

# 'The Unnatural Sin': Male Rape in Eighteenth Century England

**By Jack Taylor**

**Supervised by:**

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**Submitted to:**

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2015

In partial fulfilment of the requirements for the Erasmus  
Mundus Master's Degree in Women's and Gender Studies



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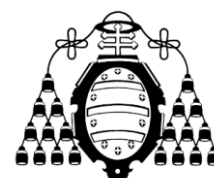
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## Abstract

This thesis examines male rape from a historical perspective, specifically in eighteenth century England. It utilises archival material from 'The Proceedings of the Old Bailey', a published newspaper of trials at London's central criminal court, to explore how male rape was conceptualised in a period which did not have its own legal definition of male rape. Fourteen cases were found which contain instances of male rape, half of which involved adult victims and the other half with child victims. These are analysed to show that male rape was a material reality, and it is shown that the courts prosecuted it under the offence of sodomy.

The first chapter contains a review of relevant literature, while the second describes the sources, theoretical framework, and research method used in the thesis. The third chapter charts the development of male rape laws, while the fourth is an analysis of the primary source material, detailing what was important to the courts and the whole courtroom procedure. Chapter five uses the concept of *Governmentality* to argue that male rape was included in the process of the governance of sexuality and thus conceptualised differently from the modern day, and explores the various discourses and techniques which made this so. Chapter six utilises the concept of *Hegemonic Masculinity* and examines the allusions to masculinity in the records, drawing parallels between these cases and modern male rape cases. It also looks at the role of the 'Molly', effeminate sodomites, in these cases and argues that it can be seen as an alternative form of masculinity.

These records show that male rape was seen differently before its introduction as a specific crime in the late twentieth century. Despite the absence of a legal offence, it was still prosecuted by the courts, showing that male rape has a history.

## Table of Contents

<b>INTRODUCTION</b>	<b>1</b>
<b>CHAPTER 1 - LITERATURE REVIEW</b>	<b>8</b>
<b>CHAPTER 2 - SOURCES, THEORETICAL FRAMEWORK, RESEARCH METHOD</b>	<b>15</b>
2.1 SOURCES	15
2.2 THEORETICAL FRAMEWORK	17
2.3 RESEARCH METHOD	20
<b>CHAPTER 3 – LEGAL REVIEW</b>	<b>21</b>
3.1 EARLY LAWS – 1200s AND 1500s	22
3.2 OFFENCES AGAINST THE PERSON - 1800s	28
3.3 MODERN SEXUAL OFFENCES – 1900s AND 2000s	32
3.4 CONCLUSION	37
<b>CHAPTER 4 – PRIMARY SOURCE ANALYSIS</b>	<b>39</b>
4.1 TRANSCRIPTS	40
4.2 THE PROCEDURE	41
4.3 ADULT CASES	43
4.4 CHILD CASES	48
4.5 CONCLUSION	54
<b>CHAPTER 5 – MALE RAPE IN THE GOVERNING OF SEXUALITY</b>	<b>56</b>
5.1 GOVERNMENTALITY	56
5.2 MEDICINE AND CONFESSION	58
5.3 THE PRESS AND CENSORSHIP	62
5.4 CONCLUSION	66
<b>CHAPTER 6 – MASCULINITY AND THE ‘MOLLY’</b>	<b>68</b>
6.1 HEGEMONIC MASCULINITY	68
6.2 PARALLELS BETWEEN EIGHTEENTH CENTURY AND MODERN MALE RAPE CASES	70
6.3 THE UNNATURAL, BESTIALITY, AND THE GENTLEMAN	74
6.4 THE CHARACTER OF CHILDREN	80
6.5 THE ‘MOLLY’	82
6.6 PROVING (HETERO)SEXUALITY	86
6.7 CONCLUSION	90
<b>CONCLUSION</b>	<b>92</b>

<b>BIBLIOGRAPHY</b>	<b>96</b>
<b>PRIMARY SOURCES</b>	<b>96</b>
<i>Cases - Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0)</i>	96
<i>Statutes</i>	96
<i>Other</i>	97
<b>SECONDARY SOURCES</b>	<b>97</b>
<b>WEB PAGES</b>	<b>101</b>

## Introduction

Men can be raped. While this seems like an obvious point to make, it is only in the twenty-first century that British society is coming to terms with it, although this is a slow process. In law it would only find a definition in 1994, and there have been few indictments, and even less convictions. Even with a legal definition the word rape is still generally used to mean a female victim and a male perpetrator. The statistics reflect this also, but as is well known, rape is heavily underreported.<sup>1</sup> This decision to not report rape seems to be more common with male victims, as modern conceptions of masculinity deny victimhood, especially in sexual assault. This, coupled with the (not unfounded) fear that they would not be believed, suggests that many more men are raped than is currently shown in the statistics.

This thesis does not attempt to prove this suggestion. What it does intend to do however, is to give male rape a history. Research on male rape is still underdeveloped, though it is slowly gaining more traction. It would find its beginnings in the 1970s, with a focus on prisons, where it was widely known to be common. Two decades later male rape would be formally inducted into criminal law, and studies would appear with a legal studies perspective. Since then, social and feminist standpoints have sprung up, with a major focus becoming less on the crime and more on the victim. This trend is continuing.

What is absent from the literature is any investigation of male rape in the past. Even academic work concerning the rape of women in history is lacking. Susan Brownmiller would kick-start the feminist concern with rape, looking at the rape of women over a variety of time periods and in many places, but with a main focus on

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<sup>1</sup> Ministry of Justice, Home Office, and Office for National Statistics, *An Overview of Sexual Offending in England and Wales* (2013)

the contemporary.<sup>2</sup> Nonetheless the book was seen by some as trying to be history book, and it is clear that her arguments lack historical specificity.<sup>3</sup> For the historian, investigating sexual violence in the past would require more rigorous analysis. This is compounded by the fact that historical study of the topic is ‘necessarily a discourse on and around the surviving evidences, not an unmediated description of ‘what happened’’.<sup>4</sup> This distinguishes the historical from the contemporary; with close attention needing to be paid to any biases in the sources. In addition, few cases of rape and sexual violence ever reached the courts.<sup>5</sup>

Nonetheless, many ideas would attempt to explain why rape occurred, but this time with historical specificity. Roy Porter would explain sexual violence since the Early Modern period in terms of deviance, as the socially disruptive acts of ‘marginal’ men.<sup>6</sup> This would not be linked to the interests of patriarchal power, as Brownmiller argued. Elsewhere, Edward Shorter argued that rape in Early Modern Europe was due to ‘a mass of sexual frustration’.<sup>7</sup> Evidence of this is the late age of marriage, with men looking for an outlet, and finding one in sexual violence. However, both of these arguments are confounded when the social construction of sexuality is taken into account, since ‘sexual frustration’ is revealed to be historically specific.<sup>8</sup> A more rigorous and frankly all-round better account is from Anna Clark, who investigated sexual violence in England for the period 1770-1845. Her study is different in that it is sensitive to the experiences of women in the past. She argues that rape was defined

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<sup>2</sup> Brownmiller, Susan, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975)

<sup>3</sup> Shorter, Edward, ‘On Writing the History of Rape’, *Signs: Journal of Women in Culture and Society*, 3 (1977), p.472

<sup>4</sup> D’Cruze, Shani, ‘Approaching the History of Rape and Sexual Violence: Notes towards Research’, *Women’s History Review*, 1 (1992), p.379

<sup>5</sup> *Ibid.*, p.387

<sup>6</sup> Porter, Roy, ‘Rape - Does it have a Historical Meaning?’, in *Rape: An Historical and Cultural Enquiry*, Tomaselli, Sylvana and Porter, Roy, (eds.) (Oxford: Basil Blackwell, 1986), p.235

<sup>7</sup> Shorter, *On Writing*, p.474

<sup>8</sup> D’Cruze, *Approaching the history of rape*, pp.382-3

‘not as the violation of a woman’s body but as the theft of her virtue’.<sup>9</sup> In addition focus is given to the changing nature of ideals of masculinity, which would change from sanctioning the uncontrolled expression of male sexuality to a chivalric concern with female virtue, but this would have more to do with protecting their women’s virtue rather than their integrity.<sup>10</sup>

This thesis contributes to these works on sexual violence in the past but presents a new object of study: male rape. This is male rape as it is found in legal sources, in accounts of trials at the *Old Bailey*, London’s central criminal court. It will incorporate a variety of academic perspectives; modern history, gender history, in addition to the history of law. It contains all the difficulties of researching sexual violence in a historical context, but with the added complication that male rape was not a legal offence. However, this does not mean it did not occur. Instead, male rape would come to be subsumed under the offence of sodomy/buggery, which criminalised anal intercourse between men, and men with women, as well as bestiality. It is in sodomy records where there is evidence of male rape, in addition to consensual sodomy. In order to find cases of male rape, it was necessary to look through these records and single out specific cases, as opposed to simply looking through records which were already categorised as rape. While time-consuming, fourteen cases were found which were deemed to have evidence of male rape. Half of these involved adults, and the other half with children. These will be talked about separately as they contain their own particularities.

Since male rape was in the domain of sodomy, it must be understood in its own terms. Fear of men having sex with each other has religious origins from the

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<sup>9</sup> Clark, Anna, *Women’s Silence, Men’s Violence: Sexual Assault in England 1770-1845* (London: Pandora Press, 1987), p.128

<sup>10</sup> Ibid.



Bible, in the stories of Sodom and Gomorrah. England had been a Christian country for a millennia, and, whilst religious strife would be a norm in the surrounding centuries, Christianity was thoroughly entrenched by the eighteenth century. Religion is one discourse which contributed to conceptions of sodomy, another was nature. The natural/unnatural distinction conceptualised sodomy as part of the latter, infused with the religious belief that intercourse should be for procreative purposes only. These discourses would hurt those with homosexual inclinations, and contribute to the view that sodomy should not be tolerated. In the law it was not; sodomy was a felony and until the nineteenth century punishment was death.

Sodomy has been a useful indicator for historians of sexuality, as it shows alternative constructions of sexuality to established heterosexuality. In particular, sodomy has been used to argue both for and against the whole premise of the social construction of sexuality, and thus whether homosexuals existed in the past before formal definition in the nineteenth century. While these questions will be left unanswered, sexuality must by necessity be examined as the records used contain allusions to a figure who is seen by some to have a 'protogay' identity: the 'Molly'.<sup>11</sup> It is not assumed that any of the people in the cases are homosexual, but the records do show that many perpetrators of male rape are anxious to prove their heterosexuality.

In addition, heterosexuality was an important part of masculinity. Masculinity has emerged as an important object in male rape research, for both the perpetrators and victims, and has spawned many 'myths' surrounding male rape. One of these is that homosexual men are always the perpetrators, but this is not backed up by

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<sup>11</sup> Plummer, Kenneth, *The Making of the Modern Homosexual* (London: Hutchinson, 1981)

statistics.<sup>12</sup> Furthermore, victims often feel like they are less than men for not being able to fight off their rapist. Since masculinity has been shown to be important in understanding male rape, it will be a key focus of this thesis. However, masculinity is neither static nor singular. It is multiple and dynamic, and contains different ideals at different times. The main ideal in the eighteenth century would be the 'Gentleman', and the cases refer to this figure many times. As such, masculinity will be analysed in reference to this figure. In addition, parallels will be made between allusions to masculinity in the modern period and the eighteenth century. Interestingly, there would be many similarities between these two times, especially when concerning the victims.

This is only a partial history of male rape; all cases occurred within one century and are located in London. While this means the study lacks generalisation, it is a start for male rape research into the past. This period itself was chosen due to the evidence available, and the fact that many records can be viewed online. While it was hoped that the time window would be wider, it was found that after the 1790s censorship would come into play, hiding any testimony and other important details. As such, it was not possible to look past this decade for evidence of male rape, though it no doubt did occur.<sup>13</sup> However, the court records utilised here were produced for a specific purpose, and as such other records may hold the key to investigating male rape in other periods.

A quick note on terminology. Feminist research into sexual violence has put the victim at the forefront. This has led some to disregard the label 'victim' altogether,

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<sup>12</sup> Abdullah-Khan, Noreen, *Survivors of Male Rape: The Emergence of a Social and Legal Issue* (Basingstoke: Palgrave Macmillan, 2002), p.18

<sup>13</sup> It should also be noted that I originally intended to use another set of sources, from the Middlesex Sessions of the Peace housed in the London Metropolitan Archives, as part of the thesis, but word constraints stop them from being utilised. These were witness accounts from the 1800s, and did not give details of the courtroom, but clearly show that male rape did indeed occur. It is hoped that these could be made use of in the future.

and instead use 'survivor' in order to recognise agency, and the triumph of hope over despair. It is seen to be eschewing the negative connotations of 'victim' in order to focus on the fact that one has survived, and can move forward with their lives.

However, 'survivor' is generally used when studies focus on the victims specifically, and not in an abstract way. Thus, Abdullah-Khan would use survivor in her study of male rape victims.<sup>14</sup> It should also be noted that the only male rape organisation in the United Kingdom is called Survivors. However, when speaking of male rape as a legal or social phenomenon, researchers have tended to use victim. This thesis will follow this trend, but with the main reason being that it is not known what happened to the men after the rape. It is unknown whether they 'survived' or not, and as such it does not seem apt to describe them in this way. Following Bourke, victim is used 'in order to draw attention to the hurt of abuse; it is not a moral judgement, nor an identity'.<sup>15</sup> It is used to show that male rape is a material reality.

The main question that this thesis will attempt to answer is how male rape was conceptualised in the eighteenth century. This will by necessity lead to a number of smaller questions which will be answered in individual chapters, and brought together at the end. Chapter Three will chart the development of sexual offence laws, showing how male rape was subsumed under the category of sodomy, and eventually would come to have its own legal offence in the twentieth century. Chapter Four will focus specifically on the primary source material, and analyse them in reference to the language used, and similarities between them, separating adult and child cases. This will be done in order to show how the courts dealt with male rape, and to illuminate both its discursive and physical reality. Chapter Five will

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<sup>14</sup> Ibid.

<sup>15</sup> Bourke, Joanna, *Rape: sex, violence, history* (Emeryville: Shoemaker & Hoard, 2007), p.7

examine why male rape came under the domain of sodomy and the different discourses and techniques which contributed to this; using the concept of *Governmentality* it is argued that this is due to the governing of sexuality. Chapter Six will utilise the concept of *Hegemonic Masculinity* to explore the various allusions to masculinity in these cases of male rape, and it is argued that male rape and masculinity share a close connection. This chapter will also provide many parallels between male rape in the eighteenth century and the modern in terms of masculinity, as well as argue that the 'Molly', effeminate sodomites which came to public attention in the early eighteenth century, can be seen as an alternative form of masculinity.

First however, is an overview of research in the study of male rape.

## Chapter 1 - Literature Review

Literature on male rape is lacking, and what little there is focuses on a contemporary context, especially since the 1990s. In addition, most take a sociological or legal approach, as opposed to the historical one applied in this thesis. Nonetheless, the literature highlights many issues which can be transposed to the historical cases that I will be focusing on, these include ideas surrounding masculinity and homosexuality, as well as the specificities surrounding the construction of the male victim.

What is evident is that much recent research which investigates male rape takes at least a partial feminist perspective, specifically by keeping the victim at the forefront of consideration. This field of research no doubt benefited from the array of literature on the sexual victimisation of women, and has attempted to apply the same models and techniques to the investigation of male rape. On top of this, feminism itself has become a research subject, since it has often constructed the 'victim' as implicitly female.

The burgeoning field of masculinities will also be a key source for literature, both sociological and historical. As stated above, masculinity is a major factor in male sexual assault, and studies have shown that it can be depleted for the victim as well as boosted for the perpetrator. The concept of 'Hegemonic Masculinity' is often drawn on in analyses, and is also useful when applied historically, since masculinity is always changing. In a similar vein, Foucault will be drawn upon, specifically his theorisations on 'Governmentality', as they adequately explain the ways in which sodomy was treated.

Early academic work on male rape focused on prisons, coming mainly from a clinical perspective, often with a quantitative focus. The majority of this work was

carried out in the United States, in the United Kingdom this work was scarce.<sup>16</sup> American investigators would discover many issues that would be, and still are, focused on in male rape research; especially masculinity and homosexuality. For example, an early study by Davis found that male rape in Philadelphia's prisons was almost at epidemic levels, but even these numbers were likely too low since men were reluctant to report being raped.<sup>17</sup> Lockwood found a number of rape myths were common in prison official's minds, specifically the belief that men cannot be raped – thus assuming that any sexual contact between prisoners was of a homosexual nature.<sup>18</sup> On the other hand, Stacco found that officials believed that weakness justified exploitation.<sup>19</sup>

King argues that while the little research in the UK seems to suggest that male rape occurs less frequently than in the US, the lack of evidence means that this conclusion is speculative at best.<sup>20</sup> Although some cases of institutional rape found its way into the press and to society, these were infrequent. Thus, the issue remained contained within the institutional setting, allowing it to be ignored in society and academia – as well as in criminal law.

Criminalisation of male rape allowed it to become a proper research object, with a solid legal backing. Researchers drew upon feminist analyses of sexual violence and used the same techniques in investigating the sexual victimisation of men, as well as the variety of attitudes male rape elicits. Smith et al. for example, found that men were seen to have less sympathy when raped by a female stranger,

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<sup>16</sup> Abdullah-Khan, *Survivors of Male Rape*, p.16

<sup>17</sup> Davis, Alan, 'Sexual assaults in the Philadelphia prison system and Sheriff's Vans', *Trans-action*, 6 (1968)

<sup>18</sup> Lockwood, Daniel, *Prison Sexual Violence* (New York: Elsevier North-Holland, 1979)

<sup>19</sup> Scacco, Athony, (ed.) *Male Rape: A Casebook of Sexual Aggression* (New York: Ams Press, 1982)

<sup>20</sup> King, Michael, 'Male rape in institutional settings' in *Male Victims of Sexual Assault*, Mezey, GC and King, MB (eds.) (Oxford: Oxford University Press, 1993)

as opposed to a male one.<sup>21</sup> Following this point, Scarce showed that gay men often received little sympathy when being a victim of male rape, since ‘the person has already experienced the physical act so it’s no big deal’.<sup>22</sup> These findings were built on by Doherty and Anderson, in a sociological study where participants were given a male rape vignette, and asked to discuss it.<sup>23</sup> The authors found that participants constructed a ‘hierarchy of suffering’, with heterosexual men receiving the most sympathy as a male rape victim, with gay men and women eliciting less. Participants constructed the rape as a sexual act – and gender as phallocentric. In addition, the participants also argued that heterosexual victims were likely to experience ridicule for being raped, due to departing from hegemonic ideals of masculinity – a common theme in male rape research. While this study lacks generalisability due to a fairly low sample size, and the fact that most participants were students, it is a useful look into perceptions of male rape victims by the public.

This is followed up by Graham, who looks at the construction of the male victim. He alludes to a variety of male rape myths, as well as the problems of investigating male rape. He compliments the work described above by providing solid reasoning, and argues ‘if heterosexual men are defined by their desire to penetrate ‘the other’ (the woman/feminine) and also by their resistance to being penetrated by ‘the same’ (the man/masculine), the conceptualization of male rape as

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<sup>21</sup> Smith, R. E., Pine, C. J., & Hawley, M. E., ‘Social cognitions about adult male victims of female sexual assault’, *The Journal of Sex Research*, 24, (1988)

<sup>22</sup> Scarce, Michael, *Male on male rape: The hidden toll of stigma and shame* (New York: Plenum Press, 1997), p.64

<sup>23</sup> Doherty, Kathy, and Anderson, Irina, ‘Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims’, *Journal of Community and Applied Social Psychology*, 14 (2004)

particularly devastating and horrific makes sense'.<sup>24</sup> Thus, all these works are alluding to similar themes; gender and sexuality.

All the above described work is encapsulated into a large research project by Abdullah-Khan. As well as investigating perceptions of male rape in newspapers, she conducted one of the few studies with male rape survivors in the United Kingdom. This evidently gives the study much ecological validity, and again, mirrors feminist analyses of sexual violence. Indeed, arguments follow a feminist strand, such as concluding 'at the root of many of these myths and stereotypes lies the gender role socialisation and, consequently, the social construction of masculinities which socialise men into strong and sexually dominant roles'.<sup>25</sup> Once again, masculinity is a huge issue that comes out of male rape research.

Most research that has focused on masculinity and male rape has been conducted with a sociological perspective, focusing on the interplays between the two in the aftermath of the rape. Groth and Burgess argue that male rape enhances the perpetrator's masculinity by taking it away from their victim.<sup>26</sup> This seems a valid point since the same has been seen when men rape women, also. Stanko argues that men rape other men for power and control, the same reasons that men rape women<sup>27</sup> – and a major argument that stemmed from second wave feminist research into sexual violence.

Many researchers of male rape have put into prime focus the concept of 'Hegemonic Masculinity', which states that there is an ordering of masculinities at a societal level, with the hegemonic ideal at the top. In addition, the concept refers to

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<sup>24</sup> Graham, Ruth, 'Male Rape and the Careful Construction of the Male Victim', *Social & Legal Studies*, 15 (2006), p.14

<sup>25</sup> Abdullah-Khan, *Survivors of Male Rape*, p.15

<sup>26</sup> Groth, N., and Burgess, A. (1980) 'Male rape: Offenders and victims', *American Journal of Psychiatry*, 137 (1980)

<sup>27</sup> Stanko, Elizabeth, *Everyday Violence: How Women and Men Experience Sexual and Physical Danger* (London: HarperCollins, 1990)



currently dominant ideals of masculinity, which while few men may achieve, many aspire to. These include strength, intelligence, stoicism, athleticism, power, sexual dominance, etc. As described earlier, many male rape myths are posited in relation to the hegemonic ideal. Furthermore, Javaid argues that men rape other men as a way to boost, preserve, and execute hegemonic masculinity.<sup>28</sup> As for the victims, these men undermine these ideals of hegemonic masculinity.<sup>29</sup> Victims are thus not seen as 'real men', and are feminised by the act of rape. This can lead to feelings of shame and stigma, which leads to men keeping silent and not reporting the assault to the police. This seems as current today as it was in the male rape research in prisons described above, as well as historically.

Feminist discourse has tended to conceptualise victimisation by rape and sexual violence as singularly female.<sup>30</sup> Thus, feminism not investigating male rape has ironically led to the perpetuation of patriarchal myths. Javaid is scathing when he says that 'the neglect of this field functions to maintain and reinforce patriarchal power relations and hegemonic masculinities'.<sup>31</sup>

Following on from the explosion of research into masculinities has been the historical application of these insights. British historian John Tosh would lead the charge, noting the subversive potential of historical masculinity research.<sup>32</sup> This is partially due to the nature of masculinity – it is dynamic and changes over time. Research has thus stressed the multiplicities and complexities that masculinity entailed. Fisher shows that in the Early Modern period the beard was one of the

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<sup>28</sup> Javaid, Aliraza, 'Feminism, Masculinity and Male Rape: Bringing Male Rape 'out of the Closet'', *Journal of Gender Studies* (2014)

<sup>29</sup> Weiss, Karen G, 'Male Sexual Victimization Examining Men's Experiences of Rape and Sexual Assault', *Men and Masculinities*, 12 (2010)

<sup>30</sup> Cohen, Claire, *Male Rape Is A Feminist Issue: Feminism, Governmentality and Male Rape*, (Basingstoke: Palgrave Macmillan, 2014), p.4

<sup>31</sup> Javaid, 'Feminism, Masculinity and Male Rape', p.9

<sup>32</sup> Tosh, John, 'What Should Historians Do with Masculinity? Reflections on Nineteenth-Century Britain', *History Workshop Journal*, 37 (1994), p.179

primary ways in which masculinity was materialised, but in modernity this has changed to being clean shaven.<sup>33</sup> Shepard examines the same period and argues that there were many options for men to achieve masculinity outside of the patriarchal model.<sup>34</sup> Moreover, Roper and Tosh would examine the Victorian period and find a variety of discourses of masculinity, which held an 'uneasy and often unstable ordering in a gender hierarchy'.<sup>35</sup> Historical research has consistently shown that masculinity is a complex notion, for both the researcher and the object of research.

In addition to this research, historians have investigated homosexuality and its origins, under a sub-discipline termed 'gay history'. One of the main questions which this history has tried to answer is whether homosexuality was 'invented' or not. Foucault has famously argued that it appeared in the late nineteenth century, after being transformed from the practice of sodomy to homosexual desire.<sup>36</sup> Others however, disagree. Alan Bray dates the social construction of homosexuality at the end of the seventeenth century.<sup>37</sup> Others disagree with the social constructionist argument altogether; Rictor Norton comments that 'homosexuals have of course existed during all periods of history'.<sup>38</sup> Sodomy records have been integral for both of these arguments, since they can simultaneously prove or disprove homosexuality, based on one's interpretation. These are similar records that are used in this thesis.

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<sup>33</sup> Fisher, W, 'The Renaissance Beard: Masculinity in Early Modern England', *Renaissance Quarterly*, 54 (2001)

<sup>34</sup> Shepard, Alex, 'Manhood Credit and Patriarchy in Early Modern England C. 1580-1640', *Past & Present*, 167 (2000)

<sup>35</sup> Roper, Michael, and Tosh, John (eds.), *Manful Assertions: Masculinities in Britain since 1800* (London: Routledge, 1991), p.17

<sup>36</sup> Foucault, Michel, *The History of Sexuality* (New York: Vintage Books, 1988-1990), p.43

<sup>37</sup> Bray, Alan, *Homosexuality in Renaissance England* (London: Gay Men's Press, 1982)

<sup>38</sup> Norton, Rictor, *Mother Clap's Molly House: The Gay Subculture in England 1700-1830* (London: Gay Men's Press, 1992), p.9

As is clear, there is a lack of specifically historical work on male rape. This thesis will be positioned in this gap of research, drawing on findings from sociological work on male rape and will attempt to apply similar theories and considerations to several cases from the eighteenth century. Most important for this are the concepts of governmentality and hegemonic masculinity. These cases suggest that, firstly, there was a construction of sexuality; both 'abnormal' and heterosexual, and secondly, that there was a push away from 'abnormal' sexualities towards heterosexuality, which, for men, was tied into various ideals of masculinity. As stated above, hegemonic masculinity argues for a hierarchy of masculinities – and 'Mollies' can be seen to be one type of alternate masculinity within this frame. What is absolutely central is that hegemonic masculinity is open to historical change.<sup>39</sup> Thus the concept must be constantly contextualised to make sense with these cases. This thesis will contribute to the usefulness of hegemonic masculinity as well as governmentality when applied historically, especially within a neglected field of research.

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<sup>39</sup> Connell, Raewyn, and Messerschmidt, James, 'Hegemonic Masculinity: Rethinking the Concept', *Gender and Society*, 19 (2005), p.838

## Chapter 2 - Sources, Theoretical Framework, Research

### Method

#### 2.1 Sources

The court cases which are analysed in this thesis come from a publication named *The Proceedings of the Old Bailey*, a newspaper that ran from 1674 until 1913, and contained details of indictments, convictions, and transcripts of what was said in the court room. From 1678 the paper was published after each time the court sessions met; eight times a year until 1834, and thereafter ten to twelve times a year.

The papers were digitised in 2003 as part of 'The Old Bailey Proceedings Online Project'. This allows the records to be viewed online, and the website even comes equipped with a search engine. Cases can be searched by keywords, or simply be used to show certain kinds of cases, for example, sodomy ones. Cases can also be sorted by punishment and various other fields.

The way I chose the specific court cases to be used was simple, but arduous. Since male rape would have been convicted under sodomy laws, I selected the sodomy and 'assault with sodomitical intent' subcategories of offences in the search engine on the Old Bailey Online website. Then, I simply looked through every case in order to ascertain whether there was evidence of a rape or not. This included hundreds of cases, but, as said earlier, I found that after the 1790s cases would not include enough detail to see whether rape had occurred. This left me with around one hundred years of cases to look through. The main indication of a case of male rape was who was punished; if only one person was, then it is likely that the act of sodomy was unwanted. If both were convicted, it was more likely to be consensual. If

there was a sodomy case involving a male child then there was certainly rape involved.

This method of data collection was time-consuming, but the only one possible without being able to search specifically for male rape. It did not have its own legal conceptualisation and so one must pay attention to the language used to determine whether a rape had occurred. Some keywords were common however, such as 'forced', 'violently', and 'cry'd'. It is interesting to note that these words are the same that can be used to describe cases of rape in the modern day.

Overall fourteen cases were found which contain instances of male rape, seven involving adults and seven with children, separated in the thesis as they contain their own particularities which will be elaborated on later. The adult cases range from 1721 - 1761, and contain three sodomy and four 'Assault with Sodomitical Intent' cases. Child cases contain five sodomy and two 'Assault with Intent' cases, and have a longer range, starting earlier in 1694 with the last being in 1779.

Despite this being a relatively small sample, as well as being self-contained in the city of London, the quality of the records are high, and contain a wealth of information that can be used.

The chief factor in using these sources however, is the fact that they are a major source of information regarding male rape, as will be seen. The cases generally contain longer transcripts than other offences, which give much material to work with. As Taylor says, 'courts were theatres'.<sup>40</sup> They give allusions to a variety of issues, the most important here being masculinity and sexuality. Criminal court records have commonly been used by historians to investigate issues of sexuality,

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<sup>40</sup> Taylor, Katherine Fischer, *In the Theater of Criminal Justice* (Princeton: Princetown University Press, 1993), p.6

especially regarding sodomy.<sup>41</sup> Indeed, they have been used to argue for and against the issue of whether homosexuals existed before the twentieth century. While this isn't the main concern of the thesis, it shows that court records can be used in diverse ways.

The court is one of the few spaces where male rape can actively be illuminated. While it did not have its own legal definition, it is evident that it was recognised by the court, and prosecuted under sodomy laws. Since this was the case, sodomy records can be utilised to analyse particular conceptualisations and attitudes towards it. The *Proceedings* are invaluable in doing this as they can be accessed at any time, at any point during the research. Since they are digitised, they do not fall prey to physical disintegration. Indeed, anyone reading this thesis can simply look up the cases themselves in seconds, which I would advocate. While they contain some glaring issues and a whole load of bias, this can be utilised in a positive way. This will be explained in detail in Chapter Two.

Since this is partially a legal study of a specific term, and since laws were an important part of the courtroom, it is necessary to conduct a brief history of the laws pertaining to sexual offences. These will of course focus on sodomy, although laws forbidding rape would actually come before sodomy was introduced in criminal law. The first chapter of this thesis will be a legal history of these laws.

## 2.2 Theoretical Framework

One main theoretical tool that will be utilised in this thesis is *Governmentality*, which emerged from a series of lectures by Michel Foucault in the 1980s on governance. It arose from understanding governance 'not as a set of institutions nor in terms of

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<sup>41</sup> Bray, Alan, *Homosexuality in Renaissance England* (London: Gay Men's Press, 1982); Goldberg, Jonathan, *Sodometries: Renaissance Texts, Modern Sexualities* (Stanford: Stanford University Press, 1992); Norton, Rictor, *Mother Clap's Molly House: The Gay Subculture in England 1700-1830* (London: Gay Men's Press, 1992); etc.

certain ideologies, but as an eminently practical activity that can be studied, historicized, and specified'.<sup>42</sup> Central in this understanding of governance is that power is not exercised in a top-down fashion from a single central position – i.e. from the state.<sup>43</sup> Governmentality is not a theory of the state, but rather an 'analytics of government'<sup>44</sup>; a loose set of analytical tools and concepts. Foucault himself stated that it is a toolkit that can be used as a researcher sees fit.<sup>45</sup> It exists in contrast to grand theories of societal change, and is not a self-contained theoretical system; giving it wide-ranging application in a variety of fields, such as political science, international relations, cultural studies, history, sociology, to name a few.

Governmentality draws attention to the 'conduct of conduct', and is concerned with the varied mechanisms, techniques, rationalities and subjectivities which give governance form and effect.<sup>46</sup> It is in this fashion that the concept will be used here, to investigate the techniques and knowledges which underpin attempts to govern sexuality. It will be used in reference to the court records examined in the thesis, which are a window to see wider developments regarding sexuality and male rape. They show how various discourses and techniques would be at the service of governmentality; in a 'rational effort to influence or guide the conduct of human beings through acting upon their hopes [...] [and] desires'.<sup>47</sup>

My second main concept used here is Hegemonic Masculinity, which was also formulated during the 1980s. This concept was developed by Connell et al, and

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<sup>42</sup> Walters, William, *Governmentality: Critical Encounters* (Oxon: Routledge, 2012), p.2

<sup>43</sup> Ibid., p.65

<sup>44</sup> Bennett, Tony, 'Culture and Governmentality' in *Foucault, cultural studies, and governmentality*, Bratich, Jack, Packer, Jeremy, McCarthy, Cameron (eds.) (Albany: State University of New York Press, 2003), p.47

<sup>45</sup> Foucault, Michel, 'Prisons et asiles dans le mecanisme du pouvoir' in *Dits et Ecrits ii: 1954-1988* (Paris: Gallimard, 1994), p.523

<sup>46</sup> Walters, *Governmentality*, p.2

<sup>47</sup> Inda, Jonathan Xavier, *Anthropologies of Modernity: Foucault, Governmentality, and Life Politics* (Oxford: Blackwell, 2005), p.1

had its beginnings in an article which critiqued 'male sex role' literature and proposed a sociological model of power relations which contained multiple masculinities.<sup>48</sup> Two years later Connell would write that the core of the concept is 'an ordering of versions of femininity and masculinity at the level of the whole society'.<sup>49</sup> This would be centred in a pattern of the global dominance of men over women, but also of men over other men. The Hegemonic ideal incorporates what it seen to be most important in being a man; traditionally including features such as physical strength, sexual promiscuity, wealth, and success. However, the hegemonic ideal is not assumed to be normative in a statistical sense, and only a minority of men might enact it.<sup>50</sup> Importantly it also does not stop alternative masculinities from being produced, which can serve to challenge the cultural dominance of the ideal, and is seen as an alternative way to be a man; one commonly defined alternative is homosexuality. The concept has found many applications, some prime examples being education studies, criminology, the media, as well as sport.<sup>51</sup> Its variability allows it to be useful in many areas.

Here the concept will be used to examine the connections between masculinity and male rape. It has already assumed importance in male rape research, as explained above, and these findings will be related to the cases of male rape in this thesis. Furthermore, it will be used to argue of seeing the 'Molly', a group of effeminate sodomite characters who appeared in the early eighteenth century, in terms of an alternative masculinity.

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<sup>48</sup> Carrigan, T, Connell, R, Lee, J, 'Towards a New Sociology of Masculinity', *Theory and Society*, 14 (1985)

<sup>49</sup> Connell, Raewyn, *Gender and power: Society, the Person and Sexual Politics* (Cambridge: Polity Press, 1987), p.183

<sup>50</sup> Connell and Messerschmidt, 'Hegemonic Masculinity', p.832

<sup>51</sup> Ibid., pp.833-834



## 2.3 Research Method

I incorporate a documentary analysis research method in this thesis. It is recognised that male rape is a material reality,<sup>52</sup> despite the absence of a legal offence.

Therefore, specific attention is paid to the language used in these court records, in order to illuminate how male rape was conceptualised. These will be placed in context with the legal history of how male rape was punished. Furthermore, this method will be utilised to draw attention to the various allusions to masculinity.

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<sup>52</sup> Cohen, *Male Rape is a Feminist Issue*, p.25

## Chapter 3 – Legal Review

British law has a long history, with the concept of ‘common law’ arising properly in the twelfth century.<sup>53</sup> This concept encapsulates the way in which the law functioned, which was less to do with proper fixed statutes but which was derived from custom and judicial precedent. In addition, criminal law remained essentially reactive.<sup>54</sup> This was especially true with sexual crimes, with male rape even more so. The legal notion of male rape would not be enshrined into law until 1994, meaning that it would indirectly fall under the scope of sodomy/buggery law, which criminalised sexual relations between men, consensual or not.

The first buggery legislation came into being in the 1500s, and would be reworked and repealed many times by the various monarchs of that century. It is important to note that while this was targeted mainly at men having anal sex with each other, it also included a man having anal sex with a woman, or with animals. There are numerous criminal court cases which show that it was an offence which many were convicted of, in all of its aspects.

The nineteenth century saw the emergence of a variety of statutes which attempted to consolidate and update previous acts relating to sexual offences. This was partially due to the arrival and substantial increase in lawyers.<sup>55</sup> This century redefined and for the first time gave proper, codified definitions in statutes for sexual crimes; these were acknowledged as ‘Offences Against the Person’. These acts would also substantially change punishments for sexual crimes, from the death

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<sup>53</sup> Baker, John Hamilton, *An Introduction to English Legal History*, 3rd edn (London: Buttersworths, 1990), p.14

<sup>54</sup> Cornish, W.R, and Clark, G, *Law and Society in England 1750-1950* (London: Sweet & Maxwell, 1989), p.568

<sup>55</sup> Critchley, T.A, *The Conquest of Violence: Order and Liberty in Britain* (New York: Schocken Books, 1970)

penalty to imprisonment. This century would also see the creation of a variety of misdemeanours in an attempt to curb homosexuality.

The twentieth century would see the decriminalisation of homosexual acts, as well as the formal instituting of legislation against male rape, under the rubric of 'Sexual Offence Acts'. This would widen the definition of rape massively, which would continue with the most recent Sexual Offence legislation, passed in 2003. This would continue to broaden the definition of rape even further, and attempt to give equal representation to both male and female victims.

This chapter will chart the development of male rape laws, in the three distinct periods identified above. Doing this allows us to see the historical changes and continuities when examining laws against male rape. Legislation was also a way to push people towards a certain kind of behaviour, important here in reference to sexuality. As will be seen, these laws went through a variety of changes, and have different emphasises in different periods.

### 3.1 Early laws – 1200s and 1500s

Although common law had become formally established in the twelfth century, statutes relating to sexual offences were few and far between, and changed little over the course of many centuries. It would be in the nineteenth century that sexual offence laws were reformed; this meant that the original rape law stood for six centuries, with buggery for three. Baker comments that 'The common law of England proved remarkable durable',<sup>56</sup> and this was never more so seen than in the case of sexual offences.

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<sup>56</sup> Baker, *An Introduction*, p.33

Year	Legislation	Annotation
1275	Statute of Westminster I	Rape made a trespass offence
1285	Statute of Westminster II	Rape made a capital felony
1533	Acte for the punishment of the vice of Buggerie	Buggery first made capital felony
1548	Sodomy Act	Redefined with less stringent measures
1553	Treason Act	Buggery laws repealed
1562	An acte for the punishment of the Vyce of Sodomye	Buggery law reinstated, under harsher 1533 terms

The first rape law would be enacted in the reign of Edward I, in 1275.<sup>57</sup> Specifically, the law states that no one may ‘ravish nor take away’ (ne ravie en prenge) a woman against her will, which can be interpreted as criminalising against rape and abduction, or only abduction, but not simply rape alone.<sup>58</sup> Part of the reason for this is that the statute put the punishment for this stipulation at a fine and two years imprisonment, which was a significant change from usual custom. Before the Norman Conquest in 1066, punishment would usually result in the rapist’s death or dismemberment.<sup>59</sup> Post 1066, rapists would receive castration and the loss of eyes.<sup>60</sup> Thus, this new punishment would seem extremely mild in comparison to older penalties.

<sup>57</sup> Statute of Westminster I

<sup>58</sup> Dunn, Caroline, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100-1500* (Cambridge: Cambridge University Press, 2013), p.30

<sup>59</sup> Hall, G.D.G, (ed.) *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (Oxford: Clarendon Press, 1993), p.171

<sup>60</sup> Blackstone, William, *Commentaries on the Laws of England*, 1st edn (Oxford: Clarendon Press, 1765-1769), p.211

It is uncertain why there was such a change in punishment, and complicating the picture is a further statute, enacted ten years later, written in both French and Latin.<sup>61</sup> While the Latin texts would simply refer to abduction and not rape, the French texts used ambiguous language, possibly referring to either one or maybe even both. It is possible that the authors used this kind of language in order for both abduction and rape to fall under the scope of the law, although this is unclear.<sup>62</sup> Nonetheless, the French text states that a man convicted of the ‘ravishment’ of a woman would lose life or limb, and it is clear that a variety of cases used this punishment, suggesting that either only the French part of the statute was used, or that both texts were interpreted as meaning the same. The result however, would be that rape became a felony in common law for the first time, and this law would stay in place for many centuries. The next rape law would actually be enacted in 1576, but only to abolish the benefit of clergy, meaning that members of the clergy could be prosecuted and convicted of the offence like any other person.<sup>63</sup> It would be a full six centuries since the original rape law would be repealed.

Although rape laws were only directed towards the protection of women, it is useful to chart their development when compared to laws forbidding sexual relations between men. This would be what buggery/sodomy laws were created for, the two terms being used interchangeably.<sup>64</sup> The first of this kind would be the ‘**Acte for the punishment of the vice of Buggerie**’ of 1533.<sup>65</sup> This would be two and a half centuries after the enactment of the first rape law, described above. The legislation stated that it forbid the ‘abominable vice of buggery committed with mankind or

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<sup>61</sup> Statute of Westminster II

<sup>62</sup> Dunn, *Stolen Women*, p.31

<sup>63</sup> 18 Eliz. 1, c. 7

<sup>64</sup> Johnson, Paul, and Robert Vanderbeck, *Law, Religion and Homosexuality* (Oxon: Routledge, 2014), p.34

<sup>65</sup> 25 Henry VIII c.6

beast'.<sup>66</sup> Though common respectability would stop the explicit definition being given, it would have been known that sodomy referred specifically to anal sex, from the stories of Sodom and Gomorrah. The penalty was death. This legislation was mainly targeted at men having anal sex with each other, but included other aspects as explained above. Indeed, the association of anal sex with bestiality would continue for many centuries. Buggery had the same conditions for requirement of proof as rape; penetration and emission.<sup>67</sup>

Before this statute conviction of sodomy would fall under the jurisdiction of the ecclesiastic courts, and was punished with death by burning as it was seen as a form of heresy.<sup>68</sup> The religious associations of sodomy and Christianity are evident, although they went through a great deal of changes in the sixteenth century; a time of both religious and political turmoil in England. Indeed, the established Tudor dynasty would see five different monarchs on the throne before the century was over.<sup>69</sup> Religion would become a major issue for all of these monarchs, and is central to understanding the changes that buggery laws went through, beginning with Henry VIII.

Henry VIII instigated what would become known as the English Reformation, the separation of the Church of England from Catholicism and Rome. This would be part of the wider Protestant Reformation which overtook Europe in the sixteenth century, where new forms of Christianity would challenge the authority of the established Roman Catholic Church. While it is not necessary to go into full details

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<sup>66</sup> Goldberg, J, *Sodomities: Renaissance Texts, Modern Sexualities* (Stanford University Press: California, 1992), p.3

<sup>67</sup> Blackstone, *Commentaries*, pp.215-216

<sup>68</sup> Pollock, Sir Frederic, *The History of English Law before the Time of Edward I. Reprint of 2nd edition, with a Select Bibliography and Notes by Professor S.F. Milsom*, 2 vols, (Indianapolis: Liberty Fund, 2010), pp.556-557

<sup>69</sup> The number would be six if we include Lady Jane Grey (1536/1537 – 1554), who was de facto queen for nine days in 1553, before her imprisonment and later execution for treason.

about the Reformation, it is important to keep in mind the religious strife which plagued England, which included a variety of rebellions in attempts to restore Catholicism as the national religion in England. What Henry VIII achieved was the implementation of a specific kind of Protestantism, which would take authority away from ecclesiastical courts and into the hands of the law – as with the first buggery law. Instead of being prosecuted under heresy, buggery was now prosecuted under the law.

The death of Henry brought his only son, Edward VI, as a minor to the throne. His reign continued with a variety of reforms in the same manner as his father, with a focus on Protestantism. He would also pass the second **Sodomy Act** of the century in 1548, which would not redefine the act of sodomy but change some of the harsher penalties of the previous law. Sodomites were still to be hanged, but if someone accused their ‘enemy’ of sodomy, they could not bear witness, as they could profit from a successful conviction.<sup>70</sup> In addition, accusations and indictments had to occur within six months of the alleged offence.<sup>71</sup> In comparison, rape law stipulated that a woman had to complain of the assault on their person within forty days. Finally, the act stated that the property of the condemned person would be inherited by his heirs, which ‘not only secured their material well-being but cleansed them of the sins of their father. With the felon died the taint’.<sup>72</sup> Thus this law made provisions that were less harsh than those of the previous act, and which attempted to double down on cases of wrongful prosecution.

When Edward died five years after the implementation of this act, his half-sister ascended to the throne. Crowned Mary I, and known to history as Bloody

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<sup>70</sup> Fone, Byrne, *Homophobia: A History* (New York: Picador, 2000), p.217

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, pp.217-8

Mary, she was a devout Catholic, and attempted to restore her faith to England. Thus she quickly began to repeal a great deal of laws of both her brother's and father's reigns, which included both buggery laws. If taken out of religious context the repealment of buggery laws could be seen as a sign of tolerance, but in actuality was part of a move to restore the former jurisdiction of the ecclesiastical courts. For a short time Catholicism would return to England, at least in part, meaning that there would be no buggery law.

However, Mary's reign would be short lived, as she died in 1558. In her five years, she managed to burn, hang, or otherwise kill 312 religious dissenters, as documented by Foxe.<sup>73</sup> Elizabeth the First, the Virgin Queen, would ascend to the throne on her death. Importantly, she was a Protestant, and would undergo to reverse many of the statutes and decisions that her half-sister had made. She would introduce a variety of new acts aiming at restoring the Protestant faith. She would also reinstate the **original Buggery Act** of her father's time, with its harsher restrictions. Indeed, parliament had stated earlier that sodomy had been on the increase since Mary's repealment of the sodomy law.<sup>74</sup> In 1562 the Buggery Act was reintroduced, under the original Henrician terms, and would remain as the only sodomy law for the next three centuries.

The 1500s saw the implementation and repealment of many buggery laws, but this was less to do with concern over buggery than of unease about religion that prompted these changes. Elizabeth I died in 1603, after a long reign of forty-three years, and Protestantism had been firmly established in England. While religious anxieties would continue over the course of the next century, and beyond, this would

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<sup>73</sup> Foxe, John, *Actes and Monuments of These Latter and Perillous Days, Touching Matters of the Church* (1563)

<sup>74</sup> Fone, *Homophobia*, p.218



not affect the laws of buggery, which would remain in place until the nineteenth century. This period would also see the instigation of a variety of sexual offence laws, mirroring the amount of changes which had occurred in the 1500s. It should be remembered however, that the cases which I will be analysing in the next chapter would occur before these new sexual offence laws. Thus, the men I will be describing were prosecuted under the Elizabethan Sodomy Act of 1562.

### 3.2 Offences Against the Person - 1800s

The nineteenth century saw the consolidation of various offences under an umbrella set of statutes, titled '*Offences Against the Person*'. Four of these acts appeared before the turn of the century, three of which are mentioned here, that incorporated a variety of crimes such as murder, treason, as well as sexual crimes.

Year	Legislation	Annotation
1828	Offences Against the Person Act	Requirement of ejaculation to prove rape/buggery dropped
1837	Offences Against the Person Act	Repeal of a variety of clauses from the previous act
1861	Offences Against the Person Act	Death penalty for buggery abolished, 'Indecent Assault' codified
1885	Labouchere Amendment	Created offence of 'Gross Indecency'

The first of these acts appeared in **1828**. The statute begins by repealing a whole load of previous laws relating to offences against the person, spanning a whole six centuries, including clause XXVI of the Magna Carta.<sup>75</sup> The list of repealed laws

<sup>75</sup> The Offences against the Person Act 1828 (9 Geo.4 Chapter 31)

continues for a total of five pages, and is incredibly comprehensive, with full titles as well as the year of the sovereign in which they were enacted. After this, various offences are defined or redefined, with a major focus being on murder. As for sexual crimes, many simply use previous definitions. Regarding buggery for instance, it is stated 'every Person convicted of the abominable Crime of Buggery, committed either with mankind or...any Animal, shall suffer Death as a Felon'.<sup>76</sup> The same is said for rape, minus the part about animals. This is no different than previous acts, buggery and rape have always been felonies, and had the death penalty.

However, what is new in this act is what is required to prove a sexual crime occurred. Specifically, the act said:

*Offenders frequently escape by reason of the Difficulty of the Proof which has been required of the Competition of those several Crimes;' for Remedy thereof be it enacted, That it shall not be necessary, in any of those cases, to prove the actual Emission of Seed in order to constitute carnal Knowledge, but that the carnal Knowledge shall be deemed complete upon Proof of Penetration only.*<sup>77</sup>

Here, the law is explicitly acknowledging the difficulty that proof of ejaculation put upon prosecutors, and seems to be attempting to make it easier to convict suspected sexual offenders, without the need for physical evidence. This focus on ejaculation is a major theme in the cases which will be analysed later, from the previous century. Indeed, these cases show that emission was extremely difficult to prove, and with this section the law seems to be acknowledging this. It would be a small step towards helping rape victims.

The next act would appear **nine years later**, which focused on repealing a variety of clauses enacted by the previously described statute.<sup>78</sup> It would seem that the sections on sexual crimes were sufficient however, as none are mentioned.

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<sup>76</sup> Ibid., Section XV

<sup>77</sup> Ibid., XVIII

<sup>78</sup> The Offences against the Person Act 1837 (7 Will.4 & 1 Vict. Chapter 85)

The next major statute would come in **1861**, and was also a large consolidation of acts such as those from the act of 1828 – thus the intent of passing it seems to be of simplification. Again, there is a large focus on murder as an offence against the person. For rape and buggery however, there is a change in punishments. The death penalty for rape was abolished with the Substitution of Punishments for Death Act 1841, and was replaced with life imprisonment.<sup>79</sup> The 1861 act reified this, stating the rapist should be kept in penal servitude for life, or not less three years, or to be imprisoned for less than two years with or without hard labour.<sup>80</sup> The death penalty for buggery continued until this act, where it was replaced by penal servitude for life, or for any term not less than *ten* years.<sup>81</sup>

In addition to this, the new offence of ‘Indecent Assault’ was codified for the first time, although it seemed to exist in common law already. This would be the first time that the offence appeared in a criminal statute however, although it was not explicitly defined; it probably referred to any illegal sexual activity which did not include penetration. Indeed, it would seem to be a gender neutral term, with the same penalty of ‘Intent to Commit’ sexual crimes. Committing on a female would garner a maximum of two years prison time, with or without hard labour.<sup>82</sup> On a man, this would be penal servitude between three and ten years, or imprisonment with or without hard labour not exceeding two years.<sup>83</sup>

These differential sentencings where penetration either occurred or with ‘Intent to Commit’ suggest that buggery was treated more harshly than rape, since in both cases it could theoretically garner more prison time. If buggery only constituted non-consensual sodomy it could be argued that male rape was taken seriously by

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<sup>79</sup> Substitution of Punishments for Death Act 1841, section 3

<sup>80</sup> The Offences against the Person Act 1861 (24 & 25 Vict Chapter 100), section 48

<sup>81</sup> Ibid., section 61

<sup>82</sup> Ibid., section 52

<sup>83</sup> Ibid., section 62

the courts, even more seriously than female rape. However, male rape would only be part of buggery law by default, with the main focus being on restricting consensual acts of sodomy.

The last change to the law of this century was introduced by the so-called 'Labouchere Amendment' of 1885. This clause creating the offence of 'Gross Indecency', and stated 'Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor'.<sup>84</sup> This ambiguous terminology makes it hard to narrow down any definition, but was probably intended to prosecute where sodomy could not be proven – similar to the 'Intent to Commit Sodomy' offence; both were misdemeanours. Most famously, Oscar Wilde was prosecuted under this offence. Ironically, Wilde called Labouchere one of his heroes three years before the amendment passed.<sup>85</sup>

As shown, legislation in the nineteenth century differed from previous times because of its focus on actual, comprehensive statutes. Much more definitional accuracy is apparent than in previous acts.<sup>86</sup> The law would also recognise the limitations of these previous acts and attempt to rectify them, specifically seen here is removal of the requirement of emission in order to prove a sexual crime had occurred. This was evidently a century of law and prison reform. The late eighteenth century saw a belief that criminals could be reformed to change their ways, and jails were created with this in mind, centred on hard labour.<sup>87</sup> This idea would eventually lose ground, but

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<sup>84</sup> Criminal Law Amendments Act (48 & 49 Vic.cap. 69), Clause 11

<sup>85</sup> Smith, F.B., 'Labouchere's Amendment to the Criminal Law Amendment Bill', *Historical Studies*, 17 (1976), pp.165–73

<sup>86</sup> Cornish and Clark, *Law and Society*, p.565

<sup>87</sup> *Ibid.*, p.570

reform in other places continued. A major piece of work which sought law reform was Jeremy Bentham's *Principles of Penal Law*. Bentham in particular would be remembered as a reformist. Although sexual offence law reform would cease for nearly a whole hundred years, the mid-late twentieth century would see a revival and many changes when it came to sexual offence laws.

### 3.3 Modern Sexual Offences – 1900s and 2000s

A number of important changes in reference to male rape and homosexuality in the law occurred in the twentieth century. Importantly, male rape as a specific offence was recognised in the law for the first time at the end of the century.

Year	Legislation	Annotation
1956	Sexual Offences Act	Consolidation and reification of previous acts
1967	Sexual Offences Act	Homosexuality decriminalised
1994	The Public Order and Criminal Justice Act	Criminalisation of anal rape
2000	Sexual Offences (Amendment) Act	Age of consent for all sexual acts equalised at sixteen years old
2003	Sexual Offences Act	Widening of rape law to include penetration of the mouth, as well as by objects

We begin with the **Sexual Offences Act of 1956** – the twentieth century would continue the tradition of using the same title for a variety of similar acts, this time

under the name of 'Sexual Offences'. This act is important in that many of its provisions and definitions were repealed by subsequent acts, and so it can be seen as an important and fairly comprehensive act for its time. First to note is that rape continued to only include a man forcing a woman. Under this is a section on 'Unnatural Offences', which suggests that the association of anal sex with the unnatural continued well into the twentieth century. This section states that 'It is felony for a person to commit buggery with another person or with an animal'<sup>88</sup> – incorporating both consensual and non-consensual anal intercourse, whether between or on a man or a woman or animal. This is not any change from buggery/sodomy legislation before this time. The act also reified the offence of 'Gross Indecency'. Thus, this act was mainly for consolidation and reification of previous acts, on the same scale as we saw with the first 'Offence Against the Person' act of the previous century.

Onto the 1960s, when homosexuality was first decriminalised, albeit partially, with the **Sexual Offences Act of 1967**. This act was influenced heavily by the Wolfenden Report (1957), which suggested decriminalisation on the basis that criminal law should not intervene into the consensual sexual relations of citizens in their private homes.<sup>89</sup> This was a fairly short act focused on homosexual practices, which begins by stating 'a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years'.<sup>90</sup> However, a 'party' only constituted two; it was an offence for more than two persons to take part or to be present.<sup>91</sup> These privacy restrictions were interpreted strictly by the courts, an act could not take place where a third person was likely to be present,

<sup>88</sup> Sexual Offences Act 1956, 4 & 5 ELiz. 2, Chapter 69, 1 (12)

<sup>89</sup> Prostitution, Committee on Homosexual Offences and, *Report of the Committee on Homosexual Offences and Prostitution* (London, 1957)

<sup>90</sup> Sexual Offences Act 1967, Chapter 60, Section 1

<sup>91</sup> Ibid.

even if they were in another room – such as in a hotel, for example. This act was not extended to Scotland or Northern Ireland,<sup>92</sup> where decriminalisation would come a few decades later. However, this law was an important milestone for the rights of homosexuals in the United Kingdom.

Next to 1994, where male rape is often referred to as firstly being legislated into British criminal law, with '**The Public Order and Criminal Justice Act**'. This interpretation is slightly misleading however, as what it actually did was include non-consensual penile penetration of the anus as a form of rape.<sup>93</sup> This is a small but important detail, as this included not only anal rape of men but of women too; the act consolidated existing differential penalties into one, specific, gender-neutral penalty. Thus, the act is actually more about anal rape as opposed to male rape. Section 142 of the act states:

*It is an offence for a man to rape a woman or another man [...] A man commits rape if [...] he has sexual intercourse with a person (whether vaginal or anal) who at the time of the intercourse does not consent to it.*<sup>94</sup>

Nevertheless, the act would bring the offence of male rape into the law. While the 1994 act did not create the specific offence of male rape as is commonly observed, it is still a defining moment in male rape legislation, and one of the few in the world to refer to the material act as rape, and not for example, 'sexual deviance'. While statutes on rape differ widely in the USA by state, the FBI's definition of rape only changed to include male rape on the first day of 2013; from 'the carnal knowledge of a female, forcibly and against her will' to 'penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim'.<sup>95</sup> One male rape law can be found

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<sup>92</sup> Ibid., Section 11

<sup>93</sup> Graham, *Male Rape*, p.195

<sup>94</sup> Criminal Justice and Public Order Act 1994, Chapter 33, XI (142, 1)

<sup>95</sup> Basu, Moni, 'U.S. Broadens Archaic Definition of Rape', *CNN*, 2012 [accessed 5 April 2015]

in India, but only by default, since all anal intercourse is criminalised, consensual or not.<sup>96</sup>

Having male rape legislation allows much easier data gathering for researchers, as there are specific legal definitions to use. The most recent statistics in the UK, gathered over three years, put the number of males at a rate of 8.67 percent of all rape victims.<sup>97</sup> Older estimates in the USA found a similar prevalence,<sup>98</sup> although the 2013 National Crime Victimization Survey uncovered 38 percent of victims were male, out of a sample size of 40,000.<sup>99</sup>

The 1994 act also fully decriminalised anal intercourse between consenting men and women or other men, as long as the act took place in private and all parties were over eighteen.<sup>100</sup> However, this was not on par with vaginal sex, which was sixteen. This was corrected with **The Sexual Offences (Amendment) Act of 2000**, which put the age of consent for all sexual activity, barring with family and those in a position of power over one of the parties, at sixteen.<sup>101</sup>

We end with the most recent legislation– the **Sexual Offences Act of 2003**, which redefined various concepts from all of the acts in the twentieth century and before; it is the most comprehensive and wide-ranging legislation on sexual offences in the UK. These are the most recent definitions, and ones used by the government, and are worth quoting in full. Thus, the section on rape states:

*A person (A) commits an offence if—  
(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,  
(b) B does not consent to the penetration, and*

<sup>96</sup> Vipra, Jai, *A Case for Gender-Neutral Rape Laws in India* (2013)

<sup>97</sup> Ministry of Justice, Home Office, and Office for National Statistics, *An Overview of Sexual Offending in England and Wales* (2013)

<sup>98</sup> Weiss, 'Male Sexual Victimization'

<sup>99</sup> Rosin, Hanna, 'When Men Are Raped', *Slate*, 2014 [accessed 5 April 2015]

<sup>100</sup> Jason-Lloyd, Leonard, *The Criminal Justice and Public Order Act 1994: A Basic Guide for Practitioners* (London: Frank Cass, 1996), p.34

<sup>101</sup> The Sexual Offences (Amendment) Act 2000, Chapter 44



(c) *A does not reasonably believe that B consents.*<sup>102</sup>

What is immediately noticeable is that person A (the rapist) is implicitly male, whereas person B (the victim) is not. So while there is gender neutrality in terms of the victim, it is not recognised that females can also be rapists. In her book two years later, Bourke comments that 'In law-enforcement and legal precept, women are assumed to be passive as sexual subjects, in contrast with the active male'.<sup>103</sup> This is partially true in this law, as it is actually possible for a man to be a victim, and thus passive too. In addition, a new offence of 'assault by penetration' was created, which is defined as when a man 'intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else'.<sup>104</sup> This new offence was intended to be used when penetration occurred with an object. Importantly, group homosexual sex was also decriminalised.

The differences between this act and the older, 1994 one are few. Both emphasise the importance of consent. The older act more obviously states that only a man can be a rapist, whereas this act states a 'person'; it is also more comprehensive in that penetration of the mouth is included as a form of rape. Indeed, one major difference between the two is that the later act does not emphasise the *sexual*, only the penetration is important, whether it is sexually charged or not. Rape is no longer defined as unwanted sexual intercourse, but unwanted penetration. This conforms to the feminist idea that rape is not necessarily about sex, but about power.<sup>105</sup>

The specific laws examined in this section provide insight into the attitudes surrounding sexual offences, with different aspects being important at different times.

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<sup>102</sup> Sexual Offences Act 2003, Chapter 42, 1 (1)

<sup>103</sup> Bourke, *Rape*, p.212

<sup>104</sup> Sexual Offences Act 2003, Chapter 42, 1 (2)

<sup>105</sup> Brownmiller, *Against Our Will*

The 1956 law was mostly concerned with reinforcing the status quo, there was no new changes in the definitions of rape or buggery. This changed a decade later, but the decriminalisation of homosexual acts seemed to be less about tolerance and more about privacy, and the law's ability to intervene and prohibit sexual acts. However once it was established that the government should not get involved in people's private lives so much, a precedent was established. From now on, laws seem to be more concerned with protection, as opposed to prohibition. Indeed, the opening to the 2003 law states it is 'An Act to make new provision about sexual offences, their prevention and the protection of children'.<sup>106</sup> There has been an intention to equalise and treat victims of rape of all genders equally in the law. Outside of it though, there is much less support for male victims. There is only one charity in the UK dealing with such, Survivors UK, as opposed to a great many for female victims. Recently, the government announced a £500,000 fund to help male victims of sexual abuse, though Survivors say this may not be enough.<sup>107</sup> Thus, there seems to be a gap between recognition of male rape in the law, and measures undertaken by the state to prevent it. While the law is progressive in itself, extra-legislative measures are lacking.

### 3.4 Conclusion

This chapter has charted the development of the laws of England pertaining to male rape. This would begin with the buggery laws of the sixteenth century, which would forbid any kind of sexual activity between men, to sexual offence laws of the nineteenth century which would not redefine the act of buggery but other aspects of these laws, to the twentieth century where the specific of male rape was sanctioned

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<sup>106</sup> The Sexual Offences Act 2003

<sup>107</sup> Merz, Theo, "Male Victims of Sexual Abuse Are Treated as Secondary", *The Guardian*, 2015 [accessed 5 April]

into the law for the first time. The major historical change that can be seen is that male rape has gone from being treated as an indirect consequence of buggery law to having a specific legal offence of its own. While buggery law was created in order to curb homosexual acts, male rape law does not connect male rape and homosexuality together. Indeed, recent male rape law redefines rape as penetration, taking the sexual out of the equation.

The cases that I will be analysing in the next chapter come from the eighteenth century, before the reforms of 'Offences Against the Person'. They were tried under the original buggery laws of the 1500s, with the proofs and punishments thereof. As will be seen, the courts would grapple with the requirements of both penetration and emission, which would become the main focal points of trials.

## Chapter 4 – Primary source analysis

The primary material that will be analysed in this chapter comes from *The Proceedings of the Old Bailey*, a published collection of trials at the Old Bailey, London's central criminal court, and which are all available online. Specifically I looked for cases of what seems to have been male-on-male rape which were tried under the laws of sodomy. The *Proceedings* contain a wealth of information on sexual crimes, especially regarding sodomy. Over the whole publishing history of the *Proceedings*, a total of one thousand one hundred and sixty eight sodomy cases were published, of which I will be specifically using fourteen; eight sodomy and six 'Assault with Sodomitical Intent' cases, ranging from 1694 to 1779. This lesser offence was categorised as a misdemeanour, and was created due to the difficulty of proving sodomy; penetration and ejaculation. This happened often, and many sodomy cases turned into these, which contained a wider range of punishments than simply *death*.

This chapter focuses on the sources. Firstly, the transcripts and procedure of the court will be illuminated, allowing these cases of male rape to be properly contextualised for the eighteenth century. Secondly, the specific cases themselves will be analysed, starting with the adult cases and then those with children. These will be examined for the similarities between them, showing what was deemed to be important to the courts. The overarching theme in these cases is the governing of sexuality, as mentioned earlier. The judgements and punishments in these cases served as attempts to govern the sexuality of men, and to push them towards the heterosexual norm. These theoretical implications will be examined more thoroughly in the next chapter, but for now these brief mentions should be kept in mind when reading about the cases.

## 4.1 Transcripts

Each individual case published in the *Proceedings* could vary greatly in length. While the majority of cases would concern thievery, and especially highway robbery, these mostly contained a small amount of detail. In contrast, transcripts for sexual crimes generally numbered many pages. Occasionally transcripts would be published in full detail, after being written up by a note-taker. Many of the cases analysed here contain these longer transcripts, suggesting that there was a public interest in sexual crimes, especially sodomy.

Transcribers used their notes and memory when writing up material for publication. This necessarily begs the question of accuracy, and their value as a historical source. The long-serving official shorthand writer Thomas Gurney stated that he attempted to record the *substance* of evidence given in court.<sup>108</sup> Naturally, transcribers could not remember or take notes of every detail, so they had to take some liberties. This was not an issue for historian John Langbein, who said that although the *Proceedings* compressed trials they did not fabricate content.<sup>109</sup> This seems to be the prevailing view, as many consider the *Proceedings* to present accurate but incomplete accounts of courtroom proceedings.<sup>110</sup>

On closer look however, the *Proceedings* do seem to contain heavy bias on the side of the prosecutor. Robert Shoemaker, who was co-director of the project to digitise the *Proceedings*, shows that they contain a great deal of selective reporting. Generally, acquittals were not published, and this ‘focused attention on cases where defendants were convicted, thus conveying the message that criminality would be

<sup>108</sup> Shoemaker, Robert, ‘The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London’, *Journal of British Studies*, 47 (2008), p.566

<sup>109</sup> Langbein, John, ‘Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources’, *University of Chicago Law Review*, 50 (1983), p.25

<sup>110</sup> Shoemaker, *Old Bailey Proceedings*, p.560

punished'.<sup>111</sup> In addition, in summarising defence testimony, the *Proceedings* would occasionally explicitly adopt the point of view of the prosecution.<sup>112</sup> The effect of this was to show that the courts were capable institutions in responding to crime, which saw a heightened public concern in the eighteenth century. The *Proceedings* was only one of many publications which gave accounts of crime, and it would eventually be edged out by other newspapers towards the end of the century. Readership would begin to decline in the 1770s, and in and after the 1790s many sexual offence cases would only contain few details.

The above mentioned selective reporting and bias must be taken in account when analysing these trials. But it can also be used as evidence of one of the main arguments utilised in this thesis – the governing of sexuality. As said, the *Proceedings* emphasised that the courts could respond effectively to crime, leaving out many acquittals, and focusing on guilty verdicts.

## 4.2 The Procedure

Crime in the eighteenth century was tough to prosecute, 'In an age before regular police forces, there was little incentive to report crimes committed by unidentified culprits'.<sup>113</sup> When proceedings did begin, they generally followed the same course. The indictment was the usual way of commencing criminal proceedings.<sup>114</sup> An adult would bring a complaint to a Justice of the Peace or a Constable, who would take a statement and investigate the crime. Children's cases would be taken by a family member, or friend. After this, the suspect would be arrested and put in prison to await trial.

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<sup>111</sup> Ibid, p.567

<sup>112</sup> Ibid., p.568

<sup>113</sup> Cornish and Clark, *Law and Society*, p.548

<sup>114</sup> Baker, *An Introduction*, p.576

On arrival to the court, prisoners were brought into the court chained at the ankles.<sup>115</sup> Twelve jurors would then be called in, after which the prosecuted party was cross-examined. Following this, witnesses of the prosecution would be called in and gave their accounts. After this had been done, the defendant usually gave a short statement along with their own witnesses, who were usually only there to vouch for the defendant's character. Then, the jury gave their verdict; the jury was required to be unanimous in their decision.<sup>116</sup>

By the early nineteenth century the average length of a trial was only a few minutes.<sup>117</sup> Baker states that a trial 'for felony could rarely, in any period, have taken more than half an hour'.<sup>118</sup> Sodomy was a felony too, but this argument needs to be questioned. As said above, transcripts for sexual crimes, including sodomy, were much longer than for other felonies. By simply looking at these transcripts, it seems impossible that these cases would have lasted for so little an amount of time. Some are extremely long, and state that the court met on other days to continue. In addition to this, biases in the records suggest that transcripts were even lengthier than was published. Defence statements were often unpublished, the reporting of legal arguments was heavily underreported, and witness testimony was often omitted or summarised.<sup>119</sup> It can be tentatively suggested that court cases of male rape lasted longer than for other crimes, and definitely more than half an hour.

Following the verdict, prisoners were taken to jail awaiting punishment. If sodomy was sufficiently proven, the perpetrator was sentenced to death. This occurred in five cases of male rape, with four being found not guilty. One case gave a special verdict, meaning it was moved to another day. Guilty verdicts rested on

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<sup>115</sup> Ibid., p.581

<sup>116</sup> Ibid.

<sup>117</sup> Anonymous, *Old Bailey Experiences* (1833)

<sup>118</sup> Baker, *An Introduction*, p.582

<sup>119</sup> Shoemaker, *Old Bailey Proceedings*, pp.568, 569, 571

both penetration and ejaculation being proved, which was recognised to be difficult,<sup>120</sup> hence the creation of the misdemeanour 'Intent to Commit'. Four cases of these misdemeanours returned guilty verdicts, with a variety of punishments. All four carried a fine; Duffus and Dicks for 20 marks, Chamberlain for 6 marks, and Broderick for 20 nobles (10 marks). In addition, all men were imprisoned for various lengths of time; Dicks for two years (uncommonly long), Broderick for three months, Chamberlain for two months and Duffus for one month. All but Chamberlain would suffer the pillory, which was 'used particularly for offences likely to arouse great resentment'.<sup>121</sup> It was common for those in the pillory to be publically abused, and to suffer physical violence. Some would even die as a result. As such most would only stand upon the pillory once, although Broderick would do twice, 'at the nearest convenient Place to where the Facts were committed'.<sup>122</sup> It seems the court wanted to make a statement in his case. Verdicts and punishments vary across all the cases, the age of the victim seems irrelevant when granting sentences.

### 4.3 Adult cases

So, to begin with the adult cases. The transcripts provided here are extremely explicit in the events that occurred. These will be quoted in full detail, so that it can be shown that male rape did indeed occur. The cases bear some similarities to other sodomy cases where intercourse is consensual; this can mainly be seen in the location where the assaults occur – the public house. It is also evident that it is important to gather whether penetration and ejaculation occurred, and many questions are asked in order to work this out.

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<sup>120</sup> Blackstone, *Commentaries*, pp.215-216

<sup>121</sup> Cornish and Clark, *Law and Society*, p.557

<sup>122</sup> May 1730 (s17300513-1)



What many of these cases have in common is the scene where the offences took place; the public or ale house. In the Duffus case this was at the '3 merry Potters', Andrews lived at the 'Fortune of War', and Dicks assaulted two people at the 'Golden Ball'. At the public house rooms could be rented for the night, which is where a great many of these offences occurred. It should be noted first that two men staying in a room and even sharing a bed together was not seen as strange, but was a common occurrence for this time period. Without electricity lighting up the streets, one would be hard pressed to find their way home, especially if it was a long way. It could also be quite dangerous. Thus many men decided to sleep together, and this is exactly what happened in the Duffus case, 'The prisoner staying late with the Prosecutor, and telling him he lived a great way off, desired the Prosecutor to let him lie with him that Night'.<sup>123</sup> This would not have seemed out of the ordinary, but of course, the perpetrator most likely knew what they were doing, and used this to their advantage. In the Andrews case, he offered his victim a bed one night because they had nowhere else to stay – he was subsequently assaulted multiple times.

Assaulting someone at one's house would be risky, considering people in this period had very little privacy. The public house was also a risk for potential abusers, however, given that it was, indeed, *public*. While getting a private room with another man would not be seen as strange, this does not mean the assault could not be seen, or heard. The case of John Dicks illuminates this perfectly. After getting his victim so drunk that he could not stand, he took him to a private room in a public house, and assaulted him. However, a fellow visitor in the house could 'plainly hear the prisoner kiss him, call him his Dear, and use several other fond and foolish

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<sup>123</sup> December 1721, trial of George Duffus (t17211206-20)

Expressions, common betwixt persons of different Sexes'.<sup>124</sup> On top of this he could see the assault through a small hole in the partition between rooms. This man's testimony was crucial in convicting Dicks. In another case, a man and wife could hear a bed creaking, which struck them as strange.<sup>125</sup> Thus, witnesses could be integral to bringing in a sodomy conviction.

Naturally with the public house came alcohol, which is implicated in almost all of the cases described here. The general narrative is that of the perpetrators buying the victim's drinks, enough to get them extremely drunk. This is what happened in the Dicks case presented above, his victim 'was so drunk and sick, that he vomited and laid down on the Bench to go to sleep: the prisoner then unbutton'd his Breeches, turn'd him on his face, but he was not sensible enough to know what he did to him'.<sup>126</sup> In the Twyford case, his victim states that 'he would not let me pay any thing'.<sup>127</sup> In various other cases, the perpetrator and victim would often drink together until the evening, before the assault happened in the early hours.

Penetration is incredibly important in all of these case records, as well as for all other sodomy records too. As has been said, in order to convict someone of sodomy, both penetration and ejaculation needs to be proved. When censorship does not come into play, examined below, victims are explicit about both the penetration and ejaculation. In the Duffus case the victim explicitly states that he 'prevented the prisoner from making an Emissio Seminis in his Body; but having thus forced the prisoner to withdraw, he (the prisoner) emitted in his own Hand'.<sup>128</sup> A sodomy conviction lied heavily on these facts. At the end of the record, there states 'The Spermatick Injection not being proved, the Court directed the Jury to bring in their

<sup>124</sup> April 1722, trial of John Dicks (t17220404-29).

<sup>125</sup> December 1742, trial of Thomas Pryor (t17421208-25)

<sup>126</sup> April 1722, trial of John Dicks (t17220404-29)

<sup>127</sup> July 1745, trial of John Twyford (t17450710-17)

<sup>128</sup> December 1721, trial of George Duffus (t17211206-20)

Verdict Special'.<sup>129</sup> This Special Verdict was given when legal issues arose in the case, or when the verdict was postponed until another day. And indeed, we can find Duffus again being convicted for 'Assault with Intent' two months later.<sup>130</sup> This seems to be quite common in the records, the same occurred with Twyford's case in 1745.<sup>131</sup> However Twyford does not turn up again in the records, so it seems that this trial never occurred. Did he run, or were the charges dropped? It is also possible that the victim's testimony was not enough to secure a conviction, even of 'Assault with Intent', and despite the fact that he shouted out and many witnesses heard.

The Andrews case ended with a conviction for death, which meant the court was certain that penetration and emission was proved. The evidence for this was not only on the victim's testimony, but also the injury he received as a result. This injury was examined by two surgeons, he even left the courtroom for twelve minutes in order to be inspected.<sup>132</sup> On top of this, many questions were made about the bed linen the assault occurred on, as well as the victim's shirt, which according to his cousin had 'marks upon it, and a sort of a putrified matter'.<sup>133</sup> The shirt was even produced at the trial, and questions were asked of how long the victim wore the shirt for, presumably in order to work out where the marks came from exactly. The court even called the man who washed the victim's linen! There was evidently much effort put in order to prove the emission, which shows just how important it was to sodomy convictions. The court was eventually satisfied with all this evidence, and sentenced Andrews to death.

Ejaculation was evidently significant in these cases, and they hinged on its ability to be proved or not, it could be the difference between freedom, imprisonment,

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<sup>129</sup> Ibid.

<sup>130</sup> February 1722, trial of George Duffus (t17220228-18)

<sup>131</sup> July 1745, trial of John Twyford (t17450710-17)

<sup>132</sup> May 1761, trial of Thomas Andrews (t17610506-23)

<sup>133</sup> Ibid.

and death. There are a variety of reasons why this was so. The first is that it could be used as proof of the assault, as was done in Andrews case above. Penetration on its own does not specifically prove that an assault took place, since there are other ways in which penetrative injuries can occur. Injuries and illness, whilst being examined and used for evidence, were not enough on their own – although they did count for more in the cases of children, as will be shown below. Semen leaves more of a specific marker than physical injuries do however, and could have been seen as ‘harder’ evidence of an assault. This is most likely why so many questions were asked about linen in the Andrews case, and why the court felt the need to question the man who washed his linen.

More importantly is the ways in which ejaculation was implicated in sexual relations; specifically in regards to both gender and reproductive roles in heterosexual intercourse. This was viewed in terms of the active/passive, a man was the active participant due to the fact of him penetrating a woman with his penis, with the woman being passive. Sex was thus not intransitive as we see it in modern times, but was seen as something done onto another.<sup>134</sup> In sodomitical intercourse two men could not be dominant, so the passive participant was feminised – which was no doubt damaging to a man’s masculinity. During the Middle Ages, in consensual sodomy cases, the active participant was punished most severely, sometimes being burned alive, while the passive partner received a milder punishment.<sup>135</sup> On top of this, ejaculating into a woman was thought to cause pleasurable sensations; so ejaculating into a man subverted this idea heavily. It could be seen as feminising him even more – thus sodomy being seen as even more of a heinous crime.

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<sup>134</sup> Karras, Ruth, *Sexuality in Medieval Europe: Doing Unto Others* (New York: Routledge, 2005), p.73

<sup>135</sup> Clark, Anna, *Desire: A History of European Sexuality* (New York: Routledge, 2008), p.78

These gender roles described above flowed from the Christian ideal of sexual intercourse – that it be done not for pleasure, but for procreation. The Church also delineated what positioning were best for doing this, which coincided with perceived gender roles. Specifically, it was taught that women should not be on top during intercourse, as it was thought that this would impede conception.<sup>136</sup> It also detracted from a man's masculinity if he let his wife be on top of him, literally and figuratively. Sodomy, as well as masturbation, were the embodiments of this idea of 'wasted seed'. This, coupled with the subversion of gender roles during sodomitical intercourse, were major reasons why sodomy was seen as such a problem which needed to be governed.

These cases evidently show that male rape occurred, despite there not being a formalised legal crime for it. The absence of a legal offence does not equal the non-existence of the material reality of sexual violence however.<sup>137</sup> This includes male rape – seen here as sodomy. The next part will continue to show the existence of male rape, but with cases of children – also prosecuted under the laws of sodomy.

#### 4.4 Child cases

The *Proceedings*, as the well as the law, did not differentiate between adult and child cases of assault. So, sexual assaults against boys were categorised and charged under the crime of sodomy, with the same requirements for conviction – proven penetration and ejaculation. However, due to the fact that children were not seen as wholly reliable witnesses, these cases often involved a whole variety of people, speaking for both the children in question as well as the defendant. This means that they are generally lengthier than the above described cases, especially when the

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<sup>136</sup> Karras, *Sexuality*, p.73

<sup>137</sup> Cohen, *Male Rape*, p.25

defendant is a 'respectable' member of the community, as can be seen in a few that will be analysed. Overall I will again be looking at seven cases, five for sodomy and two for 'Intent to Commit'. They all share many similarities with the cases above, but are markedly different in various regards. Firstly, each child must be sworn on oath, which no doubt is meant to alleviate any lying, on pain of hellfire. The kind of questions asked to the child are also much simpler than those asked to an adult. Other differences include the importance given to injury, meaning that the surgeon's opinion often counted far greater than for the adult cases. Feelings of shame are also present in many of the boys. The similarities will be spoken about first, and then the specificities of the child cases.

As with the adult cases, the first sentence contains a cultural judgement on sodomy. However, in these cases there is much more emphasis on the Christian aspect. For example Gilbert Laurence 'not having the fear of God before his Eyes, but moved by the Instigation of the Devil, he did [...] make an Assault [...] violently and wickedly, and against Nature'.<sup>138</sup> The same was said for Michael Levi, who also garnered 'the great displeasure of Almighty God'.<sup>139</sup> Three other cases state that sodomy is not a crime fit to named among Christians. The fact that Christianity is a focus in these cases is not too odd, and is standard in most sodomy cases. The exception is the case of Mustapha Pochowachett, a Turkish man. It was deposed by a fourteen year old servant boy that Pochowachett sexually assaulted him and got ill as a result. Though not much information is given about this case, the last line states that 'the thing appeared very foul and detestable before the Face of Christians, being a Crime so grievous in the sight of God'.<sup>140</sup> This is the only case which ended on

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<sup>138</sup> August 1730, trial of Gilbert Laurence (t17300828-24)

<sup>139</sup> May 1751, trial of Michael Levi (t17510523-35)

<sup>140</sup> May 1694, trial of Mustapha Pochowachett (t16940524-20)

such a note, and is possible that this was stated to contrast with the fact that the perpetrator was Turkish, and thus most likely a Muslim. This is also evidenced in the fact that sodomy was seen as a Turkish vice, as one writer stated only two decades before this case.<sup>141</sup> So in this case, it would seem religion was a major factor in what was written.

The other similarity between adult and child cases is the importance put on penetration and ejaculation. This can be seen in the case of Laurence, with the victim being asked what happened, he answered 'He put his Pr - y M - r into his Fundament a great way. Being ask'd, If he perceiv'd any Thing to come from him? He reply'd, Yes; there was Wet and Nastiness'.<sup>142</sup> Even more evidence of this can be seen in the Robert Jones case, where the thirteen year old victim was continuously asked specific questions regarding the penetration. These number six, and include 'How long might he keep it in your b - e?', 'Was he quite in?', 'Can you describe to the jury how far it was in your body?' and 'You are sure it was in you?'<sup>143</sup> There are three regarding the emission, specifically where, which turned out to be in the boy as well as on the ground. These are, no doubt, extremely invading and intimate questions to be asking a young boy, but this does show the importance of penetration and ejaculation in securing a sodomy conviction, no matter the age of the victim. The case of Charles Atwell is similar, with specific questions in the same regard, with the added factor of the boy's shirt, which was used for evidence. This time however, the shirt was less important than the injuries on the victim and the

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<sup>141</sup> Burbury, John, *A relation of a journey of the Right Honourable My Lord Henry Howard from London to Vienna, and thence to Constantinople* (1671), p.170

<sup>142</sup> August 1730, trial of Gilbert Laurence (t17300828-24)

<sup>143</sup> July 1772, trial of ROBERT JONES (t17720715-22)

perpetrator, with one man saying ‘a man can put on a clean shirt when he cannot put on a clean penis’.<sup>144</sup>

One of the most obvious differences with these child cases is the fact that children had to be sworn in to testify in court. Children were not wholly reliable witnesses, and thus needed to know the consequences of lying – eternal damnation. Oaths were taken in four of the cases, and all by boys under thirteen. The Broderick case gives an insight into this oath taking. The record states that the boy was asked what to do, to which he answered ‘he was to lay his Hand upon the Book, to kiss it, and to tell what he [Broderick] did to him. And being likewise ask'd if he should swear what was not true? He said, that it was a great Sin, and he should go in danger of Hell fire, if he should tell a lie upon Oath’.<sup>145</sup> The same was said by the twelve year old boy in the Levi case, who said that if he took a false oath he will ‘go to hell, and never enter into heaven’.<sup>146</sup> This would have been taken seriously by the boys, considering the dominance of Christianity in every aspect of public and private life in the 1700s – these oaths were not taken lightly. They were there to scare the boys into telling the truth, and hell was no doubt an effective motivator to do so. In the two other cases where oaths were taken – Jones and Atwell – they were not so detailed and *scary*. It was simply asked whether the oath had been taken, and that the child was sworn to tell the truth. This is possibly due to the paper’s dwindling readership, it wanted to focus on the more interesting details. Nonetheless, it marked an important difference between the adult and child cases.

One of the other key differences is that injuries sustained carry a greater importance in the child cases than for the adult ones. This may have been because

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<sup>144</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

<sup>145</sup> May 1730, trial of Isaac Broderick (t17300513-27)

<sup>146</sup> May 1751, trial of Michael Levi (t17510523-35)



they were common, and indeed, all of the boys who were assaulted in these cases were injured in some way. For the majority of cases surgeons were consulted. Most of the time injuries were quite severe, and included sexual diseases. The victim of the Turkish man Pochowachett got quite ill, with his surgeon swearing he had been given Venereal Disease.<sup>147</sup> On top of this the surgeon found two large ulcers on both sides of his fundament. This led to Pochowachett's guilty verdict, and subsequently his death – with religious reasons probably playing a part too, as suggested earlier. In the Laurence case, a surgeon examined the boy and stated that 'he found his Fundament quite open; that it had been penetrated above an Inch, and much lacerated; that there was a Hole, in which a Finger and Thumb might be put, and that the Fundament was Black all round, and appear'd like that of a Hen after laying an Egg'.<sup>148</sup> It would seem that the case hinged on the surgeon's evidence, since the only other testimony is from the boy. With the combination of the two, as well as Laurence calling no witnesses, he was sentenced to death.

The importance of injury in Charles Atwell's case is notable. After being assaulted, the ten year old boy fell ill, and his family sent for a surgeon. It was discovered that his shirt was stained, due to something coming out of his penis. In the case, the boy deposed that Atwell had not only forced himself into the boy, but also vice-versa – this is the only case where this seems to have happened. After this, the questions asked of the boy are specific, as has been seen before, but this time regarding the positioning of the assault. The court (or defence, it is not clear) interrogates the boy on his seeming contradiction of where, and in what position, the assault occurred. The argument was that the injury that the boy sustained was impossible to receive in the position that he described. The questions asked go back

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<sup>147</sup> May 1694, trial of Mustapha Pochowachett (t16940524-20)

<sup>148</sup> August 1730, trial of Gilbert Laurence (t17300828-24)

and forth for a long while following this argument, trying to catch the boy out. After this, the court even asks whether the boy had touched any women. The questions then come to a surgeon, who basically says that the injury which the boy received on his penis could not have been done so by being inside Atwell's backside. The majority of questions in the case seem to focus on the boy's injury, and the circumstances surrounding it, which suggests that injury was extremely important in these cases. Due to surgeon's testimony, as well as a variety of witnesses for Atwell, he was found not guilty.

The boys did not have an easy time in convicting the men who assaulted them. At many times, these men were respected members of the community, which worked against them hugely. On top of this, their testimony was not worth as much as an adults'. This point was even more salient if the boy was under thirteen. It was believed that boys had a penchant for mischief, especially during the ages of ten to fourteen.<sup>149</sup> This mischief no doubt could extent to lying. This is why such importance was put on injury, as well as on the amount and value of witnesses. For those who were deemed to be 'respectable', many witnesses were found and called upon in the court. Levi called nine witnesses to vouch for his character.<sup>150</sup> Atwell called seven, as well as having others defending him earlier.<sup>151</sup> These witnesses usually said a short statement which included how long they had known the defendant, and whether they had heard anything ill of them, which was usually nothing.

Four of the men indicted were supposedly respectable members of society, Atwell was a 'Gentleman'; Jones a Captain; Broderick a teacher and Banner a head teacher. Jones and Broderick were convicted, but Banner and Atwell were found not

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<sup>149</sup> Blackstone, *Commentaries*, p.22

<sup>150</sup> May 1751, trial of Michael Levi (t17510523-35)

<sup>151</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

guilty. Banner only called one witness ‘out of many he said he had ready’<sup>152</sup> – but who stated that many people trust their children with him, which is no doubt incredibly important for a head teacher. Many of Atwell’s seven witnesses had known him for a long time. These men had the advantage over a child, whose testimony was always suspect. Still, as these cases show, respectable men could be convicted if the evidence was strong enough, and even executed. Overall, the men were convicted in five out of seven of the cases, four of whose punishment was death. Evidently it was not hopeless to get a conviction.

While the child cases were overall treated in the same way as the adult cases, they do contain their own individualities, given that the children were indeed children, meaning that they were not completely trustworthy as victims. This is why we see more importance given to their injuries, as well as many more witnesses in each case. On a more simple level they had to take oaths, and eternal suffering would have been a good motivator for telling the truth. In any case, what the child cases show is that despite their peculiarities they follow the same trajectory as other sodomy cases.

## 4.5 Conclusion

This chapter has intended to show that male rape was a reality for some men and boys in the eighteenth century. Furthermore, despite the lack of a legal category male rape was recognised by the courts. This is evident as the victim was not prosecuted, whereas the perpetrator was; on the other hand in consensual sodomy cases both participants were indicted. While male rape was not specifically conceptualised to be an offence in its own right, it can still be said to be a sub-category of sodomy. These cases also shared the requirements of prosecution with

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<sup>152</sup> April 1723, trial of Charles Banner (t17230424-41)

female rape, that of penetration and ejaculation, and the importance of this is made clear in every court case, whether involving an adult or a child. In addition, the victim's injuries were clearly important in securing a conviction. This puts the surgeon in a position of power – as will be examined below.

Now that male rape has been illuminated, the next two chapters will focus on using theoretical frames to understand them. These cases have highlighted many issues which need to be analysed, above all why male rape was included in the sphere of sodomy. This will be done by utilising the concept of *Govermentality*, to explore the various discourses and techniques which contributed to the demonisation of sodomy.

## Chapter 5 – Male Rape in the Governing of Sexuality

This chapter will be examining the various discourses and techniques which combined to 'govern' sexuality, in order to ascertain how male rape was implicated in this process, since sodomy and male rape were conflated in the court records.

What these sources show is that combinations of these would combine to 'govern' sexuality, and I argue male rape is included in this process as well. The chapter will begin by describing the concept of governmentality and then proceed to examine these; namely medicine, confession, the press, and censorship.

### 5.1 Governmentality

Governmentality is a tool which is used to examine the ways in which people are 'governed'. Government is not understood in a singular sense, but as any form of activity that attempts to shape, guide, or affect the conduct of a person or persons.<sup>153</sup> Thus, governing does not simply include the activities of states, but any effort to guide the conduct of people; it investigates political power beyond the 'state'.<sup>154</sup>

Nonetheless, states are important in understanding the ways in which governing changed over the centuries. Foucault stressed the 'discovery' of population in the sixteenth century, with governments becoming increasingly concerned with the management of their population. This political shift was 'away from feudal state forms based on ritualized extraction towards what he called the 'administrative state'.<sup>155</sup> Furthermore, the eighteenth century saw the emergence of biopolitical techniques aimed at the collective and social body;<sup>156</sup> population now

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<sup>153</sup> Tremain, Shelley Lynn (ed.), *Foucault and the Government of Disability* (USA: University of Michigan Press, 2005), p.8

<sup>154</sup> Rose, Nikolas, Miller, Peter, 'Political Power beyond the State: Problematics of Government', *The British Journal of Sociology*, 43 (1992), p.175

<sup>155</sup> Curtis, Bruce, 'Foucault on Governmentality and Population: The Impossible Discovery', *Canadian Journal of Sociology*, 27 (2002), p.521

<sup>156</sup> Ibid.

arises as the 'terrain par excellence of government'.<sup>157</sup> This is encapsulated in the concept of Biopolitics – a 'technology of power' concerned with life as a target of population. But population

*does not mean simply a numerous human group, but living beings penetrated, compelled, ruled by processes, by biological laws. A population has a birth rate, a death rate, an age curve, an age pyramid, a degree of morbidity, a state of health, a population may perish or may, on the contrary, expand.*<sup>158</sup>

Sexuality was implicated in this, and would become a 'principle target of law, the disciplines and biopower, and provides the primary link between individuals and populations'.<sup>159</sup> Various techniques and discourses would be used in service biopower, which would encapsulate a practice with such rationality that entails to render it applicable or acceptable.<sup>160</sup> In addition, it was the bourgeoisie who were initially affected by governmentality, as this class was the target of the deployment of sexuality, its purpose. Heterosexuality was not a form of enslavement, but a self-affirmation of the ruling class; 'a defense, a protection, a strengthening, and an exaltation'.<sup>161</sup> Controlling sex meant preserving their health, their lineage. Healthy sexuality would ensure longevity and future welfare; politically, economically, and historically. When the working classes would come to be the targets of governmentality, this would be not of their own accord but due to the needs of the bourgeoisie to control them, especially when concerning population and fertility rates. Sexuality 'was foisted on them for the purpose of subjugation'.<sup>162</sup> Sexuality is class specific.

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<sup>157</sup> Inda, *Anthropologies of Modernity*, p.5

<sup>158</sup> Foucault, Michel, 'Les mailles du pouvoir' in *Les Machines à guérir, Aux origines de l'hôpital modern* (Liege: Pierre Mardaga, 1979), pp.518-519

<sup>159</sup> Foucault, *History of Sexuality*, p.147

<sup>160</sup> Ibid., p.11

<sup>161</sup> Ibid., p.123

<sup>162</sup> Ibid., p.127

This chapter will utilise governmentality in reference to the governing of sexuality. In this sense, governmentality will be used in order to explain why male rape was included in the domain of sodomy, and thus how sexuality was governed specifically as can be gleaned from these court cases. The chapter will investigate discourses and techniques which contributed to this governing, and must be seen in tandem with other elements such as law;<sup>163</sup> for instance those examined in Chapter Three. These techniques will be analysed in turn, with respective historical backgrounds.

## 5.2 Medicine and Confession

Medicine was one technique in which individuals were controlled, 'The body is above all a bio-political reality; medicine is a bio-political strategy'.<sup>164</sup> Medicine in the eighteenth century was not simply of the individual, but related to wider concerns of the population, as exemplified in the quote above. Medicine would be a space where the truth of sexuality was being explored.<sup>165</sup>

Foucault gives a background of the ways in which the medical establishment would concern itself with sexuality, termed the *Scientia Sexualis*. This was a science 'made up of evasions since, given its inability or refusal to speak of sex itself, it concerned itself primarily with aberrations, perversions, exceptional oddities, pathological abatements, and morbid aggravations'.<sup>166</sup> Although claiming to be studies of sex, they would actually avoid the topic of healthy sexual activity, focusing on perversions instead. This would be in contrast with 'other' cultures (meaning Eastern), with an '*ars erotica*' culture; where sex and eroticism are heavily connected

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<sup>163</sup> Walters, *Governmentality*, p.77

<sup>164</sup> Foucault, Michel, 'La naissance de la medecine sociale' in *Dits et ecrits, 1954-1988* (Paris: Gallimard, 1994)

<sup>165</sup> Foucault, *History of Sexuality*, pp.51-75

<sup>166</sup> Ibid., p.53

with secrecy, which is where their power comes from; ‘truth is drawn from pleasure itself’.<sup>167</sup> Western culture however, with its *Scientia Sexualis*, would not show the paths to pleasure but rather concealed the truth of sex, even as it claimed to discover it. Discourse about sex is actually designed to conceal, and to explore at the same time.

The medical establishment was the main institution involved in the *Scientia Sexualis*. With its focus on perversions, it would find much to say about sodomy. In addition, they were a force which contributed to defining and promoting a ‘normal’ version of sexuality for both men and women, which of course did not include sodomy.

In the case records of male rape doctors were often summoned to provide expert testimony on cases, showing their importance in discerning the ‘truth’ of sex, and supporting a normative version of sexuality. They would more frequently occur when some kind of injury was involved, in order to determine whether it could have been made by a sexual act. This is evidenced in the Andrews case, where the court asked a physician a variety of questions about the victim’s injury. When speaking of a laceration, the court asked ‘If the body had been entered by a man, must you have perceived it when you examined him?’<sup>168</sup> Here, this doctor’s medical knowledge is used in order to ascertain whether an illegal act has taken place. Remember that a successful conviction for sodomy meant that penetration and ejaculation must be proved, and so a doctor’s testimony could be the difference between life and death; giving them much power in regulating sexuality.

Doctors appear more frequently in cases with children, where injuries were sometimes life-threatening. The surgeon in the Pochowachett case stated ‘That he

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<sup>167</sup> Ibid., p.57

<sup>168</sup> May 1761, trial of Thomas Andrews (t17610506-23)



being order'd to search the Boy, found two great Ulcers on both sides his Fundament, and that he was in a dangerous condition'.<sup>169</sup> Most interesting, however, was the importance of the doctors in the Atwell case, which returned a not guilty verdict, in no small part due to the various testimonies of the doctors. This was a long case which was complicated due to some seeming inconsistencies in the eleven year old victim's testimony, specifically concerning the positioning of both him and Atwell during the assault. These two surgeons would state that it was impossible for the act to be committed in the position that the victim described. There was further complications since Atwell apparently forced the victim to penetrate him. When the court asked a surgeon if this was actually physically possible, he states that 'I think it impossible for a boy of that age to have a permanent erection, so as to perform it upon a man'.<sup>170</sup> When asked if he could do the act with a woman, the surgeon said 'he might for half a second of time [...] but I look upon the two operations to be very different'.<sup>171</sup> The fact that he looked upon the operations at all tells us that doctors could be an important part of sodomy cases, and are participating in truth production. Indeed, Atwell would not be convicted partly due to the doctor's testimonies.

What this suggests is that medicine, as a biopolitical technique, was utilised in cases of male rape to determine the 'truth' about cases, using the body to do so. Sexuality would be governed in part due to the importance placed on doctor's testimony in securing convictions; and thus sentencing sodomites to death. Medicine was a technique used to punish 'abnormal' sexualities.

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<sup>169</sup> May 1694, trial of Mustapha Pochowachett (t16940524-20)

<sup>170</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

<sup>171</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

Another was confession, which would turn out to be the key to unlocking the ‘truth’ about sex. Or at least, what was seen to be the truth. The mechanism of confession held special significance as a biopolitical technique because its emphasis was on the individual. In confession, a person would speak about their own transgressions from God – their sins. In the Catholic tradition, a priest would provide penance and absolution for the transgressing individual.<sup>172</sup> This would change with the Reformation – completed by the time of these cases – where it was now

*no longer a question simply of saying what was done...and how it was done; but of reconstructing, in and around the act, the thoughts that recapitulated it, the obsessions that accompanied it, the images, desires, modulations, and quality of the pleasure that animated it.*<sup>173</sup>

Confession, while retaining its original purpose of uncovering the truth, would turn to become a vehicle of constructing identity. As it is a ritual for the production of truth, the individual comes to see themselves as a subject, as they are constituted by it with the specific act of confession; ‘...in the self-examination that yields, through a multitude of fleeting impressions, the basic certainties of consciousness’.<sup>174</sup>

The fact that testimonies in these cases are longer than most other offences can be seen as evidence of this process of confession, but transformed for the courtroom. These men were encouraged to give lengthy ‘confessions’ of their sexual conduct, after which they were judged and punished. The original religious practice would be incorporated into an increasingly secularised realm, and transported to court proceedings. Due to confession, and the secularised medical version of it, an act would become an identity.

The point of all this is that the medical establishment, along with the mechanism of confession, would be disciplinary techniques in the management of

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<sup>172</sup> Blake, ‘Pastoral Power’, p.85

<sup>173</sup> Foucault, *History of Sexuality*, p.63

<sup>174</sup> Ibid., p.60

the population. This was a mixture of techniques which contributed towards the same (unknowing) goal; they would secure the maintenance of Christian norms and knowledge.<sup>175</sup> This was important as the conception of sodomy as unnatural would be persistent and still exists in the modern day in places. However, while this conception has its origins in Christianity, it would eventually turn into a secularised, modern version. Religion would give way to evolutionary biology, and categories of sexuality would be created in the late nineteenth century. As Foucault would famously say, 'homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul'.<sup>176</sup>

### 5.3 The Press and Censorship

Back to the eighteenth century, where the press would employ techniques to promote a certain type of sexuality; namely censorship. By publishing detailed records of criminal trials, sodomites would be demonised and shamed. This would no doubt have had the effect of putting off those men who had an interest in such activities, especially when sodomites were found guilty and killed. Indeed, this seems to be the intended effect.

It is also clear that the *Proceedings* focused attention on cases where defendants were convicted.<sup>177</sup> The courts were anxious to show that sodomy was a vice which would be punished, and the *Proceedings* would continue to report on sexual crimes at length. As time went on however, the tone of these reports would grow more sober, but continued to include explicit testimony.<sup>178</sup> What this suggests is that there was still a public interest in the cases, and the paper was happy to

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<sup>175</sup> Blake, 'Pastoral Power', p.81

<sup>176</sup> Foucault, *History of Sexuality*, p.43

<sup>177</sup> Shoemaker, *Old Bailey Proceedings*, p.567

<sup>178</sup> Ibid., p.564

continue publishing on them. After the 1790s however, the *Proceedings* would be limited to simply stating a record of indictment, with no other details.

Before this transposition however, sodomy would have a public face. Employing censorship is a form of control. It allows those who wish to censor the power to control who talked about what, and in which ways, and when. Burroughs states censorship 'presupposes the right of the government to decide what people will think'.<sup>179</sup> While he is referring to a singular modern, political definition of government, this can be substituted for the Foucaultian form of the 'conduct of conduct'. For present purposes, this will focus on regulating sexuality.

Of course, as Foucault shows in the *History of Sexuality*, around this time there was a discursive explosion about sex and sexuality. Counterintuitively, silence itself can be interpreted as part of the larger discourse on sexuality. There is 'not one but many silences, and they are an integral part of the strategies that underlie and permeate discourses'.<sup>180</sup> Silence itself, or the regulation of silence, shows that there was a preoccupation with what is being silenced, in this case sexuality. What this shows is that there was a push towards a certain kind of sexuality, and sometimes a silence on another.

The case records show that censorship quite commonly found its way into the reporting of these cases. The fact that these cases were published at all suggests that the public not only had an interest in the lives of criminals, but in specific kinds of criminals. Though the majority of cases in the *Proceedings* involved thievery, sodomy (as well as murder) cases contained much longer transcripts and testimony. It would seem that these cases aroused interest by the public. Thus, although censorship made its way into the record, this was secondary to the explosion of

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<sup>179</sup> Burroughs, William, 'Censorship', *The Transatlantic Review*, 11 (1962), p.5

<sup>180</sup> Foucault, *History of Sexuality*, p.27

discourses on sexuality.<sup>181</sup> However, testimony was not always reported explicitly. The way in which the court censored these records seems to have changed over time, reflecting public interest as well as the position of the publication.

The earliest case, of George Duffus in December 1721, is entirely plain about the assault, including regarding penetration as well as ejaculation, as quoted above. The same is true for the case of John Dicks four months later, which contains no censorship but lacks some description due to the fact that the victim was too drunk to know what was happening. Skip five years later and censorship seems to have made its way in small part into the case record. Chamberlain's victim asserts that he was assaulted 'in Such Sort as is Scarce decent to express'.<sup>182</sup> However, this could simply be his own cultural sensitivities coming into play. Stronger evidence lies outside of the witness testimony, with the same case stating 'Upon the whole, the Court examining into those Niceties which are not proper to be mentioned in a publick, Paper [...] found him guilty of the Assault'.<sup>183</sup> In this record there is no mention of penetration or ejaculation like in the previous cases, only mentioning the court could not convict Chamberlain of sodomy, only for the attempt to commit – meaning that they could not prove penetration and ejaculation. However one would have needed to know the difference between the two offences in order to work this out, whereas in previous cases this was not true.

This censorship generally continued, but not always. In Thomas Pryor's case of 1742, the record states that the victim 'gave Evidence of a Penetration, but in such Language as is not fit to be committed to Paper'.<sup>184</sup> Three years later in John Twyford's case, his victim is explicit in that he says 'I am almost ashamed to tell - he

<sup>181</sup> Cousins, Mark, and Hussain, Athar, *Michel Foucault. Theoretical Traditions in the Social Sciences* (Basingstoke: Palgrave Macmillan, 1984)

<sup>182</sup> August 1727, trial of Thomas Chamberlain (t17270830-39)

<sup>183</sup> Ibid.

<sup>184</sup> December 1742, trial of Thomas Pryor (t17421208-25)

put his - into my fundament, and pushing so hard it awaked me'.<sup>185</sup> The case record did omit a vital word here. So while this is mostly blunt testimony, a small amount of censorship finds its way in. Now on to the last case, that of Thomas Andrews in 1761, where his victim states that 'I awaked with a violent pain and agony, which I was in, and found his y - d in my body'.<sup>186</sup> Again, a small amount of censorship of the keyword, but this case does speak about penetration freely, as well as the injury to the victim's backside. Indeed one surgeon talks of the consequences of such an injury, stating 'it may be observed there will be excrement come away from the gut, almost as big as my arm, very large and hard'.<sup>187</sup> Thus, there seems to be censorship of a certain nature, generally of a sexual nature, regarding penetration and ejaculation over time.

From the 1790s, sodomy cases were published with extremely little detail, often stating only the crime committed and whether the perpetrator was convicted or not. In one trial in 1790, the record states 'The evidence on this trial [...] was utterly unfit for the public eye'.<sup>188</sup> Another states that 'WILLIAM WINKLIN was indicted for an unnatural crime ; but the evidence on the trial being extremely indecent, the Court ordered the publication of it to be suppressed'.<sup>189</sup> Whatever occurred, it was enough to sentence Winklin to death. But we shall never know, because from this time onwards there is little, if any, sexually explicit testimony reported in the trials. This could be in part to declining readership, which began in the 1770s.<sup>190</sup> There also seems to be an increase in the number of trials reported, just with less description. On top of this, newspapers were gaining ground and reporting cases in increasing

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<sup>185</sup> OBPO, July 1745, trial of John Twyford (t17450710-17)

<sup>186</sup> OBPO, May 1761, trial of Thomas Andrews (t17610506-23)

<sup>187</sup> Ibid.

<sup>188</sup> February 1790, trial of JOSEPH BACON RICHARD BRIGGS (t17900224-76)

<sup>189</sup> February 1797, trial of WILLIAM WINKLIN (t17970215-46)

<sup>190</sup> Shoemaker, *The Old Bailey Proceedings*, p.579

detail<sup>191</sup> – even if this detail was not true. In any case, without any testimony or detail, it is not possible here to work out whether any sodomy cases after the 1790s included male rape.

In short, the press, using censorship, was a vehicle to promote sexuality of a specific kind, heterosexual, and to demonise any other. This was done in opposite ways; by speaking about it and by being silent about it. The power here was not located in the censorship, or even in the silence, but in what was achieved by doing so. It would seem that neither of these tactics would stop people committing sodomy, as the case records even after the 1790s do show that there were still many convictions, despite not having any testimony.

## 5.4 Conclusion

This chapter has attempted to detail some of the ways in which different discourses and techniques have contributed to governing sodomy in the eighteenth century. These include how important the medical establishment was in conceptualising sexuality. In addition, it has been shown that confession was a technique in managing the population, as part of the search for the ‘truth’ about sex. This search would continue for many centuries, with the medical eventually being emphasised over the religious. As well as this, the opposing uses of censorship/silence and the *noise* of speaking about sodomy, especially in the criminal records, have been described.

Foucault shows that these techniques contribute to the governance of sexuality, in order to ‘shape, regulate, or manage the conduct of individuals or groups toward specific goals or ends’.<sup>192</sup> Here, the goal is heterosexuality.

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<sup>191</sup> Ibid.

<sup>192</sup> Inda, *Anthropologies of Modernity*, p.6

I argue that male rape is included in this governance as well, as male rape was not conceptualised as separate from sodomy. While the modern day would deal with male rape on its own terms, in the eighteenth century it would be punished on the same terms as sodomy. The court records various discourses and techniques which came together to govern sexuality, and so male rape.

The next chapter will focus more clearly on how masculinity is implicated within these specific cases of male rape.



## Chapter 6 – Masculinity and the ‘Molly’

The chapter will explore the various allusions to masculinity in these court cases. It will be argued that masculinity and male rape have a close connection, and this is just as much the case for the eighteenth century as it is for the twenty-first.

Furthermore, the chapter will explore parallels between male rape victims from these two periods. It will then proceed to look at the role of the ‘Molly’, effeminate sodomites, and argue that it can be conceptualised as an alternative masculinity, as well as look at the effect this character had on courtroom proceedings.

### 6.1 Hegemonic Masculinity

Masculinity has been a central research topic when investigating male rape. It has assumed massive importance in explaining why men rape, whether the victim is male or female. Many subscribe to the view that men rape as a way to boost and execute ‘hegemonic masculinity’, by seeking power and control over their victim.<sup>193</sup> Furthermore, the victim’s own masculinity is stripped away by the act.<sup>194</sup> Thus, the social construction of masculinities and the integral part this plays in men’s life pushes men into strong and sexually dominant roles. Male victims of rape do not fit into this construction. Despite the more recent focus and attention male victims have received, there still exists a great many myths and stereotypes surrounding male rape. At the heart of this is gender role socialisation.<sup>195</sup> Some of these myths also assume heteronormative views about rape in general, such as the belief that rape is always sexually motivated.<sup>196</sup> Masculinity is evidently important in understanding male rape. One tool to investigate this connection is the concept of Hegemonic Masculinity.

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<sup>193</sup> Javaid, ‘Feminism, Masculinity and Male Rape’, p.2

<sup>194</sup> Ibid.

<sup>195</sup> Abdullah-Khan, *Survivors*, p.15

<sup>196</sup> Ibid., p.18

This concept has become a staple in the studies of masculinities, and is a natural fit for this thesis since masculinity has been proven to be central to understanding modern male rape. This would turn out to be the true for historic cases too, which contain many allusions to the masculinity of both the perpetrators and victims, suggesting a historical continuity in the connection of male rape and masculinity.

Hegemonic Masculinity illuminates the ordering of masculinities at a societal level, with the Hegemonic ideal at the top, containing the most culturally important ways of being a man, with all other masculinities subordinated below it. Furthermore it can be understood as ‘a pattern of practice that allows men’s dominance over women to continue’.<sup>197</sup> Embodying a naturalistic argument, this conception of hegemony is heteronormative.<sup>198</sup>

Masculinities and sexualities are of course historically specific.<sup>199</sup> The advantage of using Hegemonic Masculinity as a framework is that it is malleable across time and culture, although it was recognised in Connell and Messerschmitt’s reformulation of the concept that trying to put all masculinities and femininities into a pattern of power – global dominance of men over women – was too simple.<sup>200</sup> Historical and cultural specificity is important to recognise, although it will be seen that there are many parallels between eighteenth century and modern conceptions. While the ideal for the modern man is different for that of the eighteenth century man, the fact that an ideal can be found confirms the concept’s wide-ranging application. Indeed, in the primary source cases examined in this thesis, what would emerge is many allusions to the figure of the ‘Gentleman’, which can be seen as one

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<sup>197</sup> Connell and Messerschmidt, ‘Hegemonic Masculinity’, p.832

<sup>198</sup> Ibid., p.187

<sup>199</sup> Reeser, Todd, *Masculinities in Theory: An Introduction* (Chichester: Wiley-Blackwell, 2010), p.217

<sup>200</sup> Connell and Messerschmidt, ‘Hegemonic Masculinity’, p.848

form of the eighteenth century ideal man. Furthermore, while debates of whether homosexuals existed in the eighteenth century rage on, it is clear that sodomy represented a challenge to culture, as well as to masculinity and sexuality, and can be examined as a form of alternate masculinity.

It is the adaptability of the concept that has made it so useful in studying masculinities, and this continues to be the case when it is applied to historical research. Furthermore, the inherent social constructionist position makes it incredibly useful in studying various masculinities and sexualities. Since sodomy is so central to understanding male rape in this period this makes it a suitable framework to utilise.

Allusions to masculinity can be found in both the adult and child cases, suggesting that it was important to any sodomy case. The concept of hegemonic masculinity as well as the findings of contemporary researchers on male rape will be utilised to make sense of these court cases and examine discussions of masculinity. Thereafter the chapter will look at the figure of the Gentleman and connections of sodomy with bestiality, and proceed to look at the character of the 'Molly'.

## **6.2 Parallels between eighteenth century and modern male rape cases**

One important facet of hegemonic masculinity in the eighteenth century was strength.<sup>201</sup> For the cases with longer testimony, many questions are asked which allude to the associations of masculinity with strength, of both the perpetrator and the victim. Indeed, working out whether the victim was willing or not is a central theme in many sodomy trials, and can mean the difference between life and death. This

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<sup>201</sup> Shepard, Alex, *Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2006), p.9

seems to be the case in the trial of Twyford. One witness who came into the room after he heard the victim (a soldier) shout out, states that:

*I asked the soldier, and said, as you are a man of maturity, how could such a thing be acted to you, (for you are not a boy) without you was as willing as the other? [...] then said I, you assaulted one another [...] for they must both of them be willing alike, or else there could not be any such thing done.<sup>202</sup>*

This statement shows that the witness simply cannot comprehend that this man was raped, but contains some nuance. Firstly is the idea that that since the man is mature, he must have physical strength, at least enough, to fight back. Secondly is the fact that he is a soldier, and therefore it is assumed that he should be in greater physical health than others. Consequently, the witness carries the belief that this simply could not have occurred if he did not consent. Since the victim is an adult man, and a soldier at that, then he must have had the physical strength to stop the assault from occurring. Rape it could not be, but sodomy it could. It is possible that the court followed this line of argument, since the transcription ended after this witness's statement by saying that his case had been moved to 'Intent to Commit', yet Twyford does not show up again in the case record.

Another case which highlights the association of male rape and masculinity in reference to strength is that of Pryor, of 'Intent to Commit'. Once again, questions are asked of consent and the victim's ability to stop the assault from happening. Specifically, the court asks whether he strived to 'hinder' Pryor, to which the victim, a certain Mr Porter, says no. The next question is whether he was willing, thus showing that not fighting Pryor off leads the court to believe that consent was given. This was denied. Next, the court states 'You are as strong as he; I do not think he could have done it, if you had endeavoured to hinder him?' to which Porter replied

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<sup>202</sup> July 1745, trial of John Twyford (t17450710-17)

‘He is stronger than I am’.<sup>203</sup> Again, there is the belief that since Porter is apparently as physically strong that as Pryor, then the rape could not have occurred. Although written as a question, the above sentence seems to be more of a statement of the speaker’s own beliefs, or more accurately their disbeliefs.

What these two cases display is that physical strength, as an aspect of masculinity, is an important part of determining whether consent was given or not. Although this could be due to lack of evidence, which was common for sodomy trials, it is interesting to note that both of these trials were for (or turned into) ‘Intent to Commit’, and both seemed to return verdicts of not guilty. Thus, it could be cautiously argued that questions of physical strength, paired with consent, were an important factor in determining a verdict.

Thus, in these sources there can be detected a specific historical thinking on the connection between masculinity and strength, which affected the proceedings of court cases on male rape. Despite this, similar assumptions seemed to have survived to the modern century, specifically the idea that male rape cannot happen as the rapist can be fought off. This belief was found to be widespread in the minds of American prison officials.<sup>204</sup> Furthermore, men often consider their bodies impenetrable to sexual assault.<sup>205</sup> Thus, the associations of masculinity with strength and the impermeable nature of men’s bodies pave the way for male rape victims to not be believed, as can be seen quoted above.

Another observation that can be made in these sources is the feeling of shame, which is present in a variety of cases. The victim of Andrews was ashamed to tell his relative of what happened.<sup>206</sup> Indeed, immediately after the rape he got

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<sup>203</sup> December 1742, trial of Thomas Pryor (t17421208-25)

<sup>204</sup> Lockwood, *Prison Sexual Violence*

<sup>205</sup> Graham, ‘Male Rape’, p.188

<sup>206</sup> May 1761, trial of Thomas Andrews (t17610506-23)

back into bed, and in the court he states 'That is all that I blame myself in, for going to bed again. There I own myself in a fault, and a very great one'.<sup>207</sup>

Feelings of shame are more common when looking at the cases involving children. When the court asked why the victim of Levi did not report the assault to the police straight away, he said 'I was ashamed to tell it'.<sup>208</sup> This was a boy who was twelve years old, intimately feeling the sense of shame which is common in those who are older. Indeed, the court would ask him whether he knew what had happened was wrong, to which he said yes.<sup>209</sup> There is also an evident sense of shame in the case of Jones, where it is mentioned eleven times in the testimony.<sup>210</sup> He would not tell his mother, his uncle, but would eventually tell a man who came in the shop where the boy worked, and saw him evade Jones. However, he would only tell the man if he promised not to tell his uncle, and then the boy 'persisted [in saying] he was ashamed'.<sup>211</sup>

Modern research has identified the feeling of shame as a common theme in male rape victims, who are perceived by themselves as failing in being a man, for example by not fighting the rapist off. Cohen states that victimisation has been conceptualised as inherently female, thus excluding the male.<sup>212</sup> In addition, heterosexual men are defined by their desire to penetrate women, and their resistance to being penetrated.<sup>213</sup> So how can a man be conceptualised within these discourses? He is denied victimhood, as well as masculinity. Therefore, 'Maintaining their silence allows the male victim of a sexual attack to avoid the stigma and

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<sup>207</sup> Ibid.

<sup>208</sup> May 1751, trial of Michael Levi (t17510523-35)

<sup>209</sup> Ibid.

<sup>210</sup> July 1772, trial of ROBERT JONES (t17720715-22)

<sup>211</sup> Ibid.

<sup>212</sup> Javaid, 'Feminism, Masculinity and Male Rape', p.4

<sup>213</sup> Graham, 'Male Rape', p.14

embarrassment that might be expected when reporting a sexual assault to the police'.<sup>214</sup> Shame is common in male rape victims.

The same sense of shame seems to be evident in the cases here, although this is tentative. Farmer states that 'For a man to be raped is for him to be feminized and, in a misogynistic culture, this is a fate worse than death'.<sup>215</sup> This seems appropriate when discussing these cases, where many would wait for some time before reporting to the police, if at all, and seem to have felt ashamed after. Some may not have even reported at all.

### 6.3 The Unnatural, Bestiality, and the Gentleman

These cases show that different types of discourse came together to instil how to feel about sodomy, and in effect male rape; especially religious and natural/unnatural. All cases begin with a statement regarding their crime with culturally judgemental language. George Duffus had committed 'the unnatural Sin'<sup>216</sup> and Thomas Andrews 'the detestable crime'.<sup>217</sup> These various names for sodomy suggest that homosexual intercourse was to be discouraged, with associations not only with illegality but also being against human nature. Being unnatural as well as illegal would have been powerful motivators to not commit sodomy. John Twyford garnered a longer statement than the others, the record saying 'he not having the fear of God [...] wickedly, unlawfully and feloniously did make an assault [...] which is not fit to be named among Christians'.<sup>218</sup> What these statements show is how Christianity was intimately tied up with ideas of sex and the body, with anal penetration being seen as anti-Christian. Another powerful motivator. Indeed, it

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<sup>214</sup> Ibid., p.7

<sup>215</sup> Farmer, Angela, 'The Worst Fate: Male Rape as Masculinity Epideixis In James Dickey's *Deliverance* and the American Prison Narrative', *Atenea*, 28 (2008), p.107

<sup>216</sup> December 1721, trial of George Duffus (t17211206-20)

<sup>217</sup> May 1761, trial of Thomas Andrews (t17610506-23)

<sup>218</sup> July 1745, trial of John Twyford (t17450710-17)

should be reminded that all sodomy was discouraged, which included with women. Here it would seem that these assaults are less the problem than the *sin* itself, it is specifically *sodomitical* assaults which are the issue. Contemporary legal historian Blackstone said as much, stating that the crime (he would not name it) was even more detestable than (female) rape.<sup>219</sup> Furthermore sodomy was culturally abhorrent, Thomas Chamberlain was found guilty of 'Actions that are in their Nature both immodest and filthy'.<sup>220</sup> This statement shows that sodomites were seen as disgusting in many ways, by culture as well as (supposedly) nature, with many discourses coming together. Sodomites were defined as lacking humanity due to the association between sodomy and bestiality.

This association was present from sodomy's first induction into law.<sup>221</sup> Part of the abhorrence of bestiality comes from the Bible, and the punishment of having sex with animals is gender neutral, 'Anyone who has sexual relations with an animal must be put to death'.<sup>222</sup> The animal in question was also to be put to death despite its 'innocence' – suggesting just how perverse this sin was seen as. This strong condemnation of bestiality is due to its status as an unnatural perversion, humans were not intended to mate with animals – Genesis 2:20 comments that no animals were 'suitable' for Adam. Bestiality, then, denies humanity's supposed special status as above all animals, and it's (especially men's) capacity for reason. Bestiality is therefore associated with the opposite; irrationality, the uncontrollable, and especially the unnatural. These would all be connected with sodomy.

The case record shows that sodomy laws were used at various times to convict people of bestiality. In 1677 a woman was sentenced to death for committing

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<sup>219</sup> Blackstone, *Commentaries*, pp.215-216

<sup>220</sup> August 1727, trial of Thomas Chamberlain (t17270830-39)

<sup>221</sup> Goldberg, *Sodometries*, p.3

<sup>222</sup> Exodus 22:19



sodomy with her dog.<sup>223</sup> In 1757 a man ‘not regarding the order of nature’ was also put to death for having sex with a mare.<sup>224</sup> Thus, the conviction of bestiality via sodomy laws persisted, as well as the associations between the two. This can be seen in the cases here. In one such, of Thomas Chamberlain, his victim states ‘when he was in Bed he began to kiss me again [...] and threw himself upon my Body in a Beastly Manner’.<sup>225</sup> Beastly here is referring not only to the simple fact of an assault, but of the *manner* of the assault. Furthermore, the age of the victim did not matter in making statements about beastly nature. In John Dick’s case, a boy was sent into a room where two men were supposedly committing sodomy. A witness said thus, ‘the prisoner repeated his unnatural Enormities upon the Boy, in a beastly manner, making several motions with his Body’.<sup>226</sup> What this shows is that the sodomitical behaviour that was seen as beastly and abhorrent, no matter the victim.

This had implications for the Gentleman. In the eighteenth century, it could be argued that the Hegemonic ideal was the ‘Gentleman’. During the seventeenth century a huge amount of literature was published which concerned people’s conduct; what was expected of them, what they should aspire to, and how to live. One of the most published of these was ‘*The English Gentleman*’ (1630), which many through many editions and expansions during the author’s lifetime and thereafter<sup>227</sup> - he would argue that one the most important features of a gentleman was moderation in all things.<sup>228</sup> Broadly speaking, manhood can be defined in patriarchal terms of ‘discretion, reason, moderation, self-sufficiency, strength, self-

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<sup>223</sup> July 1677, trial of married woman (t16770711-1)

<sup>224</sup> July 1757, trial of James Wales (t17570713-29)

<sup>225</sup> August 1727, trial of Thomas Chamberlain (t17270830-39)

<sup>226</sup> April 1722, trial of John Dicks (t17220404-29)

<sup>227</sup> Sanders, Julie, ‘Brathwaite, Richard (1587/8–1673)’, *Oxford Dictionary of National Biography*, 2009 [Accessed 26 April 2015]

<sup>228</sup> Brathwaite, Richard, *The English Gentleman* (1630), p.306

control, and honest respectability'.<sup>229</sup> Being an adult was not enough, nor was material self-sufficiency, both of these had to be combined with marriage.<sup>230</sup>

Character, courtesy, and cultivation were some of the other hallmarks of the 'natural gentleman'.<sup>231</sup> In addition, a gentleman would embody the ideal of politeness. This was defined as 'the intricate play of manners, language, self-display, sociability and *je ne sais quoi*'.<sup>232</sup> The gentleman would know what to say, what *not* to say, and when to do both of these things.

Importantly, and obviously, gentleman were not sodomites. Indeed, Cohen argues that anxiety over masculinity was not due to femininity or homosexuality, but of effeminacy.<sup>233</sup> Effeminacy was seen to be implicit in sodomites, as examined in the next chapter, and gentleman were not seen as such.

Chamberlain's landlord stated that he had always behaved like a gentleman – thus there is the association that sodomites and gentlemanly status are mutually exclusive. This type of violent behaviour goes against the middle class ideal of masculinity, where men control themselves, they are rational beings. This is at odds with the sodomitical behaviour described here, which is filthy and without reason; thus, Chamberlain was not a 'proper' man. The gentleman is the opposite of the sodomite, the beast, but they also guarantee each other's existence.

There are many allusions to the gentleman in these cases, most often when a man rejects another's claim to being one. Masculinity was achieved in the company

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<sup>229</sup> Shepard, *Meanings of Manhood*, p.9

<sup>230</sup> Tosh, John, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England* (New Haven: Yale University Press, 1999), p.110

<sup>231</sup> McLaren, Angus, *The Trials of Masculinity: Policing Sexual Boundaries 1870-1930* (Chicago: University of Chicago Press, 1997), p.90

<sup>232</sup> Cohen, Michele, *Fashioning Masculinity: National Identity and Language in the Eighteenth Century* (London: Routledge, 1996), p.42

<sup>233</sup> *Ibid.*, p.9

of other men,<sup>234</sup> and so accusing a man of not being a gentleman was a huge deal. This occurred in the case of Twyford, where the victim 'said he was not a Gentleman; then we began to quarrel'.<sup>235</sup> Fights after such a slight was common, with honour also being an important factor of masculinity. However, the victim could not always commit to do this. Sometimes it was better to be polite, and bring the incident to the court, as with the case of Andrews. Indeed, a variety of instances are evident where the victim thought about others before himself. The rape happened when the two men were in bed together, and after the victim got out of bed, he got back in. This was due to him 'not willing to make a disturbance in the house'.<sup>236</sup> This was not all however, as the next morning he shook hands with Andrews, and even thanked him for his 'kindness and civility' in giving him food and letting him sleep at his house.<sup>237</sup> It is this acknowledgement of supposed kindness to a man, as well as the act of shaking hands, which is part of the gentlemanly ideal. A man knew when to thank those who had been nice to him; for Andrew's victim this would happen even after being raped. In addition, the two even drank together again that night.

While these examples examine masculinity immediately after the act of rape, more generally what is alluded to in these cases in reference to gentlemanliness is the necessary procurement of witnesses to one's character. This occurred in the majority of cases described here, and can sometimes make the difference between life and death. Gilbert Laurence denied the allegations against him and even had an alibi, but did not call any witnesses, and was thereafter condemned to death.<sup>238</sup> Most times however, witnesses were called and appeared in court. Defence witnesses were allowed to be sworn in in 1702, but not until 1867 was this comparable to the

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<sup>234</sup> Ibid.

<sup>235</sup> July 1745, trial of John Twyford (t17450710-17)

<sup>236</sup> May 1761, trial of Thomas Andrews (t17610506-23)

<sup>237</sup> Ibid.

<sup>238</sup> August 1730, trial of Gilbert Laurence (t17300828-24)

prosecution.<sup>239</sup> Basically, defence witnesses did not count so much as prosecution witnesses. Nonetheless they could have an important impact on how the defendant was perceived by the jury, which was required to have a unanimous decision for conviction.<sup>240</sup>

The records show that the verdict was given after the statements of these witnesses, which could be many. Michael Levi called eleven witnesses to his character.<sup>241</sup> The comments were varied, saying 'he is a man of modesty and chastity', that 'he always had the character of an honest man', and he 'was timorous of God'.<sup>242</sup> Three witnesses would state that due to this court case, they now have a bad opinion of him. This would matter little to Levi however, who, despite all these witnesses, was still sentenced to death. This was also occur in the case of Jones, who was also condemned to death despite calling five witnesses, who made such comments as 'I should have thought him the last man in the world, that would have been guilty of any thing of the sort', and another saying 'I could never have thought this of him'.<sup>243</sup> On the other hand, Atwell would call ten witnesses, who proceeded to state that 'he always bore a very fair character'.<sup>244</sup> Importantly, another witness said that he and a great many others have slept in the same bed as Atwell over the years, who had never done anything of the sort that he was accused of. The record would state that he was not guilty.

Thus, what can be ascertained from these verdicts is that while defence witnesses were an important part of court proceedings, other factors such as physical evidence were more important in securing a conviction or not. A great many

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<sup>239</sup> Baker, *An Introduction*, p.582

<sup>240</sup> Ibid., p.581

<sup>241</sup> May 1751, trial of Michael Levi (t17510523-35)

<sup>242</sup> Ibid.

<sup>243</sup> July 1772, trial of ROBERT JONES (t17720715-22)

<sup>244</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

witnesses did not guarantee a not guilty verdict, as can be seen in two of these cases. Indeed, what would be detrimental would be having no witnesses, as in the case of Laurence. Witnesses can be said to be a supplement in cases which are tight, to prove that a man was indeed a gentleman, and thus to be trusted. A conviction for sodomy would prove the opposite, as one court witness in the Levi case would indicate, saying 'I never had any, ill opinion of him before this broke out, and now I look upon him to be far from a virtuous person'.<sup>245</sup> As Roper and Tosh point out, masculinity is often experienced as tenuous,<sup>246</sup> and sodomy was one way in which masculinity can easily be denied.

## 6.4 The Character of children

Where the previous cases highlight the importance of the gentlemanly status of an adult perpetrator or victim, consequently the cases which involve child victims show that the character of these children is also an important factor in determining whether the victim could be believed or not. When it came to sodomy cases, making sure that the victim was not lying was crucial, which was exacerbated in cases with children. It was common knowledge that some criminals would attempt to extort money from others by saying that if they did not give them money, they would accuse them of being a sodomite. In the 1700s, even being accused of something perceived to be so unnatural and disgusting would have been a big deal. While children were not seen as criminals, they were still recognised as having a propensity for lies. Therefore, their testimony would not count as much as an adults'. So the association of children with lying, as well as sodomy and dishonesty, put children who had actually suffered in a difficult place.

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<sup>245</sup> May 1751, trial of Michael Levi (t17510523-35)

<sup>246</sup> Roper and Tosh, *Manful Assertions*, p.18

Thus the courts would ask questions to those who knew the children to remark on their character. These would most often be to do with their honesty, the uncle of the victim in the Jones cases was asked the quite leading question of 'He is not a lying boy is he?'<sup>247</sup> The court of Atwell's case was more blunt when they asked 'Was he a boy that told the truth, that could be depended upon, or was he apt to fib?'<sup>248</sup> This was all important when attempting to work out whether the child was telling the truth or not. In both of these cases, the relatives would say a resounding 'no', that the children were honest. The court of Jones continued further, asking 'What is his character for veracity?' and 'Is he a sensible boy?'<sup>249</sup> Where the adult cases show that the character of the perpetrator was important in the courts, and not the victim, the child cases display that both were important in determining a conviction. This would happen for Jones, but not for Atwell, again suggesting that other factors were more important.

These cases contribute to the observation that masculinity is an important part of cases of male rape. They show that while masculinity is not ahistorical, the importance of it in male rape is. It is interesting to note that what is seen to be important – physical strength, one's character, the feeling of shame – is evident in this period as well as in the twentieth and twenty-first century. Not fighting back, even if it seemed evident that the victim was physically strong, was taken as implying consent. Of course not fighting back, even if one was physically stronger than the perpetrator, does not mean that consent was given. There could be any number of reasons why this happened, being scared for example. Still, the fact that these myths

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<sup>247</sup> July 1772, trial of ROBERT JONES (t17720715-22)

<sup>248</sup> October 1779, trial of CHARLES ATWELL (t17791020-5)

<sup>249</sup> July 1772, trial of ROBERT JONES (t17720715-22)

existed in the 1700s and continue to be used today show that they are persistent and believed by many.

Hegemonic masculinity is also shown in these cases with the figure of the gentleman. While masculinity had different emphases in the 1700s, it still assumes a central aspect in these cases. One's character, whether an adult or child, was important as it contributed to the verdict in that it could determine whether one could be believed or not, especially important in the case of children.

This section has examined masculinity in isolation. However, hegemonic masculinity is a relational concept.<sup>250</sup> Thus, it cannot be understood without reference to other groups. This is important as "hegemonic' masculinities function by asserting their superiority over the 'other', whether that be gay men, younger men, women, or subordinated ethnic groups'.<sup>251</sup> The next section will examine one of these groups in more detail.

## 6.5 The 'Molly'

The policing of sexuality has been a major theme in discussions of Hegemonic Masculinity.<sup>252</sup> This part will explore the possibility of seeing the 'Molly' in terms of an alternative masculinity. While homosexuality can be identified as one in modern times, historians have different beliefs on whether homosexuality existed before the nineteenth century, as shown in the above Literature Review. Central in many of these debates is the 'Molly', a figure who appears in the late seventeenth and early eighteenth centuries, and who then disappears into the shadows due to persecution. The 'Molly' differed from those who engaged in sodomy as they are seen by some to incorporate a self-identity.

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<sup>250</sup> Connell, *Gender and power*, p.183

<sup>251</sup> Roper and Tosh, *Manful Assertions*, p.13

<sup>252</sup> Connell and Messerschmitt, 'Hegemonic Masculinity', p.837

But self-identity or not, the ‘Molly’ exists in relation the hegemonic ideal, specifically in its embodiment of effeminacy. It is this which separates the ‘Molly’ from sodomites, ‘Mollies’ were part of their own social milieu.<sup>253</sup> Furthermore, effeminacy in this period would have associations with masculinity, which would contradict each other and change over time.

Sodomites had always appeared over the centuries, but the eighteenth century saw the appearance of a particular kind. The ‘Molly’ was ‘discovered’ by the ‘London Spy’, who wrote

*There are a particular Gang of Wretches in Town, who call themselves ‘Mollies’, & are so far degenerated from all Masculine Deportment or Manly exercises that they rather fancy themselves Women, imitating all the little Vanities that Custom has reconciled to the Female sex, affecting to speak, walk, tattle, curtsy, cry, scold, & mimic all manner of Effeminacy.*<sup>254</sup>

So the major difference between the sodomite and ‘Molly’ was that the ‘Molly’ was like a woman – not only in the act of sodomy, but outside of it too. Not only this, but the ‘Mollies’ also organised themselves into a group who had their own kind of public houses; the ‘Molly House’. In these houses, the men would all use women’s names.<sup>255</sup> Naturally, it was also a space for them to engage in sodomy. One visitor to one of these houses (who turned informant) stated how he went there three Sunday nights in a row and saw between forty and fifty men engaging in sodomy.<sup>256</sup>

The association of effeminacy and sodomy are evident, and are heavily implicated in the ‘Molly’. The 1720s saw the public profile of the ‘Molly’ reach its highest point, as a certain ‘moral’ society brought about their downfall. The ‘Society for the Reformation of Manners’ worked with the police to infiltrate the houses, as

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<sup>253</sup> Bray, *Homosexuality*, p.85

<sup>254</sup> Ward, Ned, *The History of the London Clubs* (1709), p.28

<sup>255</sup> Dalton, James, *A Genuine Narrative* (1728), p.32

<sup>256</sup> Applebee, J, *Select Trials at the Sessions House in the Old Bailey, Volume 3* (1742), pp.37-8



well as conduct raids and turned ‘Mollies’ into informants. This would secure the indictments and convictions of many ‘Mollies’, and their Houses disappeared.

These cases contain allusions to the ‘Molly’, who were well known around the time, especially evident when speaking of effeminacy. A witness in the Dicks case testified that he ‘could plainly hear the prisoner kiss him [the victim], call him his Dear, and use several other fond and foolish Expressions, common betwixt persons of different Sexes’.<sup>257</sup> We can see the ‘Molly’ in this statement, who is usurping behaviours normally reserved for women. Dicks would be indicted and forced to stand in the pillory – usual when both penetration and ejaculation could not be proved. As a public shaming, many could come to view or abuse those who were stuck there with no way to fight back. Children themselves would have seen this, as the eleven year old victim of Broderick shows, when he says that Broderick ‘had serv'd him as the two Men had serv'd one another that stood in the Pillory’.<sup>258</sup> Sodomites and ‘Mollies’ had a public profile.

We can also see men who state that they prefer sodomitical intercourse to vaginal, which immediately flags the potential of seeing these men as homosexual. In the Rodin case, the prosecutor (who was not the victim, as his whereabouts were unknown) states that ‘the prisoner acted with him [the victim] as in Cohabiting with a Woman, and said he receiv'd more pleasure in lying with a Man, than with the finest Woman in the World’.<sup>259</sup> It would turn out that Rodin would be found not guilty, due to the prosecutor being a ‘scandalous Villain’, and that ‘the prisoner had a Wife, and they had lived together above a 12 Month at her House’; using his wife and marriage as evidence of heterosexuality, as explored below. Nonetheless, whether this assault

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<sup>257</sup> April 1722, trial of John Dicks (t17220404-29)

<sup>258</sup> May 1730, trial of Isaac Broderick (t17300513-27)

<sup>259</sup> October 1722, trial of Thomas Rodin (t17221010-2)

occurred or whether it was made up, there was still the idea in the prosecutor's mind of saying that Rodin preferred having sex with any man than even the most beautiful woman. It is this preference that lead some to believe that sodomites had a homosexual identity. Indeed, the Duffus case gives more evidence to this view, where Duffus states that he 'afterwards told this Deponent he need not be troubled, or wonder at what he had done to him, for it was what was very common, and he had often practised it with many others'.<sup>260</sup> This again seems like a homosexual preference.

However, effeminacy was not used in a simplistic way, and it did not have a singular definition. Effeminate could refer to a man who resembled women but also to one who excessively desired women.<sup>261</sup> Both of these definitions emphasise the breakdown of masculinity, where men would either be like women or drive themselves to excess; remember that Brathwaite (mentioned above) taught that a man must be moderate in all things, which included women. Randolph Trumbach has argued that by the end of the century effeminacy came to be associated more or less exclusively with the 'Molly'.<sup>262</sup> But Kathleen Wilson showcases that in imperial projects effeminacy would be used ambiguously, mainly in the subversion of the manly.<sup>263</sup> It would seem then, that there was no one way in which the notion was used, and this should be kept in mind when regarding the sources used here. In summary, effeminacy would encompass at the same time a 'blurring of gender boundaries and an affirmation of sexual difference'.<sup>264</sup>

<sup>260</sup> December 1721, trial of George Duffus (t17211206-20)

<sup>261</sup> Du Bosc, Jacques, *L' honneste Femme* (1632), p.376

<sup>262</sup> Trumbach, Randolph, 'The Heterosexual Male in Eighteenth-Century London and his Queer Interactions' in *Love, Sex, Intimacy and Friendship between Men*, O'Donnell, Katherine, and O'Rourke, Michael, (eds.) (Basingstoke: Palgrave, 2003)

<sup>263</sup> Wilson, Katherine, *The island race: Englishness, empire, and gender in the eighteenth century* (London: Routledge, 2003), p.23

<sup>264</sup> Cohen, *Fashioning Masculinity*, p.7

It is the blurring that allows us to see the 'Molly' as an alternative form of masculinity. Effeminacy did not only have an impact upon sexuality, but upon one's gender as well. Of course these two concepts were not thought to be separate, but as one whole package. Nevertheless, the 'Molly' incorporated behaviours that were reviled by most men.

Shepard states that 'early modern articulations of masculinity can [...] be broadly categorized as patriarchal, anti-patriarchal [...] or as loosely configured alternatives'.<sup>265</sup> The 'Molly' falls into this alternative category. Normative manhood was defined by 'others',<sup>266</sup> and the 'Molly' is one of these. The "Mollies" implicit effeminacy, in addition to participating in 'unnatural' sexual intercourse, meant that it could not be part of a hegemonic ideal of masculinity. Consequently, "Mollies" were subordinated.

These cases contain many allusions to the 'Molly', as well as a variety of gendered statements. It was around this time where the 'Molly' would reach its peak public profile, and it is evident that these cases knew of it, and were implicated in keeping the 'Molly' in public view.

## 6.6 Proving (hetero)sexuality

Interestingly two of these cases, one of an adult victim and one of a child, contain questions and statements which seem to attempt to prove the perpetrators heterosexuality. This was intended to make the perpetrator seem like someone who could not commit sodomy. The cases differ in their approach to this, however.

The first case is that of Jones, with his fourteen year old victim. Here, the onus is on Jones himself to prove his heterosexuality. To do this, he states that he

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<sup>265</sup> Shepard, *Meanings of Manhood*, p.12

<sup>266</sup> Ibid., p.8

has 'some witnesses to prove my attachment to women'.<sup>267</sup> This is a purposeful proving of heterosexuality, intended to show that he likes women, and not boys. Overall, Jones would summon four people to vouch for him, some of whom had known him for many years. One of these was named Ann, who stated that Jones is 'very fond of the women; he always appeared so to me in all the connexions he had with me'.<sup>268</sup> What these 'connections' were is unclear, be they personal or business or other, but either way he appeared to Ann as a 'normal', heterosexual man. As a woman herself, Ann would have been a decent witness to vouch for Jones, especially if they had intimate 'connections'. Another witness, a male, took a different approach. An old friend, he stated that when Jones was young he was 'addicted to women', and recollected that 'it was said he was clapped or poxed, and I believe it was so'.<sup>269</sup> Quite fantastically, this witness is using a sexual infection as evidence of Jones' heterosexuality, and thus of his innocence in this case. From a young age, it is clear that Jones liked women, and had engaged in sexual intercourse many times, or at least that is what is put forward. As another witness said, Jones 'is very fond of the women in general'.<sup>270</sup> The boy must have been lying then.

Taking a different, more subtle approach is the court of Andrew's case. Where before it was Jones who was showcasing his heterosexuality, in this case it can be gathered that the court was trying to do the same thing, though not explicitly. Specifically, the court would ask questions to multiple people, including the victim and Andrew's daughter, centred on his family life. It was asked whether he was married for example, and how many children he had. This was not done in the previous case, as it was likely Jones was not married or had children, or he could

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<sup>267</sup> July 1772, trial of ROBERT JONES (t17720715-22)

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

have used them as evidence of his heterosexuality. Nonetheless Andrews could, as it turned out he had been married for twenty-five or twenty-six years, and had four living children, after his wife had been pregnant twelve times. Given that these questions were asked to more than one person, they do not seem to have been asked for simply informational purposes. They may have been repeated in order to showcase that Andrews was heterosexual, and his marriage and multiple children were evidence of this.

One question that this case raises is the compatibility of marriage and homosexuality. For historians looking back, does proof of heterosexual relations (especially marriage and children, since they are common) mean that a subject was not homosexual? This has been somewhat explored in academic literature, with Norton stating that fewer than one-fifth of 'Mollies' maintained a marriage, with most being either bachelors or separated from their wives.<sup>271</sup> This would suggest that 'Mollies' seemed more interested in their own (homo)sexual activities. However, Norton later states that 'homosexuality was never a sufficient reason for a man not to marry; it would have been unthinkable for a man of any public consequence to play a role in society without a hostess, or at any rate without a wife back at the country seat'.<sup>272</sup> Despite this apparent evidence of 'Mollies' not marrying, Norton argues that homosexuals would have gotten married despite their homosexuality. Indeed, after showing how one 'Molly' was given eight children by his wife, he states that this is 'sufficient proof of the compatibility of effeminacy and virility'.<sup>273</sup> Despite some apparent backtrack in argumentation, I would agree with him where he states that homosexuality was not a sufficient reason for marriage. But importantly, as stated

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<sup>271</sup> Norton, *Mother Clap's*, pp.101-2

<sup>272</sup> Ibid., p.154

<sup>273</sup> Ibid., p.147

earlier, I do not agree that many of the men he uses for evidence were simply homosexual. Sexuality is much more complicated than this, and indeed, 'outside an immediately sexual context, there was little or no social pressure for someone to define for himself what his sexuality was'.<sup>274</sup> Thus, heterosexuality, or homosexuality, did not necessarily mean that a man would have gotten married or not. Marriage was an ideal for all men.

Modern sexuality often relies on self-identification. However in the past this was not the case. Sexuality was often implied and understood, and it did not necessarily require any sense of self-knowledge. This is what can be seen when we look back and attempt to find 'homosexuals'. It is clear that sodomy 'certainly did not define a subject position'.<sup>275</sup> There is no evidence of any man who committed sodomy calling themselves a sodomite, in the same way as someone in modern times could call themselves gay. The 'Molly' changed this however, as they contain many similarities to the modern homosexual.<sup>276</sup> This leads Bray to argue that the 'Molly' is the first form of homosexuality,<sup>277</sup> and Plummer states that the 'Molly' is a protogay identity.<sup>278</sup> While this can be disputed, what cannot is the effect that the emergence of the 'Molly' had on the courts, as evidenced in the cases described here. The 'Molly' had a public profile which the raids of the 1720s raised even further. Effeminacy was now a major issue. This would then allow heterosexuality to be used as a defence in court, as is cautiously argued here, given the small sample size of cases discussed.

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<sup>274</sup> Bray, *Homosexuality*, p.70

<sup>275</sup> Radcliff, N, 'Can the Sodomite Speak? Sodomy, Satire, Desire, and the Castlehaven Case' in *Love, Sex, Intimacy and Friendship between Men, 1550-1800*, O'Donnell, Katherine, and O'Rourke, Michael, (eds.) (London: Palgrave, 2002), p.149

<sup>276</sup> Bray, *Homosexuality*, p.103

<sup>277</sup> Ibid., p.114

<sup>278</sup> Plummer, *The Making of the Modern Homosexual*

Thus, there are important connections to be made between male rape and sexuality. While the sexuality of the perpetrators and victims cannot be investigated and categorized as can be done in modern times, there are still relevant allusions to various sexualities, even if they had not been specifically defined yet.

## 6.7 Conclusion

The conceptions of masculinity as examined here must be taken in context, they are historically specific. While they may seem cohesive, definitions invariably change as time moves on.<sup>279</sup> However, this shows that the historical study of masculinities is anti-essentialist,<sup>280</sup> and that negative associations can change over time.

This chapter follows modern findings of male rape research which highlights the connections between masculinity and male rape. It argues that these connections can also be seen in eighteenth century rape cases, evidenced in the variety of statements and references to masculinity. Furthermore hegemonic features of masculinity have been seen to be important when examining male rape; for both rapists and victims. This occurs whether the hegemonic ideal is the eighteenth century gentleman or the modern man. In addition, the connections between sodomy and bestiality, and thus what is human, show how the natural/unnatural discourse can function to support not only the governing of sexuality but also hegemonic forms of masculinity.

Furthermore it has been argued that the 'Molly' can be seen as a form of alternative masculinity. Patriarchal manhood was not the only masculinity available for men in the early modern period,<sup>281</sup> and it is evident that the 'Molly' existed in tension with other forms. Whether the 'Molly' is seen as homosexual or not, it clearly

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<sup>279</sup> Reeser, Todd, *Masculinities in Theory: An Introduction* (Chichester: Wiley-Blackwell, 2010), p.217

<sup>280</sup> Ibid.

<sup>281</sup> Shepard, *Manhood Credit and Patriarchy*, p.9

upset traditional boundaries of gender and sexuality with its embodiment of effeminacy, as well as courtroom proceedings. This is a figure who, after many arrests and deaths in 1720s, would disappear from the public scene.



## Conclusion

This thesis has set out to examine male rape from a historical perspective, in a particular time and place. It has attempted to show that male rape has a history, and to contribute to existing research on male rape, which is slowly growing into a proper field in its own right. While this study is the first to look at male rape in history, it will hopefully not be the last.

Many questions would guide the thesis, and these would eventually morph into the specific chapters above. Firstly was the legal history of male rape, and how, since it was indeed a material reality, it would be prosecuted before its inception in criminal law. What this chapter showed was how male rape was subsumed under the offence of sodomy, and how this changed over time. The three distinct periods above briefly note how wider concerns – religion, the prison system – had an effect on how male rape was prosecuted and punished. Although this thesis focuses on the eighteenth century, it is important to note how the modern day deals with male rape as it gives an awareness of historical change. Furthermore, modern research findings can be more adequately understood when understanding how the law treats the offence.

The next major question would focus on how male rape was treated by the courts, how it was conceptualised, and what was deemed important; simply put, how the courts dealt with male rape. It was shown that the courts relied heavily on the physical facts of the act; penetration and ejaculation – and furthermore with injuries. In addition, male rape was convicted under sodomy no matter the age of the victim. This shows that all anal intercourse was demonised, and the focus was on the sexual nature of the penetration. Nevertheless, cases concerning the rape of boys did contain their own particularities, partly due to the way in which childhood was

understood. Explicit quoting of testimony was used in this chapter to affirm that male rape existed.

The third chapter would answer why male rape came under the domain of sodomy, and the techniques and discourses which contributed to making this so. The concept was used in to explore the governing of sexuality, showing how any diversion away from the heterosexual ideal would be punished severely. A variety of discourses would come together in service of this; religious, natural/unnatural, medical, legal – a discursive explosion indeed.

More questions would be answered later on. One chief focus of this thesis has been on masculinity, as it has been shown to be important in male rape research. It was shown that this was the case for the eighteenth century, just as it has been for modern times. It can be argued then, that masculinity and male rape have a close connection, which may have changed over different periods, but the connection remained, and indeed, still remains. Hegemonic Masculinity also proved to be a useful tool in analysing these cases, showing how perpetrators and victims are placed in relation to it; especially concerning the ‘Molly’, seen as an alternative masculinity.

This study does has its limitations; all cases occurred within one century and are located in London. This gives the thesis a particular historical specificity, with findings that cannot all be simply transposed elsewhere; especially concerning how *governmentality* functions, along with models of masculinity. This must be kept in mind when looking at male rape in other times and places. Furthermore, fourteen cases is a relatively small sample size. However, this does mean that the cases could be analysed in detail. On top of all this, the *Proceedings* are biased in their own right, and are selective in the trials that they publish. This does not mean than

other cases of male rape did not occur, but that they are not available for us to see. Indeed, the fact that the *Proceedings* give little detail for the nineteenth century is unfortunate.

Despite these limitations there are numerous avenues to explore for the future study of male rape in history. Firstly, and obviously, is the study of male rape in other time periods. In addition, here only the *Proceedings* were used, and there are no doubt other sources which contain records of male rape. These could include other court records, witness testimonies, diaries, or other literature. Secondly, and again obviously, is the study of male rape in other locations. In a British context this could include other cities, or other countries in the Kingdom. Of course the study of male rape should not be kept within this small island, and can be examined elsewhere. Male rape in history can be studied for any location in the world which has adequate sources.

There are many other issues which can be looked at further, especially concerning what happened after the rape. Did any victim commit suicide, as sometimes happens with male rape? One possible frame to use is identity politics, did the rapist or victim internalise a new sense of self following the rape? References could be made to the 'Molly', who has been seen by some to incorporate a sense of identity. In addition, what are the post-rape implications for masculinity? It is these post-rape effects which interest me most, but which the court cases that are used here contain no allusion to. Any of the proposals laid out here are worth doing, and there are countless more.

It must be emphasised that this thesis should not be placed apart from its cultural context. The idea of this topic came from seeing how male rape is little understood, and how victims are rarely cared for. It came from seeing how models of

masculinity force victims to be silent, keeping their assault from their families as well as the authorities. It came from witnessing the deep sense of shame victims carry in their lives.

Following D'Cruze, this thesis is necessarily and unavoidably political.<sup>282</sup> It cannot hope to achieve change on its own, but it can contribute to exposing the harm of male rape, as well as how harmful masculinity can be for victims, and continues to be. Masculinity itself is open to historical change, so there is hope that harmful associations can be shattered.<sup>283</sup> At the very least, it can show how male rape has a history, just as sexual abusers do. As Joanna Bourke emphatically states, 'By demystifying the category of rapist we can make him less frightening and more amenable to change'.<sup>284</sup> This is a political and empowerment project.

Male rape has a past, and a present, but hopefully not a future.

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<sup>282</sup> D'Cruze, *Approaching the history of rape and sexual violence*, p.377

<sup>283</sup> Connell and Messerschmidt, 'Hegemonic Masculinity', p.835

<sup>284</sup> Bourke, *Rape*, p. viii

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