretences, deception and deceit were implicitly part of section 2 cases too. There were a number of cases where the complainants had been deceived about the nature of the job and found themselves entering a brothel after responding to an advertisement for a maid, beautician, or indeed a travel companion. Importantly, these deceptions, whether they were in relation to deception as to circumstances or deceptively obtained consent as in *Williams*, became associated with both section 2 and 3 prosecutions to such a degree that by the 1920s, the nature and impact of deception were rarely even discussed at length during trials.

A high-profile 1925 procurement case from Sussex Assizes illustrates how broadly procurement was interpreted by that time, and how intertwined the offence had become with rape by the 1920s. In this case, a wealthy 37-year-old man and his 22-year-old then housekeeper, later wife, were convicted of multiple accounts of various procurement sections after he assaulted several girls in his manor house, after advertising the positions in the *Times* and through servants' agencies. The charges related to six girls and women but police identified a dozen others who were potential victims. After the victims had accepted the position in question, they had been raped by the defendant in the house within days of starting in the position, often at night (1925, MEPO 3/400). The women and girls who facilitated the defendant's offending, were in complex, dependant if not coercive relationships with the defendant and had by all accounts been procured themselves (Metropolitan Police, 1925a; Metropolitan Police 1925b). Neither the police nor the court documents contain any meaningful discussion as to whether the procurement was the appropriate charge, and it seems to have been readily accepted that the employment advertisement gave rise to deception and

procurement charges as the defendants had procured the victims by 'divers subtleties and deceits' (Calendar for Sussex Assizes, 1925). The aim of the advertisement was to lure women and girls, under false pretences, into situations where the defendant could sexually assault them yet the charges were for various counts of procurement and not specific to s.3(2) procurement under false pretences, showing how broadly procurement had become understood.

The case further illustrates how procurement and deception had become intertwined – if not confused – with rape and the legal construction of rape, as illustrated by the focus on absence of consent. When giving statements, the complainants who were over the age of 16 stated that even if they had not screamed loudly or 'strenuously protested' during the assault, they had not consented. In a report from the Chief Constable of the Metropolitan Police (1925b), one of the complainants concludes that it 'may be that she ultimately submitted to the man but when one views this case in the light of what we know happened to the other girls in the house, I do not know that this submission can properly be held to be consent'. During the trial, the judge directed the jury that when it comes to victims below the age of 16, they 'need not trouble themselves with the question as to whether they were consenting parties or not, because it was an offence if it was committed by a man of XXX's age', that is, a man of 37 years of age (London Metropolitan Police, MEPO 3/400). There was no minimum age under the procurement sections and the discussion about consent ought not to have been relevant to a charge of procurement as lack of consent was not an element of procurement. Lack of consent was, however, a key element to a rape charge and, thus, the threshold for prosecuting rape was clearly met in the above case, as demonstrated by the comments by both the police and the judge. The investigating police officer admitted that some of the incidents were close to a rape charge but deemed that it was not 'politic' to charge the defendants as such (Metropolitan Police, 1926). On appeal, the Lord Chief Justice said, 'what was done in this case came very near to being rape' on appeal, confirming the procurement convictions (*Daily Mail*, 1926). He further noted that the penalty for rape was, at maximum, life imprisonment, to put the appellant's two-year sentence into perspective and highlight its leniency. Herein also lay the popularity of the charge of procurement: procurement had a lower evidentiary burden and allowed for significantly more lenient penalties than rape.

The maximum sentence for all procurement offences was two years, with or without hard labour, yet maximum sentences were rare, and most defendants were sentenced for 12 months or less. The case of Annie, discussed at the beginning of this paper, who was procured, raped, and forced to work in prostitution by Samuel and his gang, illustrate the trend of under-charging and lenient sentencing. Samuel, as the ringleader and main culprit, received the harshest sentence of the entire gang, a sentence of 18 months with hard labour. The rest of his gang received sentences ranging from one to 12 months with hard labour, with one additional conviction for indecent assault for the man who raped her (*Illustrated Police News*, 1910d; unreported, Old Bailey, 6 December 1910). Prosecuting rape as procurement, or indeed indecent assault, allowed the courts to impose lenient penalties. It also allowed for faster and often procedurally easier trials, with no need to engage with complex corroborative and medical evidence, or with issues of consent.

Conclusion

As deception, fraud and questions of conditional consent remain deeply contested in modern criminal law and as courts, practitioners and academics are seeking a new way forward to resolve those issues, this article has sought to shed light on the history of procurement offences and their developments. It has also sought to show that the legal developments in this field cannot be divorced from their social context.

Procurement offences, as enacted in the late 19th century, were complex offences, in terms of both their social context and their legal development. The offences were enacted following stories of white slavery and of girls who were 'stolen, kidnapped, betrayed, carried off from English country villages' to work in brothels in the capital and in continental Europe, in the words of a well-known women's rights campaigner, Josephine Butler (1881). Despite a great deal of public attention on the matter, the CLAA and its enforcement were bitter disappointments to campaigners like Butler (Coote, 1916: 30) – understandably so. While the CLAA was carried through by desperate and scandalous stories of child prostitution and stories of vice in London, cases of that kind simply did not materialise in the courts in the volume the campaigners had expected. Frustrated by this, the campaigners attempted to push for another procurement-specific law, the Procuration Bill 1911, which would have removed the age limit of 21 introduced in s.2(1) of CLAA and made procurement a felony instead of misdemeanour (Procuration Bill, 1911, HO 45/10644/208925). The Bill never gained momentum and prosecutions for procurement for prostitution remained low throughout the period of the study.

The paper has also shown that procurement gained a multitude of legal meanings during the period of study. The procurement offences continued to be closely associated with prostitution and their enactment was driven by condemnation of those who sought to profit from the prostitution of others. Yet, the offences gained further significance in the decades after their enactment, partially as a response to the criminal justice system's failure to adequately address sexual offences. Most reported cases never made it to trial (Bates, 2019) and when they did, cases were routinely under-charged. It is in this context that the ill-defined procurement emerged as a 'catch-all' sexual offence, providing an easier avenue for prosecutions than offences such as rape or carnal knowledge of a child. The use of procurement in this manner did not, however, translate into improved access to justice or fairer trial practices as procurement trials were influenced by poor understanding of factors such as capacity and poverty that made women and girls vulnerable for exploitation.

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Note

1. Pseudonyms are used throughout for victims and defendants for ethical reasons even if names are publicly available. References are given, including case names where cases are reported, if they are publicly available. In accordance with agreements with the National Archives and Women's Library, no file reference is given for closed or restricted materials – just the location of the file.

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